

## **D5.3 RUN-EU Research Framework-Research, Material, Intellectual and Knowledge Transfer Agreement Draft**

*(M9 July 2021)*

*(Limerick Institute of Technology-LIT (WPL*

*IPCA WPCoL)*

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# 1. WP5 Research Management in RUN-EU Discovery Program

## 1.1. Sustainable Inter-regional Research and Innovation

As a University RUN-EU has a shared vision to become a global innovation leader, to drive a strong, sustainable economy for society where research and innovation projects provide key enabling activities to achieve our goals. Knowledge transfer, including commercialisation as a result of RUN-EU research activity, is an important element of the RUN-EU discovery program. This deliverable will serve as the central point of reference for internal RUN-EU-alliance and industry-RUN-EU alliance research partnerships from the perspective of knowledge transfer (KT). The template KT forms are designed to be suitable for research transactions assisting in removing ambiguity in knowledge transfer by encouraging predictability and transparency across the RUN-EU knowledge transfer system. The Model Agreements are offered in a 'clean' form Word document, ready to download and use as a starting point for drafting and discussion with research partners.

WP5 focuses on the operationalisation of the RDI activities, through strong collaboration among partners, regional innovation clusters and European innovation hubs creating future-looking joint RDI teams and procedures, to increase and embed sustainable Inter-regional research and innovation projects across the RUN-EU alliance during the three years of the project.



Figure 1 RUN-EU 8 future-looking joint RUN-EU RDI teams indicative research areas

Research, Development and Innovation (RDI) are central to the RUN-EU Discovery program. The focus is on excellence with meaningful impact through industrial leadership and stakeholder engagement. Our research is strategically orientated and impact focused. Through innovative partnerships between RUN-EU researchers and industry partners and other stakeholders, our aim is to remove existing obstacles to innovation and revolutionize the way the public and private sector work together to bring research developments and advancements to the marketplace for societal benefit. The RUN-EU members have committed to establish a suite of common RUN-EU research and IP agreement templates to include how material, knowledge and Intellectual property transfer within the consortium will be managed. The basis of the agreements are based on the results of European best practice across the partnership members. A series of partner consultations have been undertaken with existing Intellectual Property/Knowledge Know-how and tools and policy documents across the consortium members and now propose a common suite of RUN-EU agreements including how material, knowledge and intellectual property transfer to be used.

This common set of template agreements has been created and included in this deliverable document for engagement between RUN-EU members and also with external industry and social partners. All the templates are now available within a WP5 research information Framework for RUN-EU members. We aim to promote a knowledge sharing approach and knowledge transfer capacity, valorizing the entrepreneurial mind-set amongst our researchers. As our staff and students engage actively with industry, business and the community, the RUN-EU suite of research documents and also the information documents concerning IP management and commercialization available through the European Commission IP Helpdesk (<https://intellectual-property-helpdesk.ec.europa.eu>) will provide exemplar templates for engagement. RUN-EU will use International best practice drawing on guidelines from various research funding agencies and the European commission IP helpdesk in relation to the treatment of Intellectual Property where commercially exploitable Intellectual Property arises as a result of RUN-EU research and development activities undertaken. We will further ensure, that, opportunities are taken, where possible and appropriate, to commercialise that Intellectual Property arising from RUN-EU research projects in all possible fields, applications and territories.

The RUN-EU Discovery program suite of research agreements aims to:

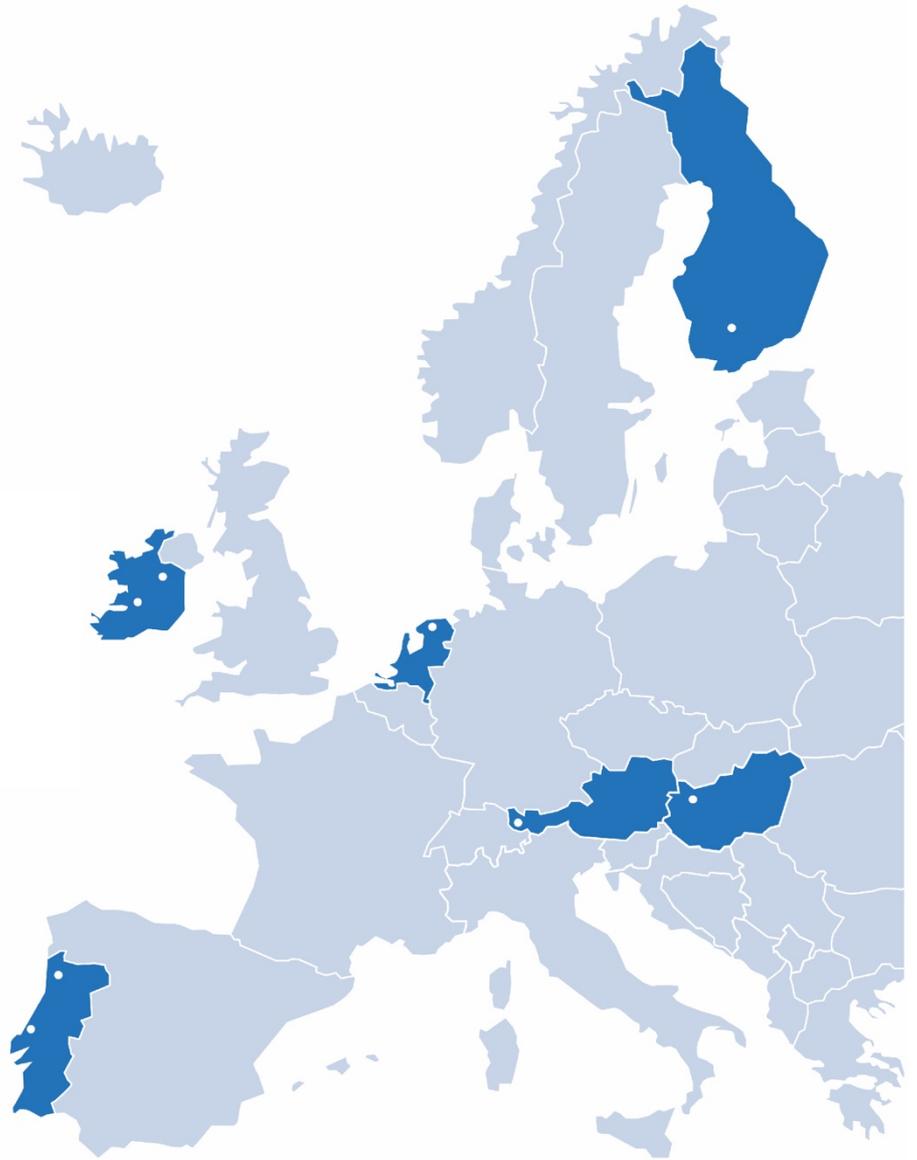
- Promote an entrepreneurial culture within RUN-EU to encourage strategies of commercialisation and technology transfer that foster the development of potentially commercial Intellectual Property arising from our research;

- Encourage RUN-EU researchers to consider the potential for Intellectual Property arising from their work;
- Improve the mutually supportive relationships between RUN-EU and external organizations engaged in the creation and exploitation of intellectual property;
- Stimulate interest in RUN-EU research teams as a source of research expertise having commercial potential;
- Recognize the legitimate commercial interests of external partners in the context of agreements entered into with RUN-EU research teams in terms of the sharing of benefits and liabilities;
- Provide a straightforward and business-like interface between external organizations and RUN-EU.

## **2. Deliverable 5.3 RUN-EU research, material, intellectual and knowledge transfer agreements (M5-M9)**

### **2.1. Research Agreement Templates**

RUN-EU MODEL TWO-WAY  
CONFIDENTIAL DISCLOSURE  
AGREEMENT



Dated \_\_\_\_\_ 20[●]

(1) [Full legal name of the RUN-EU RPO]

and

(2) [Full legal name of the Company]

## **MODEL TWO-WAY CONFIDENTIAL DISCLOSURE AGREEMENT**

## TWO-WAY CONFIDENTIAL DISCLOSURE AGREEMENT

This Agreement dated \_\_\_\_\_ 20[●] is between:

- (1) [●] (the “**RUN-EU RPO**”), an academic institution established [in RUN-EU RPO member country,] whose [principal address *or* registered office] is at [●]; and
- (2) [●] (the “**COMPANY**”), [a company incorporated in [●] under registration number [●]], whose [principal place of business *or* registered office] is at [●].

The RUN-EU RPO and COMPANY together shall be referred to as the “**Parties**”, and “**Party**” shall mean either one of them.

### Background:

The Parties wish to hold discussions in the field of [●] (the “**Field**”). Each Party wishes to receive confidential information in the Field from the other Party for the purpose of considering whether to enter into a further agreement with the other Party (the “**Permitted Purpose**”).

### The Parties agree as follows:

#### 1. Definitions

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

<b>Authorised Persons</b>	shall have the meaning given in clause 3.1.
<b>Confidential Information</b>	shall mean:  (a) in respect of Information provided in documentary form or by way of a model or in other tangible form, Information which 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 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  (c) in respect of Confidential Information imparted orally, any note or record of the disclosure [and any evaluation materials prepared by the Receiving Party that incorporate any Confidential Information]; and  (d) any copy of any of the foregoing; and

	(e) the fact that discussions are taking place between the Disclosing Party and the Receiving Party.
<b>Disclosing Party</b>	shall mean the Party to this Agreement that discloses Information, directly or indirectly to the Receiving Party under or in anticipation of this Agreement.
<b>FOI</b>	shall mean the Freedom of Information legislation/acts in RUN-EU member countries and includes any provision amending, superseding or re-enacting it (whether with or without modification).
<b>Information</b>	shall mean information whether of a technical, commercial or any other nature whatsoever provided directly or indirectly by the Disclosing Party to the Receiving Party in oral or documentary form or by way of models, biological or chemical materials or other tangible form or by demonstrations and whether before, on or after the date of this Agreement.
<b>Receiving Party</b>	shall mean the Party to this Agreement that receives Information, directly or indirectly from the Disclosing Party.

## 2. Confidentiality obligations

2.1. In consideration of the Disclosing Party providing Confidential Information, at its discretion, to the Receiving Party, the Receiving Party shall:

- 2.1.1. keep the Confidential Information secret and confidential;
- 2.1.2. neither disclose nor permit the disclosure of any Confidential Information to any person, except for disclosure to Authorised Persons in accordance with clause 3, or to a court or other public body in accordance with clause 4;
- 2.1.3. not use the Confidential Information for any purpose, whether commercial or non-commercial, other than for the Permitted Purpose;
- 2.1.4. make only such limited number of copies of the Confidential Information as are required for the Permitted Purpose, and provide those copies only to Authorised Persons; and
- 2.1.5. take proper and all reasonable measures to ensure the confidentiality of the Confidential Information.

## 3. Disclosure to employees

3.1. The Receiving Party may disclose the Confidential Information to those of its officers, employees and professional advisers (together, the “**Authorised Persons**”) who:

- 3.1.1. reasonably need to receive the Confidential Information to enable the Receiving Party to achieve the Permitted Purpose;
  - 3.1.2. have been informed by the Receiving Party (a) of the confidential nature of the Confidential Information, and (b) that the Disclosing Party provided the Confidential Information to the Receiving Party subject to the provisions of a written confidentiality agreement;
  - 3.1.3. have written confidentiality obligations to the Receiving Party that (a) are no less onerous than the provisions of this Agreement, and (b) apply to the Confidential Information, and who have been instructed to treat the Confidential Information as confidential;
  - 3.1.4. in the case of the Receiving Party's professional advisers, have been provided with a copy of this Agreement and have agreed with the Receiving Party to comply with the obligations of the Receiving Party under this Agreement; and
  - 3.1.5. [in the case of the Receiving Party's solicitors, have confirmed that they will treat the Confidential Information as if it were the Receiving Party's confidential information and therefore subject to the relevant jurisdictional rules concerning client information.
- 3.2. The Receiving Party shall be responsible for taking reasonable action to ensure that its Authorised Persons comply with the Receiving Party's obligations under this Agreement and shall be liable to the Disclosing Party for any breach of this Agreement by such Authorised Persons.

#### **4. Disclosure to court, etc.**

- 4.1. To the extent that the Receiving Party is required to disclose Confidential Information by order of a court or other public body that has jurisdiction over the Receiving Party, it may do so. Before making such a disclosure the Receiving Party shall, if the circumstances permit:
- 4.1.1. inform the Disclosing Party of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information);
  - 4.1.2. ask the court or other public body to treat the Confidential Information as confidential; and
  - 4.1.3. permit the Disclosing Party to make representations to the court or other public body in respect of the disclosure and/or confidential treatment of the Confidential Information.

#### **5. Exceptions to confidentiality obligations**

- 5.1. The Receiving Party's obligations under clause 2 shall not apply to Confidential Information that:
- 5.1.1. the Receiving Party possessed before the Disclosing Party disclosed it to the Receiving Party; or

- 5.1.2. is or becomes publicly known, other than as a result of breach of the terms of this Agreement by the Receiving Party or by anyone to whom the Receiving Party disclosed it; or
- 5.1.3. the Receiving Party obtains from a third-party, and the third-party was not under any obligation of confidentiality with respect to the Confidential Information; or
- 5.1.4. it can show (as demonstrated by its written records or other reasonable evidence) has been developed by any of the Receiving Party's employees who have not had any direct or indirect access to, or use or knowledge of, the Confidential Information.

## **6. Freedom of Information legislation (FOI)**

- 6.1. The COMPANY acknowledges and agrees that the RUN-EU RPO may be subject to the FOI and the codes of practice issued under FOI legislation/acts as may be amended, updated or replaced from time to time.
- 6.2. The COMPANY acknowledges and agrees that:
  - 6.2.1. subject to clauses 6.2.2 and 6.3, the decision on whether any exemption applies to a request for disclosure of recorded information under the FOI is a decision solely for the RUN-EU RPO; and
  - 6.2.2. if the RUN-EU RPO is processing a request under the FOI to disclose any Confidential Information then the COMPANY shall co-operate with the RUN-EU RPO, at the RUN-EU RPO's reasonable cost and expense, and shall use reasonable efforts to respond within ten (10) working days of the RUN-EU RPO's request for assistance in determining whether an exemption to the FOI applies.
- 6.3. If the RUN-EU RPO determines, in its sole discretion, that it will disclose any of the COMPANY's Confidential Information, it shall use reasonable efforts to notify the COMPANY in writing prior to any such disclosure. In any event, the RUN-EU RPO shall not disclose any Confidential Information which falls within any of the exemptions of the FOI and will consult with COMPANY to decide how best to respond to any FOI request before any response is made.

## **7. Return of information and surviving obligations**

- 7.1. Subject to clause 7.2, the Receiving Party shall (a) at the Disclosing Party's request, and (b) upon any termination of this Agreement:
  - 7.1.1. either return to the Disclosing Party or destroy (at the Disclosing Party's option) all documents and other materials that contain any of the Confidential Information, including all copies made by the Receiving Party representatives;
  - 7.1.2. permanently delete all electronic copies of Confidential Information from the Receiving Party's computer systems; and
  - 7.1.3. provide to the Disclosing Party a certificate, signed by an officer of the Receiving Party, confirming that the obligations referred to in clauses 7.1.1 and 7.1.2 have been met.

- 7.2. As an exception to its obligations under clause 7.1, the Receiving Party may retain one copy of the Confidential Information, in paper form, in the Receiving Party's legal files for the purpose of ensuring compliance with the Receiving Party's obligations under this Agreement.
- 7.3. Following the date of any termination of this Agreement, or any return of Confidential Information to the Disclosing Party ("**Final Date**"), (a) the Receiving Party shall make no further use of the Confidential Information, and (b) the Receiving Party's obligations under this Agreement shall otherwise continue in force, in respect of Confidential Information disclosed prior to the Final Date, in each case for a period of 5 years from the date of this Agreement.

## **8. General**

- 8.1. The Receiving Party acknowledges and agrees that all property, including intellectual property, in Confidential Information disclosed to it by the Disclosing Party shall remain with and be vested in the Disclosing Party.
- 8.2. This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
  - 8.2.1. to grant the Receiving Party any licence or rights other than as may be expressly stated in this Agreement;
  - 8.2.2. to require the Disclosing Party to disclose, continue disclosing or update any Confidential Information;
  - 8.2.3. to require the Disclosing Party to negotiate or continue negotiating with the Receiving Party with respect to any further agreement, and either party may withdraw from such negotiations at any time without liability; nor
  - 8.2.4. as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any information or materials provided under this Agreement.
- 8.3. This Agreement shall be governed by and construed in accordance with laws of the RUN-EU RPO member country and each Party agrees to submit to the exclusive jurisdiction of the courts of the RUN-EU RPO member country.

**Agreed by the Parties through their authorised signatories:**

**For and on behalf of**  
*[Insert full legal name of the RUN-EU RPO]*

**For and on behalf of**  
*[Insert full legal name of the COMPANY]*

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

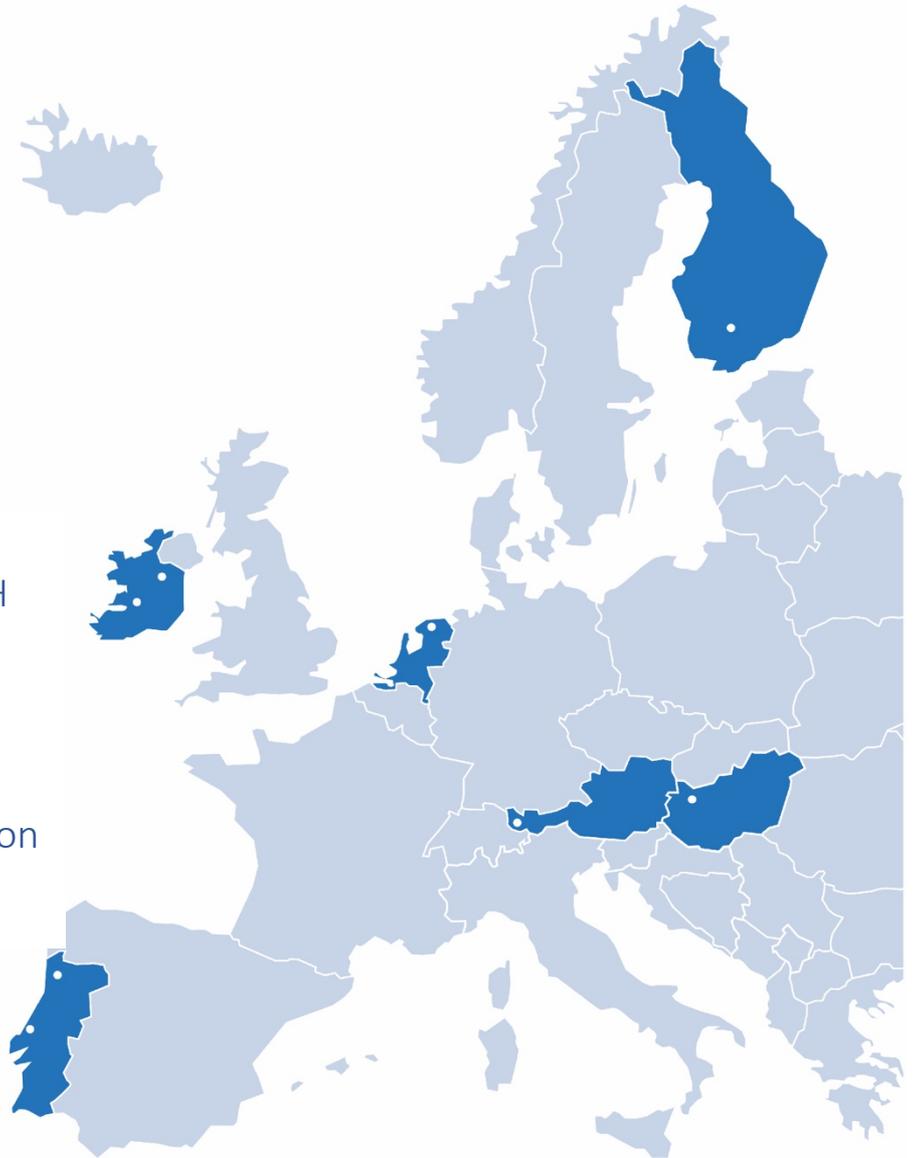
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

RUN-EU-EU MODEL RESEARCH  
CONSORTIUM AGREEMENT

Consortium Agreement Based on  
the DESCA 2020 Version 1.2.4



# RUN-EU MODEL RESEARCH CONSORTIUM AGREEMENT

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### CONSORTIUM AGREEMENT

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Attachment 1: Background included

Attachment 2: Accession document

[Attachment 3: List of Third Parties for simplified transfer according to Section 8.3.2.]

## **CONSORTIUM AGREEMENT**

THIS CONSORTIUM AGREEMENT is based upon

REGULATION (EU) No 1290/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 laying down the rules for the participation and dissemination in “Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)” (hereinafter referred to as “Rules for Participation”), and the European Commission Multi-beneficiary General Model Grant Agreement and its Annexes, and is made on the 1<sup>st</sup> Day of January 2020, hereinafter referred to as the Effective Date

### **BETWEEN:**

1. **[Full legal name of the Provider/ Research Performing RUN EU Member] [acronym]**,  
[address] hereby represented by project coordination team [project director(s)] and
  
2. **[Full legal name of the Provider/ Research Performing RUN EU Member] [acronym]**,  
[address] hereby represented by project coordination team [project director(s)] and
  
3. **[Full legal name of the Provider/ Research Performing RUN EU Member] [acronym]**,  
[address] hereby represented by project coordination team [project director(s)] and
  
4. **[Full legal name of the Provider/ Research Performing RUN EU Member] [acronym]**,  
[address] hereby represented by project coordination team [project director(s)] and
  
5. **[Full legal name of the Provider / Research Performing RUN EU Member] [acronym]**,  
[address] hereby represented by project coordination team [project director(s)] and
  
6. **[Full legal name of the Provider / Research Performing RUN EU Member] [acronym]**,  
[address] hereby represented by project coordination team [project director(s)] and
  
7. **[Full legal name of the Provider / Research Performing RUN EU Member] [acronym]**,  
[address] hereby represented by project coordination team [project director(s)] and
  
8. **[Full legal name of the Provider / Research Performing RUN EU Member] [acronym]**,  
[address] hereby represented by project coordination team [project director(s)] and

hereinafter, jointly or individually, referred to as “Parties” or “Party”

relating to the Coordination Support Action entitled **[Project Title]**

in short **[Project Acronym]** hereinafter referred to as “Project

## **WHEREAS:**

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Funding Authority as part of the – [Funding Call Title]. The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement to be signed by the Parties and the Funding Authority (hereinafter “Grant Agreement”).

The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

## **1 Section: Definitions**

### **1.1 Definitions**

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules for Participation or in the Grant Agreement including its Annexes.

### **1.2 Additional Definitions**

#### **“Consortium Body”:**

Consortium Body means any management body described in the Governance Structure section of this Consortium Agreement.

#### **“Consortium Plan”**

Consortium Plan means the description of the action and the related agreed budget as first defined in the Grant Agreement and which may be updated by the General Assembly.

#### **"Funding Authority"**

Funding Authority means the body awarding the grant for the Project.

#### **“Defaulting Party”**

Defaulting Party means a Party which the General Assembly has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Section 4.2 of this Consortium Agreement.

#### **“Needed”**

means:

For the implementation of the Project:

Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources.

For Exploitation of own Results:

Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources.

### **“Software”**

Software means sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression.

## **2 Section: Purpose**

The purpose of this Consortium Agreement is to specify with respect to the Project the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the Project and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.

## **3 Section: Entry into force, duration and termination**

### **3.1 Entry into force**

An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

A new entity becomes a Party to the Consortium Agreement upon signature of the accession document (Attachment 2) by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

### **3.2 Duration and termination**

This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the Grant Agreement and under this Consortium Agreement.

However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.

If

- the Grant Agreement is not signed by the Funding Authority or a Party, or
- the Grant Agreement is terminated, or
- a Party's participation in the Grant Agreement is terminated,

this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Section 3.3 of this Consortium Agreement.

### **3.3 Survival of rights and obligations**

The provisions relating to Access Rights, Dissemination and confidentiality, for the time period mentioned therein, as well as for liability, applicable law and settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the General Assembly and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

## **4. Section: Responsibilities of Parties**

### **4.1 General principles**

Each Party undertakes to take part in the efficient implementation of the Project, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the Grant Agreement and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Belgian law.

Each Party undertakes to notify promptly, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the Project.

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.

Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

### **4.2 Breach**

In the event that a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement (e.g. improper implementation of the project), the Coordinator or, if the Coordinator is in breach of its obligations, the Party appointed by the General

Assembly, will give formal notice to such Party requiring that such breach will be remedied within 30 calendar days from the date of receipt of the written notice by the Party.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the General Assembly may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

#### **4.3 Involvement of third parties**

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the Grant Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the Grant Agreement.

### **5. Section: Liability towards each other**

#### **5.1 No warranties**

In respect of any information or materials (incl. Results and Background) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliated Entities) exercising its Access Rights.

#### **5.2 Limitations of contractual liability**

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act.

For any remaining contractual liability, a Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's share of the total costs of the Project as identified in Annex 2 of the Grant Agreement provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability.

### 5.3 Damage caused to third parties

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Consortium Agreement or from its use of Results or Background.

### 5.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure.

Each Party will notify the competent Consortium Bodies of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

## 6 Section: Governance structure

### 6.1 General structure

The organisational structure of the Consortium shall comprise the following Consortium Bodies:

General Assembly as the ultimate decision-making body of the consortium

Executive Board as the supervisory body for the execution of the Project which shall report to and be accountable to the General Assembly

The Coordinator is the legal entity acting as the intermediary between the Parties and the Funding Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement. The Management Support Team assists the Executive Board and the Coordinator.

### 6.2 General operational procedures for all Consortium Bodies

#### 6.2.1 Representation in meetings

Any Party which is a member of a Consortium Body (hereinafter referred to as "Member"):

- should be present or represented at any meeting;
- may appoint a substitute or a proxy to attend and vote at any meeting;
- and shall participate in a cooperative manner in the meetings.

#### 6.2.2 Preparation and organisation of meetings

##### 6.2.2.1 Convening meetings

The chairperson of a Consortium Body shall convene meetings of that Consortium Body.

	<b>Ordinary meeting</b>	<b>Extraordinary meeting</b>
<b>General Assembly</b>	At least once a year	At any time upon written request of the Executive Board or 1/3 of the Members of the General Assembly

<b>Executive Board</b>	At least quarterly	At any time upon written request of any Member of the Executive Board
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### **6.2.2.2 Notice of a meeting**

The chairperson of a Consortium Body shall give notice in writing of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated below.

	<b>Ordinary meeting</b>	<b>Extraordinary meeting</b>
<b>General Assembly</b>	45 calendar days	15 calendar days
<b>Executive Board</b>	14 calendar days	7 calendar days

### **6.2.2.3 Sending the agenda**

The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body a written (original) agenda no later than the minimum number of days preceding the meeting as indicated below.

<b>General Assembly</b>	21 calendar days, 10 calendar days for an extraordinary meeting
<b>Executive Board</b>	7 calendar days

### **6.2.2.4 Adding agenda items:**

Any agenda item requiring a decision by the Members of a Consortium Body must be identified as such on the agenda.

Any Member of a Consortium Body may add an item to the original agenda by written notification to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.

<b>General Assembly</b>	14 calendar days, 7 calendar days for an extraordinary meeting
<b>Executive Board</b>	2 calendar days

### **6.2.2.5**

During a meeting the Members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda

### **6.2.2.6**

Meetings of each Consortium Body may also be held by teleconference or other telecommunication means.

### **6.2.2.7**

Decisions will only be binding once the relevant part of the Minutes has been accepted according to Section 6.2.5. Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document, which is then agreed by the defined majority (see Section 6.2.3) of all Members of the Consortium Body. Such document shall include the deadline for responses. Decisions taken without a meeting shall be considered as accepted if, within the period

set out in article 6.2.4.4, no Member has sent an objection in writing to the chairperson. The decisions will be binding after the chairperson sends to all Members of the Consortium Body and to the Coordinator a written notification of this acceptance.

### **6.2.3 Voting rules and quorum**

#### **6.2.3.1**

Each Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum). If the quorum is not reached, the chairperson of the Consortium Body shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members are present or represented.

#### **6.2.3.2**

Each Member of a Consortium Body present or represented in the meeting shall have one vote. A Party which the General Assembly has declared according to Section 4.2 to be a Defaulting Party may not vote. Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast.

### **6.2.4 Veto rights**

Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of a Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.

#### **6.2.4.1**

A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of a Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.

#### **6.2.4.2**

When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting only.

#### **6.2.4.3**

When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 calendar days after the draft minutes of the meeting are sent. A Party that is not a Member of a particular Consortium Body may veto a decision within the same number of calendar days after the draft minutes of the meeting are sent.

#### **6.2.4.4**

When a decision has been taken without a meeting a Member may veto such decision within 15 calendar days after written notification by the chairperson of the outcome of the vote.

#### **6.2.4.5**

In case of exercise of veto, the Members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its Members.

#### **6.2.4.6**

A Party may neither veto decisions relating to its identification to be in breach of its obligations nor to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the consortium or the consequences of them.

#### **6.2.4.7**

A Party requesting to leave the consortium may not veto decisions relating thereto.

### **6.2.5 Minutes of meetings**

#### **6.2.5.1**

The chairperson of a Consortium Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He/she shall send the draft minutes to all Members within 10 calendar days of the meeting.

#### **6.2.5.2**

The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has sent an objection in writing to the chairperson with respect to the accuracy of the draft of the minutes.

#### **6.2.5.3**

The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

### **6.3 Specific operational procedures for the Consortium Bodies**

#### **6.3.1 General Assembly**

In addition to the rules described in Section 6.2, the following rules apply:

##### **6.3.1.1 Members**

###### *6.3.1.1.1*

The General Assembly shall consist of one representative of each Party (hereinafter General Assembly Member).

###### *6.3.1.1.2*

Each General Assembly Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.1.2. of this Consortium Agreement.

###### *6.3.1.1.3*

The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise in a meeting of the General Assembly.

###### *6.3.1.1.4*

The Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 11.8.

#### **6.3.1.2 Decisions**

The General Assembly shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. In addition, all proposals made by the Executive Board shall also be considered and decided upon by the General Assembly.

The following decisions shall be taken by the General Assembly:

##### Content, finances and intellectual property rights

- Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Funding Authority
- Changes to the Consortium Plan
- Modifications to Attachment 1 (Background Included)
- Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3.2)

##### Evolution of the consortium

- Entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the consortium and the approval of the settlement on the conditions of the withdrawal
- Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement
- Declaration of a Party to be a Defaulting Party
- Remedies to be performed by a Defaulting Party
- Termination of a Defaulting Party's participation in the consortium and measures relating thereto
- Proposal to the Funding Authority for a change of the Coordinator
- Proposal to the Funding Authority for suspension of all or part of the Project
- Proposal to the Funding Authority for termination of the Project and the Consortium Agreement

##### Appointments

On the basis of the Grant Agreement, the appointment if necessary of:

- Executive Board Members

### **6.3.2 Executive Board**

In addition to the rules in Section 6.2, the following rules shall apply:

#### **6.3.2.1 Members**

The Executive Board shall consist of the Coordinator and the Parties appointed by the General Assembly. The Coordinator shall chair all meetings of the Executive Board, unless decided otherwise by a majority of two-thirds.

#### **6.3.2.2 Minutes of meetings**

Minutes of Executive Board meetings, once accepted, shall be sent by the Coordinator to the General Assembly Members for information.

#### **6.3.2.3 Tasks**

##### *6.3.2.3.1*

The Executive Board shall prepare the meetings, propose decisions and prepare the agenda of the General Assembly according to Section 6.3.1.2.

##### *6.3.2.3.2*

The Executive Board shall seek a consensus among the Parties.

##### *6.3.2.3.3*

The Executive Board shall be responsible for the proper execution and implementation of the decisions of the General Assembly.

##### *6.3.2.3.4*

The Executive Board shall monitor the effective and efficient implementation of the Project.

##### *6.3.2.3.5*

In addition, the Executive Board shall collect information at least every 6 months on the progress of the Project, examine that information to assess the compliance of the Project with the Consortium Plan and, if necessary, propose modifications of the Consortium Plan to the General Assembly.

##### *6.3.2.3.6*

#### **The Executive Board shall:**

- agree on the Members of the Management Support Team, upon a proposal by the Coordinator
- support the Coordinator in preparing meetings with the Funding Authority and in preparing related data and deliverables
- prepare the content and timing of press releases and joint publications by the consortium or proposed by the Funding Authority in respect of the procedures of the Grant Agreement Article 29.

#### 6.3.2.3.7

In the case of abolished tasks as a result of a decision of the General Assembly, the Executive Board shall advise the General Assembly on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

### 6.4 Coordinator

#### 6.4.1

The Coordinator shall be the intermediary between the Parties and the Funding Authority and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.

#### 6.4.2

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations
- keeping the address list of Members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Funding Authority
- transmitting documents and information connected with the Project to any other Parties concerned
- administering the financial contribution of the Funding Authority and fulfilling the financial tasks described in Section 7.3
- providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

If one or more of the Parties is late in submission of any project deliverable, the Coordinator may nevertheless submit the other 'Parties' project deliverables and all other documents required by the Grant Agreement to the Funding Authority in time.

#### 6.4.3

If the Coordinator fails in its coordination tasks, the General Assembly may propose to the Funding Authority to change the Coordinator.

#### 6.4.4

The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement.

#### 6.4.5

The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.

## **6.5 Management Support Team**

The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the Executive Board and shall assist and facilitate the work of the Executive Board and the Coordinator for executing the decisions of the General Assembly as well as the day-to-day management of the Project.

### **6.5.1**

Management Support Team may include Innovation, Research & Development Facilitator (IRDF), Gender and Diversity Ambassadors (GDA), Open Science Ambassadors (OSA) and Research Innovation Ambassadors (RIA).

## **7 Section: Financial provisions**

### **7.1 General Principles**

#### **7.1.1 Distribution of Financial Contribution**

The financial contribution of the Funding Authority to the Project shall be distributed by the Coordinator according to:

- the Consortium Plan
- the approval of reports by the Funding Authority, and
- the provisions of payment in Section 7.3.

A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.

#### **7.1.2 Justifying Costs**

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the Funding Authority. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Funding Authority.

#### **7.1.3 Funding Principles**

A Party that spends less than its allocated share of the budget as set out in the Consortium Plan or – in case of reimbursement via unit costs - implements less units than foreseen in the Consortium Plan will be funded in accordance with its actual duly justified eligible costs only.

A Party that spends more than its allocated share of the budget as set out in the Consortium Plan will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

#### **7.1.4 Return of excess payments; receipts**

##### **7.1.4.1**

In any case of a Party having received excess payments, the Party has to return the relevant amount to the Coordinator without undue delay.

#### **7.1.4.2**

In case a Party earns any receipt that is deductible from the total funding as set out in the Consortium Plan, the deduction is only directed toward the Party earning such income. The other Parties' financial share of the budget shall not be affected by one Party's receipt. In case the relevant receipt is more than the allocated share of the Party as set out in the Consortium Plan, the Party shall reimburse the funding reduction suffered by other Parties.

#### **7.1.5 Financial Consequences of the termination of the participation of a Party**

A Party leaving the consortium shall refund all payments it has received except the amount of contribution accepted by the Funding Authority or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Section 5.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks.

### **7.2 Budgeting**

The budget set out in the Consortium Plan shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

### **7.3 Payments**

#### **7.3.1 Payments to Parties are the exclusive tasks of the Coordinator.**

In particular, the Coordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts
- undertake to keep the Funding Authority's financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.
- With reference to Articles 21.2 and 21.3.2 of the Grant Agreement, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount from which the amounts retained by the Funding Authority for the Guarantee Fund and for the final payment have been deducted.

#### **7.3.2**

The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following:

- Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority without undue delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the funding authority will be paid to the party concerned.

The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or to a Beneficiary which has not yet signed this Consortium Agreement.

The Coordinator is entitled to recover any payments already paid to a Defaulting Party. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Funding Authority.

## **8 Section: Results**

### **8.1 Ownership of Results**

Results are owned by the Party that generates them.

### **8.2 Joint ownership**

Joint ownership is governed by Grant Agreement Article 26.2 with the following additions:

Unless otherwise agreed:

- each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and
- each of the joint owners shall be entitled to otherwise Exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given:
  - (a) at least 45 calendar days advance notice; and
  - (b) Fair and Reasonable compensation.

### **8.3 Transfer of Results**

#### **8.3.1**

Each Party may transfer ownership of its own Results following the procedures of the Grant Agreement Article 30.

#### **8.3.2**

It may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (3) to this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to a transfer to listed third parties according to the Grant Agreement Article 30.1.

### **8.3.3**

The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment (3) after signature of this Agreement requires a decision of the General Assembly.

### **8.3.4**

The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, it may be impossible under applicable EU and national laws on mergers and acquisitions for a Party to give the full 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.

### **8.3.5**

The obligations above apply only for as long as other Parties still have - or still may request - Access Rights to the Results.

## **8.4 Dissemination**

### **8.4.1**

For the avoidance of doubt, nothing in this Section 8.4 has impact on the confidentiality obligations set out in Section 10.

### **8.4.2 Dissemination of own Results**

#### **8.4.2.1**

During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 29.1 of the Grant Agreement subject to the following provisions. Prior notice of any planned publication shall be given to the other Parties at least 45 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement in writing to the Coordinator and to the Party or Parties proposing the dissemination within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

#### **8.4.2.2**

An objection is justified if

- (a) the protection of the objecting Party's Results or Background would be adversely affected
- (b) the objecting Party's legitimate interests in relation to the Results or Background would be significantly harmed.

The objection has to include a precise request for necessary modifications.

#### **8.4.2.3**

If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

The objecting Party can request a publication delay of not more than 45 calendar days from the time it raises such an objection. After 4 calendar days the publication is permitted.

#### **8.5.1 Dissemination of another Party's unpublished Results or Background**

A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published.

#### **8.5.2 Cooperation obligations**

The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree that includes their Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

#### **8.5.3 Use of names, logos or trademarks**

Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

## **9 Section: Access Rights**

### **9.1 Background included**

#### **9.1.1**

In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits. Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.

#### **9.1.2**

Any Party may add further own Background to Attachment 1 during the Project by written notice to the other Parties. However, approval of the General Assembly is needed should a Party wish to modify or withdraw its Background in Attachment 1.

## **9.2 General Principles**

### **9.2.1**

Each Party shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party property rights.

### **9.2.2**

Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.

### **9.2.3**

Access Rights shall be free of any administrative transfer costs.

### **9.2.4**

Access Rights are granted on a non-exclusive basis.

### **9.2.5**

Results and Background shall be used only for the purposes for which Access Rights to it have been granted.

### **9.2.6**

All requests for Access Rights shall be made in writing. The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

### **9.2.7**

The requesting Party must show that the Access Rights are Needed.

## **9.3 Access Rights for implementation**

Access Rights to Results and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.

## **9.4 Access Rights for Exploitation**

### **9.4.1 Access Rights to Results**

Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable conditions. Access rights to Results for internal research activities shall be granted on a royalty-free basis.

### **9.4.2**

Access Rights to Background if Needed for Exploitation of a Party's own Results, including for research on behalf of a third party, shall be granted on Fair and Reasonable conditions.

### **9.4.3**

A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

## **9.5 Access Rights for Affiliated Entities**

Affiliated Entities have Access Rights under the conditions of the Grant Agreement Articles 25.4 and 31.4. Such Access Rights must be requested by the Affiliated Entity from the Party that holds the Background or Results. Alternatively, the Party granting the Access Rights may individually agree with

the Party requesting the Access Rights to have the Access Rights include the right to sublicense to the latter's Affiliated Entities.

Access Rights to Affiliated Entities shall be granted on Fair and Reasonable conditions and upon written bilateral agreement. Affiliated Entities which obtain Access Rights in return fulfil all confidentiality and other obligations accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliated Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

## **9.6 Additional Access Rights**

The parties agree to negotiate in good faith any additional access rights to results as might be asked for by any party, upon adequate financial conditions being agreed.

## **9.7 Access Rights for Parties entering or leaving the consortium**

### **9.7.1 New Parties entering the consortium**

As regards Results developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.

### **9.7.2 Parties leaving the consortium**

#### **9.7.2.1 Access Rights granted to a leaving Party**

##### *9.7.2.2.1 Defaulting Party*

Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the General Assembly to terminate its participation in the consortium.

##### *9.7.2.2.1 Non-defaulting Party*

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Results developed until the date of the termination of its participation. It may request Access Rights within the period of time specified in Section 9.4.3.

**9.7.2.2** Access Rights to be granted by any leaving Party Any Party leaving the Project shall continue to grant Access Rights pursuant to the Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

### **9.8 Specific Provisions for Access Rights to Software**

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software. Parties' Access Rights to Software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

## **10 Section: Non-disclosure of information**

### **10.1**

All information in whatever form or mode of communication, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential" at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

### **10.2**

The Recipients hereby undertake in addition and without prejudice to any commitment on non-disclosure under the Grand Agreement, for a period of 4 years after the end of the Project:

- Not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in a machine readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

### **10.3**

The recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

### **10.4**

The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

- the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;

- the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
- the Confidential Information was already known to the Recipient prior to disclosure, or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.7 hereunder.

#### **10.5**

The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care

#### **10.6**

Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

#### **10.7**

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

- notify the Disclosing Party, and
- comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

### **11 Section: Miscellaneous**

#### **11.1 Attachments, inconsistencies and severability**

This Consortium Agreement consists of this core text and

Attachment 1 (Background included)

Attachment 2 (Accession document)

Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3.2)

In case the terms of this Consortium Agreement are in conflict with the terms of the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.

Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated that fulfils the purpose of the original provision.

#### **11.2 No representation, partnership or agency**

Except as otherwise provided in Section 6.4.4, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

#### **11.3 Notices and other communication**

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator.

Formal notices:

If it is required in this Consortium Agreement (Sections 4.2, 9.7.2.1.1, and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

Other communication:

Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all Parties.

#### **11.4 Assignment and amendments**

Except as set out in Section 8.3, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval. Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Section 6.3.1.2 (LP) require a separate written agreement to be signed between all Parties.

#### **11.5 Mandatory national law**

Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

### **11.6 Language**

This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

### **11.7 Applicable law**

This Consortium Agreement shall be construed in accordance with and governed by the laws of the RUN-EU member jurisdiction excluding its conflict of law provisions.

### **11.8 Settlement of disputes**

The parties shall endeavour to settle their disputes amicably. Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Brussels unless otherwise agreed upon. The language to be used in the mediation shall be English unless otherwise agreed upon.

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 calendar days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of 60 calendar days, either Party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be Brussels unless otherwise agreed upon. The language to be used in the arbitral proceedings shall be English unless otherwise agreed upon.

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.

## 12 Section Signatures

### AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

### The Coordinator: [Research Performing RUN-EU Member]

Name:

Title:

Signature and Stamp

Date

I hereby confirm that I have taken note of the entire content of the Consortium Agreement.

**Partner 2: [Research Performing RUN-EU Member]**

Signature and Stamp

Date

I hereby confirm that I have taken note of the entire content of the Consortium Agreement.

**Partner 3: [Research Performing RUN-EU Member]**

Name:

Title:

Signature and Stamp

Date

I hereby confirm that I have taken note of the entire content of the Consortium Agreement.

**Partner 4: [Research Performing RUN-EU Member]**

Name:

Title:

Signature and Stamp

Date

I hereby confirm that I have taken note of the entire content of the Consortium Agreement.

**Partner 5: [Research Performing RUN-EU Member]**

Name:

Title:

Signature and Stamp

Date

I hereby confirm that I have taken note of the entire content of the Consortium Agreement.

**Partner 6: [Research Performing RUN-EU Member]**

Name:

Title:

Signature and Stamp

Date

I hereby confirm that I have taken note of the entire content of the Consortium Agreement.

**Partner 7: [Research Performing RUN-EU Member]**

Name:

Title:

Signature and Stamp

Date

I hereby confirm that I have taken note of the entire content of the Consortium Agreement.

**Partner 8: [Research Performing RUN-EU Member]**

Name:

Title:

Signature and Stamp

Date

I hereby confirm that I have taken note of the entire content of the Consortium Agreement.

## Attachment 1: Background included

According to the Grant Agreement (Article 24) Background is defined as “data, know-how or information (...) that is needed to implement the action or exploit the results”. Because of this need, Access Rights have to be granted in principle, but Parties must identify and agree amongst them on the Background for the project. This is the purpose of this attachment.

### PARTY 1

As to **[Coordinator RPO]**, it is agreed between the Parties that, to the best of their knowledge the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

This represents the status at the time of signature of this Consortium Agreement.

### PARTY 2

As to **[Partner 1]**, it is agreed between the Parties that, to the best of their knowledge the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

This represents the status at the time of signature of this Consortium Agreement.

### PARTY 3

As to **[Partner 3]**, it is agreed between the Parties that, to the best of their knowledge the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

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This represents the status at the time of signature of this Consortium Agreement.

**PARTY 4**

As to **[Partner 4]**, it is agreed between the Parties that, to the best of their knowledge the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 5**

As to **[Partner 5]**, it is agreed between the Parties that, to the best of their knowledge the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 6**

As to **[Partner 6]**, it is agreed between the Parties that, to the best of their knowledge the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 7**

As to **[Partner 7]**, it is agreed between the Parties that, to the best of their knowledge the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 8**

As to **[Partner 8]**, it is agreed between the Parties that, to the best of their knowledge the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

This represents the status at the time of signature of this Consortium Agreement.

**Attachment 2: Accession document**

ACCESSION

**of a new Party to**

**[Acronym of the Project] Consortium Agreement, version [..., YYYY-MM-DD]**

**[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE Grant Agreement]**

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].

**[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE Grant Agreement]**

hereby certifies that the consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the consortium starting [date].

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

**[Date and Place]**

**[INSERT NAME OF THE NEW PARTY]**

Signature(s)

Name(s)

Title(s)

**[Date and Place]**

**[INSERT NAME OF THE COORDINATOR]**

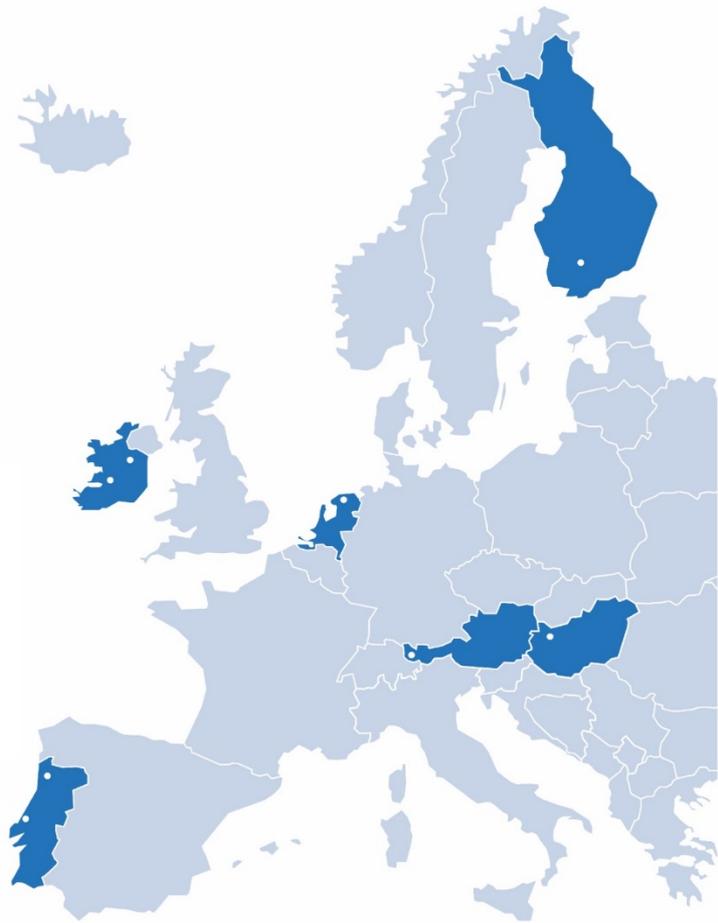
Signature(s)

Name(s)

Title(s)

**Attachment 3: List of Third Parties for simplified transfer according to Section 8.3.2**

**RUN-EU MODEL  
COLLABORATIVE RESEARCH  
AGREEMENT  
(PARTLY INDUSTRY FUNDED)**



Dated \_\_\_\_\_20[●]

(1) *[Full legal name of the Lead RUN-EU RPO]*

and

(2) *[Full legal name of the Partner RUN-EU RPO]*

and

(3) *[Full legal name of the Industry Party]*

## **RUN-EU MODEL COLLABORATIVE RESEARCH AGREEMENT**

### **(PART INDUSTRY FUNDED)**

**MODEL COLLABORATIVE RESEARCH AGREEMENT**  
**(PART INDUSTRY-FUNDED)**

**This Agreement** dated \_\_\_\_\_ 20[●] is between:

The RUN-EU RPOs

- (1) [●] (the “**Lead RUN-EU RPO**”); an academic institution whose principal address is at [●]  
and
- (2) [●] (the “**Partner RUN-EU RPO**”), an academic institution whose principal address is at [●]; and;  
the Company:
- (3) [●] (the “**Industry Party**”), [a company *or* insert relevant entity type incorporated in [●] with registration number [●],] whose [principal place of business *or* registered office] is at [●].

**Background:**

- A. The Industry Party wishes to collaborate with the RUN-EU RPO’s (Lead and Partner(s)) in respect of the Project and has agreed to provide the Industry Contribution in respect of the Project in each case upon the terms and subject to the conditions of this Agreement.
- B. Grant co-funding for the Project has been obtained from the Research Funding Organisation, [●] from the grant funding call [●], grant number [●], project title [●].

**The Parties agree** as follows:

**1. Interpretation**

*1.1 Definitions.* In this Agreement (and the background recitals above), unless the context requires otherwise or unless otherwise specified the following words shall have the following meanings:

<b>Affiliate</b>	In relation to a Party, means any entity or person that Controls, is Controlled by, or is under common Control with that Party.
<b>Background IP</b>	Any Intellectual Property in the same or related fields to the research contemplated by this Agreement, developed, owned, licensed to or otherwise controlled by a Party prior to the Commencement Date or generated by that Party independently of the Project and, in each case, made available by that Party for use in connection with the Project in accordance with the process set out at Clause 4.2. A list of Background IP as at the date of this Agreement is set out in Schedule 3.
<b>Commencement Date</b>	The commencement date as set out in Schedule 1.

<b>Completion Date</b>	The completion date as set out in Schedule 1.
<b>Confidential Information</b>	<p>Any information relating to the business, affairs, technology, products or processes of a Disclosing Party that:</p> <p><i>1.1.a.1</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;</p> <p><i>1.1.a.2</i> in respect of information that is imparted orally, described by the Disclosing Party or its representatives to the Receiving Party as being confidential at the time of disclosure [and confirmed in writing, marked confidential and sent to the receiving party within [28] days of the oral disclosure];</p> <p><i>1.1.a.3</i> is a copy of any of the foregoing; or</p> <p><i>1.1.a.4</i> due to its character or nature, a reasonable person in a like position to the Receiving Party and under like circumstances would consider confidential.</p>
<b>Control</b>	Possession of the power to direct or cause the direction of the management and policies of a person whether by membership, ownership, contract or otherwise. "Controlled", "Controls" and other cognate words and expressions shall be construed accordingly.
<b>Disclosing Party</b>	The Party disclosing Confidential Information to the other Party in connection with the Project.
<b>Event of Force Majeure</b>	Circumstances beyond the reasonable control of any Party, including labour disputes involving that Party, which may lead to a delay or failure of performance of obligations under this Agreement.
<b>Evaluation Exercise</b>	The process of evaluating the Foreground IP, including the carrying out of investigations, development and experimental work, for the purposes of assessing the commercial potential of the Foreground IP under the terms of clause 4.9
<b>Exercise Notice</b>	Written notice from the Industry Party to the RUN-EU RPO's that it wishes to exercise the Option.
<b>Export Control Rules</b>	Any export and import laws and associated embargo and economic sanction regulations, including those administered by RUN-EU member country, the EU and the United States to the extent they apply to a Party's activities under this Agreement.
<b>Fees</b>	The fees to be paid to the RUN-EU RPO's by the Industry Party as set out in Schedule 2.

<b>FOI</b>	The the RUN-EU RPO's Freedom of Information legislation/Acts, revised, modified or replaced from time to time.
<b>Foreground IP</b>	All Intellectual Property generated by the Parties in the performance of the Project. For the avoidance of doubt, Foreground IP shall include any Non-Severable Improvements.
<b>Government-related Bodies</b>	The RUN-EU member Government departments, agencies or State research funding organisations to which the RUN-EU RPO's may need to report on their activities, which may include, [●][●][●]
<b>Grant</b>	The grant from the State Research Funding Organisation to the RUN-EU RPO's for the purpose of carrying out the Project and its associated terms and conditions.
<b>Industry Contribution</b>	The total contribution of the Industry Party to the Project, including the Fees plus the monetary equivalent of any in-kind contributions as set out in Schedule 2.
<b>Industry Non-Severable Improvement</b>	Any Non-Severable Improvement to any Significant Background of the Industry Party.
<b>Intellectual Property (IP)</b>	All intellectual property of any description including Know-How, copyright, trade marks, database rights, design rights, patents, utility models, and applications for, and the right to apply for any of the foregoing items.
<b>Know-How</b>	Any unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain.
<b>Licence Field</b>	[Insert Field Area]
<b>Licence Territory</b>	[Insert]
<b>Negotiation Period</b>	90 days from and including the date of the Exercise Notice, being the period within which the parties must negotiate and conclude a licence.
<b>Non-Severable Improvement</b>	IP generated by any Party in the performance of the Project where, at a minimum, the IP in question: (i) was created using Significant Background; and (ii) cannot be used without infringing the Significant Background.

<b>Notice Party</b>	A Party in respect of whom notice of termination is issued by the other Party pursuant to Clause 10.1.
<b>Option</b>	Any option to negotiate a licence to Intellectual Property (or in the case of Industry Non-Severable Improvements, an assignment) granted by the RUN-EU RPO's to the Industry Party pursuant to Clauses 4.7 4.8, 4.9 or 4.10.
<b>Option Period</b>	For Foreground IP, one-hundred twenty days from and including the date of formal notification of the creation of the Foreground IP in question.  For Background IP, the term of the Project.
<b>Parties</b>	The RUN-EU RPOs (individually Lead RUN-EU RPO and RUN-EU RPO; together RUN-EU RPOs) and the Industry Party, and "Party" shall mean any of them.
<b>Personnel</b>	The officers, directors, employees, contractors, researchers or registered students of a Party and those of its Affiliates.
<b>Principal Investigator</b>	The lead researcher from the RUN-EU RPO's for the Project.
<b>Project</b>	The programme of work to be carried out by the Parties as described in the project plan in Schedule 1
<b>Project Foreground IP</b>	All Foreground IP arising in the Project excluding any Industry Non-Severable Improvements.
<b>Publishing Parties</b>	Any Party intending to publish any results of the Project.
<b>Receiving Parties</b>	The Party receiving Confidential Information from the other Party in connection with the Project.
<b>Restricted Material</b>	Any technical data, technology, services, products or materials that are subject to Export Control Rules.
<b>Reviewing Party</b>	The Party other than the Publishing Party.
<b>RUN-EU RPO's Non-Severable Improvement</b>	Any Non-Severable Improvement to any Significant Background of the RUN-EU RPO's.

**Significant Background**

A Party's Background IP used in the Project will constitute "Significant Background" where: (i) it is the subject of a granted patent; and/or (ii) the Project substantially relies on this Party's Background IP/Know how and without it the Project would be difficult or impossible to carry out. A list of Significant Background as at the date of this Agreement is set out in Schedule 3.

**State Research Funding Organisation** [Insert Government State Agencies Name]

1.2 *Construction.* In this Agreement, unless the context requires otherwise:

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

1.3 If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

## 2. Scope of the Project

2.1 *Project.* The Parties shall carry out the Project according to the project plan described in Schedule 1. The Project shall be carried out under the direction and supervision of the Principal Investigators. Each of the Parties shall use all reasonable endeavours to obtain all regulatory and ethical licences, consents and approvals necessary to allow it to carry out the tasks allotted to it in Schedule 1.

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

2.3 *Grant.* The Industry Party acknowledges that the RUN-EU RPO's is bound by the terms and conditions of the [Grant and Grant Reference Number], and agrees to reasonably cooperate with the RUN-EU RPO's so as to ensure that the conduct of the Project complies with the Grant and the RUN-EU RPO's reporting obligations

thereunder by complying with the terms described in Schedule 4. The Industry Party further agrees to make any reasonable necessary amendments to this agreement if the terms of the Grant are altered.

### **3. Project costs and contributions**

*3.1 Invoices.* The RUN-EU RPO's shall provide the Industry Party with invoices for the Fees due to the RUN-EU RPO's in accordance with the payment schedule set out in Schedule 2.

*3.2 Payment.* The Industry Party shall pay all valid invoices in accordance with the provisions of Schedule 2. Interest shall be automatically applied in the event of late payment in accordance with the provisions of Schedule 2.

*3.3 Currency and VAT.* All amounts stated are to be paid in Euro. The Industry Contribution is exclusive of value added tax (if applicable) which, subject to the provision of a valid value added tax invoice, shall be paid by the Industry Party in addition.

### **4. Intellectual Property**

*4.1 Background IP.* Each Party shall retain all right and title to, and interest in its own Background IP. Nothing in this Agreement shall affect ownership of any Background IP. No licence to use any Background IP is granted or implied by this Agreement except the rights expressly granted in this Agreement.

*4.2 Register of IP.*

- a)* Schedule 3 sets out a list of Background IP that the Parties have agreed to make available for the Project as at the date of this Agreement, together with details of any restrictions or encumbrances on the use of that Background IP and whether that Background IP is Significant Background.
- b)* Any Party wishing to make available Background IP for use in the Project after the date of this Agreement shall provide the other Party with a written description of the Background IP together with details of any restrictions or encumbrances on the use of that Background IP. The Parties shall also agree whether that Background IP is Significant Background. The introduction of any such Background IP shall be subject to the prior written approval of the other Party (such approval shall not be unreasonably withheld or delayed).
- c)* The Lead RUN-EU RPO shall maintain a register of Background IP contributed to the Project detailing the name of the contributing Party together with details of any restrictions or encumbrances on its use specified by the contributing Party.
- d)* No Party may withdraw or make any amendments to the terms and conditions of any Background IP without the prior written approval of the other Party (such approval shall not be unreasonably withheld or delayed).

*4.3 Use of Background in the Project.* Each Party grants to the other Parties and its Affiliates a royalty-free, non-exclusive licence to use, and permit its Personnel who are involved in the Project to use, its Background IP for the purposes of carrying out the Project, but for no other purpose. Neither Party may grant any sub-licence to use the other Party's Background IP.

*4.4 Notification of results.* Each of the Parties shall notify the other promptly after identifying any experimental result that it believes is patentable or otherwise protectable, and will supply copies of those results. All other experimental results will be reported according to the reporting arrangements in the Project plan described in Schedule 1.

*4.5 Personnel.* Each Party shall ensure that all its Personnel involved in the Project:

- a) maintain adequate and secure records, either electronically or in laboratory books, for the purpose of establishing intellectual contribution, authorship and/or inventors and invention dates;
- b) assign any rights they may have in any Foreground IP to it in order to be able to give full effect to the provisions of this Agreement; and
- c) otherwise comply with the obligations of that Party under this Agreement.

*4.6 Foreground IP.* Subject to the provisions in clause 4.6, all right and title to, and any interest in, any and all Foreground IP shall vest and remain vested in the RUN-EU RPO's. Foreground IP created solely by one RUN-EU RPO is solely owned by that RUN-EU RPO ("Sole RUN-EU RPO Foreground"). Foreground IP created jointly by the RUN-EU RPOs shall be owned jointly by the RUN-EU RPOs ("Joint RUN-EU RPO Foreground IP") and a joint ownership agreement ("JOMA") shall be put in place to govern the management of such Joint RUN-EU RPO Foreground IP, including the nomination of a Lead Commercialisation Agent to manage the commercial exploitation of such Foreground IP. To the extent that any Project Foreground IP is capable of prospective assignment, the Industry Party now assigns that Project Foreground IP to the RUN-EU RPO's; and to the extent that any Project Foreground IP cannot be prospectively assigned, shall assign such Project Foreground IP as and when that Project Foreground IP is created, at the request of the RUN-EU RPO's from time to time. At the request and expense of the RUN-EU RPO's, the Industry Party shall execute such documents as may be necessary to transfer title to the RUN-EU RPO's and apply for patents or other protections for such Project Foreground IP.

*4.7 Industry Non-Severable Improvements.*

- In consideration of the performance by the Industry Party of its obligations under this Agreement, the Industry Party shall have the right during the Option Period to acquire an assignment of any Industry Non-Severable Improvements at fair market rates.
- It is agreed that the fair market rate shall not exceed the value of the Industry Contribution made by the Industry Party at the date of the assignment to the extent that the Industry Party has not previously received a credit to the full value of that contribution and provided that this does not give rise to an unlawful state aid (within the meaning of Articles 107 to 109 of the Treaty on the Functioning of the European Union).

*4.8 Access rights - Option to an exclusive/non-exclusive licence*

- The owning RUN-EU RPO (or the Lead Commercialisation Agent in the case of RUN-EU RPO Joint Foreground IP) grants to the Industry Party an exclusive option during the Option Period to elect to negotiate a licence in the Licence Field in the Licence Territory to the Project Foreground IP.
- Any such licence shall:

- be on fair and reasonable commercial terms;
- be concluded by way of a separate licence; and
- include, without limitation, terms based on the provisions of HOA's in Schedule 5.

For the avoidance of doubt, the terms in the HOA,s are provided for the purposes of developing a licence and no provision of the HOA,s is intended to be or is legally binding on any person.

- Any such licence shall be in consideration of the performance by the Industry Party of its obligations under this Agreement and subject to the Industry Contribution made by the Industry Party being in excess of the relevant minimum contribution level as set by the State Research Funding Organisation and being made in full.
  - a) Any such licence shall be delivered in a separate agreement and concluded on completion of the Project.

#### *4.9 Evaluation licence.*

- a) In consideration of the performance by the Industry Party of its obligations under this Agreement, the RUN-EU RPO's hereby grants to the Industry Party an exclusive non-transferable, non-sub-licensable, royalty-free licence during the Option Period or such other period as both parties may agree to use the Project Foreground IP for the limited purpose of performing the Evaluation Exercise.
- b) This Evaluation Exercise shall be subject to the provisions of this Agreement,
- c) The Industry Party shall promptly disclose to the RUN-EU RPO's the information resulting from the Evaluation Exercise.

*4.10 Access to RUN-EU RPO's Background for commercial purposes.* To the extent that a licence to any RUN-EU RPO's Background IP is legally or technically necessary in order to commercially exploit the Foreground IP, the Industry Party shall have the option during the Option Period to negotiate and conclude a licence to the RUN-EU RPO's Background IP provided that the RUN-EU RPO's has not indicated otherwise in Schedule 3 or pursuant to Clause 4.2. Any such licence shall be on fair and reasonable commercial terms.

#### *4.11 Procedure for the exercise of Options:*

- a) If the Industry Party wishes to exercise an Option, it shall give an Exercise Notice to the owning RUN-EU RPO or the RUN-EU RPO's in the case of jointly owned IP prior to the expiry of the applicable Option Period. No Option may be exercised more than once in respect of the same IP.
- b) Upon receipt of an Exercise Notice, the Parties acting reasonably shall promptly enter into negotiations in good faith with a view to the conclusion of a licence agreement (in the case of an Industry Non-Severable Improvement, an assignment) in respect of the relevant Intellectual Property during the Negotiation Period.
- c) If the Industry Party does not exercise its Option during the applicable Option Period or the Parties are unable to agree the terms of a licence agreement (in the case of an Industry Non-Severable Improvement, an assignment) within the Negotiation

Period and subject to either Party's right to refer the matter under Clause 11 that Option shall lapse.

*4.12 Research rights.* Notwithstanding the provisions of Clause 4.7 or the grant of any exclusive licence to Project Foreground IP, the owning RUN-EU RPO or the RUN-EU RPO's in the case of jointly owned IP shall have a non-exclusive, irrevocable, perpetual, royalty free right to utilise the Foreground IP for internal teaching and research, but for no other purpose. The rights of the RUN-EU RPO's under this Clause 4.12 are subject to the confidentiality restrictions in Clause 5 and the rules on publication in Clause 6.

*4.13 IP protection.* The owning RUN-EU RPO or the RUN-EU RPO's in the case of jointly owned IP shall consult with the Industry Party in respect of the IP protection strategy and associated costs for the Project Foreground IP, including application for patents or other protections. The owning RUN-EU RPO or the RUN-EU RPO's shall be responsible for the costs of such IP protection until the Project Foreground IP is licensed to the Industry Party, and any such licence shall include terms that relate to ongoing IP costs and/or the reimbursement of the previous direct costs of this IP protection.

*4.14 Step-in rights.* If the owning RUN-EU RPO or the RUN-EU RPO's in the case of jointly owned IP chooses not to file, prosecute or maintain any IP protection for the Foreground IP, the owning RUN-EU RPO or the RUN-EU RPO's in the case of jointly owned IP shall give the Industry Party notice within a reasonable period prior to the potential loss of rights, and if the Industry Party so requests, the owning RUN-EU RPO or the RUN-EU RPO's in the case of jointly owned IP shall (at the cost and expense of the Industry Party) prepare, file, prosecute and maintain such IP protection as the Industry Party sees fit.

*4.15 State Aid.* The grant of any assignment of, or licence to, Intellectual Property pursuant to Clauses 4.7, 4.8, 4.9 or 4.10 is subject to compliance with EU state aid rules and the Parties shall use all reasonable endeavours to ensure that the terms of any such assignment or licence do not give rise to unlawful state aid.

## **5. Confidentiality**

*5.1 Confidentiality obligations.* Each Receiving Party undertakes:

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

5.2 *Exceptions to obligations.* The provisions of Clause 5.1 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 agents, Personnel, or Affiliates.

5.3 *Disclosure in accordance with legal obligations.* To the extent that the Receiving Party is required to disclose any of the Disclosing Party's Confidential Information by order of a court or other public body that has jurisdiction over it or under other statutory or regulatory obligations it may do so, provided that, before making such a disclosure the Receiving Party shall, unless it is prohibited from so doing by law:

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

Disclosure of any Confidential Information pursuant to any such order or requirement shall not be deemed to render it non-confidential and the Receiving Party's obligations with respect to such Confidential Information shall not be changed or lessened by virtue of any such disclosure, unless such disclosure results in one or more of the exceptions listed in Clause 5.2 above applying to that Confidential Information.

5.4 *Freedom of Information legislation.* The Industry Party acknowledges and agrees that the RUN-EU RPO's is subject to FOI and the codes of practice issued under FOI as may be amended, updated or replaced from time to time. The Industry Party agrees that all requests under FOI relating to this Agreement and any other relevant records will be processed by the RUN-EU RPO's under the terms of FOI. The RUN-EU RPO's and the Industry Party shall communicate and cooperate in relation to the processing of any requests under FOI.

5.5 *Notice of breach.* Each Party shall give notice to each of the other Party of any unauthorised use, disclosure, theft or other loss of that other Party's Confidential Information as soon as is practicable after becoming aware of it.

5.6 *Duration of obligations.* The obligations of confidentiality and non-use set out in this Clause 5 shall survive termination of this Agreement for any reason for a period of five (5) years from the date of termination.

## **6. Publication**

- 6.1 *Prior consultation.* Each Publishing Parties shall submit its proposed publication in writing to the Reviewing Party at least 30 days before submitting it for publication.
- 6.2 *Delay for protection of IP.* If the Reviewing Parties believes that delay is needed in order to seek patent or similar protection for any of the Reviewing Party's Background IP or any Foreground IP, the Reviewing Party may by giving written notice to the Publishing Party require the Publishing Party to delay the proposed publication for a maximum of ninety (90) days or other such time as both Parties may agree, or until any affected IP is protected, whichever is the sooner.
- 6.3 *Removal of Confidential Information.* All Non-Severable Improvements shall be treated as Confidential Information belonging to the owning Party. The Reviewing Party may by giving written notice to the Publishing Party require the removal of any of the Reviewing Party's Confidential Information from the publication.
- 6.4 *Assumed permission.* If the Publishing Party does not receive a written objection from the Reviewing Party within 30 days of submission of notification of publication then permission to publish shall be deemed to have been given.

## **7. Notification to RUN-EU Member / European Government-related Bodies**

- 7.1 *Reporting obligations.* The Industry Party acknowledges that as a publicly funded organisation, the RUN-EU RPO's may be obliged to report on its activities, including those relating to research to Government-related Bodies. In particular the RUN-EU RPO's is required to report under the terms and conditions of the Grant and related funding to Government-related Bodies.
- 7.2 *Provision of information.* The Industry Party hereby consents to information relating to the Project being reported to Government-related Bodies providing that any such information shall be kept to the minimum required and shall, except for the name of the Industry Party, the amount of the Industry Contribution, and a non-confidential project title, be marked "confidential" to the extent it comprises Confidential Information.
- 7.3 *Reporting under the Grant.* In respect of the Grant, the Industry Party hereby consents to the information listed in Schedule 4 relating to the Project being reported to the State Research Funding Organisation.

## **8. Warranties and Undertakings**

- 8.1 *No implied warranties, etc.* Each Party 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.
- 8.2 *Entitlement to enter the contract.* Each Party warrants to the other that it has full power and authority under its constitution and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement.

- 8.3 Performance of the Project.* Each Party shall carry out the research and tasks which it is specified to perform in the project plan set out in Schedule 1, and provide the human resources, materials, facilities and equipment that are designated to be provided by in the project plan, in each case in a timely manner, in accordance with good accepted research practice and all applicable laws, and with due regard for the health and safety of those involved in the Project.
- 8.4 Use of results or outcome.* Each Party shall be responsible for the use to which it puts any technology, product, process, method, discovery, software, information, material or data developed during the course of or otherwise arising from the Project.
- 8.5 No other warranties.* Each Party acknowledges that this Agreement provides for the performance of research and that specific results cannot be guaranteed. Neither Party warrants or undertakes that any result or outcome, whether stated in this Agreement or not, shall be achieved, be achievable or be attained at all or by a given Completion Date or any other date, nor does either Party give any warranty that the content or use of any results, Intellectual Property, reports, information or other materials provided in connection with this Agreement will not constitute or result in any infringement of third-party rights.

## **9. Liability and insurance**

### *9.1 Liability of the Parties.*

- a)* To the extent that either Party has any liability to the other Party in contract, tort (including negligence), or otherwise under or in connection with this Agreement, including any liability for breach of warranty, that Party's liability shall be limited in accordance with the following provisions of this Clause 9.1.
- b)* Except as provided in Clauses 9.1(c), 9.1(d) and 9.1(f), the aggregate liability of each Party to the other Party shall be limited to a sum equal to the total Industry Contribution to the Project under this Agreement.
- c)* The aggregate liability of each Party to the other Party in the case of breach of confidentiality, wilful default or negligence (not leading to death or personal injury) shall be limited to a sum equal to three (3) times the total Industry Contribution to the Project under this Agreement.
- d)* The aggregate liability of the Industry Party to the RUN-EU RPO's in respect of any breach of any terms of the Grant to the extent that such breach arises out of or in connection with the Industry Party's breach of this Agreement or negligence shall be limited to a sum equal to the Total Project Budget (and the Parties acknowledge that losses incurred by the RUN-EU RPO's under the Grant as a result of the Industry Party's breach of this Agreement or negligence shall constitute a direct loss arising out of or in connection with the Industry Party's breach of this Agreement or negligence).
- e)* 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.
- f)* Nothing in this Agreement excludes or limits any Party's liability for death or personal injury caused by that Party's negligence, for fraud or fraudulent

misrepresentation or for any other liability to the extent it cannot be excluded or limited under applicable law.

9.2 *Insurance.* Each Party shall effect and maintain in force all necessary insurance coverage for the performance of its respective obligations under this Agreement, including as a minimum:

- a) Employer's liability insurance for any one claim in the amount of €13,000,000; and
- b) Public liability insurance for any one claim in the amount of €6,500,000; and
- c) If the Party is providing relevant professional advice under the Project, Professional indemnity insurance in the amount of €1,000,000.

## 10. Termination

10.1 *Early termination.* Without prejudice to any other rights or remedies, a Party may terminate this Agreement, at any time, on written notice to the Notice Party:

- a) if the Notice Party is in material breach of its obligations under this Agreement and, where the breach is capable of remedy within thirty (30) days, the Notice Party has not remedied the breach within thirty (30) days of receiving written notice which specifies the breach and requires the breach to be remedied; or
- b) if: (i) the Notice Party becomes insolvent or unable to pay its debts as and when they become due; (ii) an order is made or a resolution is passed for the winding up of the Notice Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (iii) a liquidator, examiner, receiver, receiver manager, or trustee is appointed in respect of the whole or any part of the Notice Party's assets or business; (iv) the Notice Party makes any composition with its creditors; (v) the Notice Party ceases to continue its business; or (vi) as a result of debt and/or maladministration the Notice Party takes or suffers any similar or analogous action.

10.2 *Consequences of termination.* On termination of this Agreement for any reason except for material breach by the RUN-EU RPO's, the Industry Party shall pay to the RUN-EU RPO's:

- a) any payment which was due to the RUN-EU RPO's prior to the date of termination but which was not paid prior to termination; and
- b) a proportion of the next payment (if any) falling due after the date of termination reflecting the RUN-EU RPO's work prior to the date of termination and any non-cancellable commitments entered into by the RUN-EU RPO's including a proportionate contribution to any redundancy costs that the RUN-EU RPO's may incur as a direct result of the termination this Agreement with respect to personnel employed for the purposes of the Project and funded from the Industry Contribution].

10.3 *Survival of obligations.* On termination or expiration of this Agreement for any reason, all rights and duties of the Parties with regard to each other will cease except for rights and remedies which may have accrued prior to termination or expiration and any rights and/or obligations

which expressly or by implication are intended to commence, survive or continue in effect on or after termination or expiration. Without prejudice to the generality of this clause, the termination or expiration of this Agreement will not affect Clauses 4, 5, 6, 7, 9, 11 and, to the extent applicable, 12 which shall survive the expiration and/or termination of this Agreement.

## **11. Dispute Resolution**

*11.1 Internal escalation.* The Parties shall make every reasonable effort to resolve all issues fairly by negotiation. All disputes which arise between the Parties in connection with this Agreement shall be discussed initially between the project managers for the Project. If the dispute remains it shall be referred to [●], in case of the Lead RUN-EU RPO, it shall be referred to [●] in case of the partner RUN-EU RPO, and [●] in the case of the Industry Party in an attempt to resolve the issue in good faith.

*11.2 Mediation.* In the event that the dispute has not been settled within sixty (60) days, it shall be submitted for mediation by a mediator or other appropriate independent third party expert agreed by the Parties or, in default of agreement, appointed by the Centre for Dispute Resolution in Dublin. The cost of any such mediator or expert shall be borne equally by the Parties.

*11.3 Injunctive relief.* For the avoidance of doubt, however, nothing in this Clause 11 shall prevent or delay a Party from applying to a court of competent jurisdiction for the purposes of seeking injunctive relief provided that there is no delay in the prosecution of that application.

## **12. General**

*12.1 Force majeure.*

- a) 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 (except payment obligations) that result from any Event of Force Majeure. The Party affected by an Event of Force Majeure 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.
- b) If a Party is prevented from performing a material obligation under this Agreement by any Event of Force Majeure for a continuous period of 90 days or more, then the other Party shall be entitled to terminate this Agreement with immediate effect by giving notice in writing. Neither Party shall be liable to the other for such termination.

*12.2 Amendments.* This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

*12.3 Independent contractors.* The relationship of the RUN-EU RPO's to the Industry Party shall be that of independent contractor. This Agreement is not intended to, and does not, create any contract of employment or other legal relationship between the Parties.

*12.4 Sub-contracting.* The RUN-EU RPO's may not sub-contract any part of the Project except with the written authorisation of the Industry Party. Where such authorisation is given the RUN-EU RPO's shall be responsible for the work of any sub-contractor and for such sub-contractor's compliance with the provisions of this Agreement.

**12.5 Assignment.** Neither Party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement except to its Affiliates without the prior written agreement of the other Party.

**12.6 Standard form documents.** The Parties recognise that printed form purchase orders, invoices and other commonly used form documents relating to the performance of any obligations under this Agreement may contain terms which conflict with one or more terms of this Agreement. In case of any such conflict, the relevant terms of this Agreement shall prevail.

**12.7 Entire agreement.** This Agreement, including its Schedules, sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter.

**12.8 Notices.** All notices given by either Party to the other pursuant to this Agreement shall be in writing and may be delivered by pre-paid post, registered courier or by hand to:

	<b>Lead RUN-EU RPO's Contact</b>	<b>Partner RUN-EU RPO's Contact:</b>	<b>Industry Partner Contact</b>
Name:			
Title:			
Address:			

Any such notice, if so given, shall be deemed to have been served:

- a) if sent by hand, when delivered;
- b) if sent by post or courier, one business day after posting.

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

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

**12.12 Export and Import Control.**

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

- b) Subject to the foregoing, each Party shall adhere to, and reasonably assist each other with adhering to, Export Control Rules and shall not export, re-export, resell, transfer, or disclose, directly or indirectly, any Restricted Materials to any proscribed person, entity, or country, or foreign national thereof, unless properly authorised in accordance with Export Control Rules.
- c) Any Party exporting Restricted Materials shall be solely responsible for obtaining any applicable licences and authorisations.

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

**12.14 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.

**12.15 Law and jurisdiction.** This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the Lead RUN-EU member country and each Party agrees to submit to the exclusive jurisdiction of the courts of Lead RUN-EU member country. **Agreed by the parties through their authorised signatories:**

<p><b>SIGNED</b> For and on behalf of  <i>[Lead RUN-EU RPO]</i></p> <p>_____</p> <p>Signed</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>	<p><b>SIGNED</b> For and on behalf of  <i>[Partner RUN-EU RPO]</i></p> <p>_____</p> <p>Signed</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>	<p><b>SIGNED</b> For and on behalf of  <i>[Industry Partner]</i></p> <p>_____</p> <p>Signed</p> <p>Name</p> <p>Title:</p> <p>Date:</p>
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**We/I not being a party to this Agreement and without intention to create legal relations acknowledge the terms of this Agreement.**

*Lead RUN-EU RPO's Principal Investigator*

*Partner RUN-EU RPO's Principal Investigator*

\_\_\_\_\_

\_\_\_\_\_

Signed

Signed

Name:

Name:

Title:

Title:

Date:

Date:

## Schedule 1

### Project Plan

<b>Work scope</b>	<i>Describe the research to be undertaken and key roles and obligations for each participant</i>
<b>Goals</b>	<i>The main aims of the Project</i>
<b>Commencement Date</b>	
<b>Completion Date</b>	
<b>Timetable</b>	<i>Provide an estimated timetable of activities.</i>
	<i>Milestones:</i>
<b>Staff</b>	<i>List who will work on the Project and who employs them, and where they will work. State if any elements of the research be subcontracted to third parties. Name the project managers for each of the parties.</i>
	<i>Are suitable contractual arrangements in place with personnel? Y/N? If not, is there a suitable recruitment plan? Y/N?</i>
<b>Reporting requirements</b>	<i>Describe how and how often progress will be reported amongst the parties and to research funders (as applicable)</i>
<b>Project management</b>	<i>Describe the project management arrangements for the Project. Who is the primary point of contact for each organisation?</i>
<b>Dissemination</b>	<i>Describe how the results of the research will be disseminated and describe any restrictions to be imposed</i>
<b>Changes</b>	<i>Are any alterations to the Project possible, and if so what steps are needed to make these changes</i>

## Schedule 2

### Project Budget

Summary Of Total Project Costs				
Cost Category	Research Agency Contribution	Company Contribution		Total Project Costs
	Cash €	Cash €	In-Kind	€
Personnel				
Equipment				
Materials				
Travel (Domestic)				
Travel (International)				
Sub-Contract Costs				
Other Costs				
Overheads				
<b>Total</b>				
<b>Percentages</b>				

### Payment Schedule for Lead RUN-EU RPO

<b>Payment schedule</b> (exclusive of VAT)	<b>Date due</b>	<b>Amount</b>
<b>RUN-EU RPO's contact details for invoices</b>		
<b>Industry Party's contact details for invoices</b>		
<b>Payment Terms</b>		

<b>Interest on Late Payment</b>	
<b>Payment details for RUN-EU RPO's</b>	
<b>VAT</b>	
<b>Industry VAT Number</b>	
<b>RUN-EU RPO's VAT Number</b>	

**Payment Schedule for Partner RUN-EU RPO**

<b>Payment schedule (exclusive of VAT)</b>	<b>Date due</b>	<b>Amount</b>
<b>RUN-EU RPO's contact details for invoices</b>		
<b>Payment Terms</b>		
<b>Interest on Late Payment</b>		
<b>Payment details for RUN-EU RPO's</b>		
<b>VAT</b>		
<b>RUN-EU RPO's VAT Number</b>		

**Schedule 3**

**Register of Background IP**

**LEAD RUN-EU RPO's Background IP**

Describe Background	List any relevant restrictions and encumbrances associated with the Background	Is this "Significant Background"?

**Partner RUN-EU RPO's Background IP**

Describe Background	List any relevant restrictions and encumbrances associated with the Background	Is this "Significant Background"?

**Industry Party Background IP**

Describe Background	List any relevant restrictions and encumbrances associated with the Background	Is this "Significant Background"?

**Schedule 4**

**Provisions of the Grant which are relevant to the Industry Party**

**Reporting**

The Industry Party agrees that the RUN-EU RPO's will provide the following information to Government-related Bodies according to the reporting schedule described. Unless otherwise specified, all such information will be marked "confidential".

Information to be provided	Government-related Body	Date of reporting

## Schedule 5

### Heads of Agreement

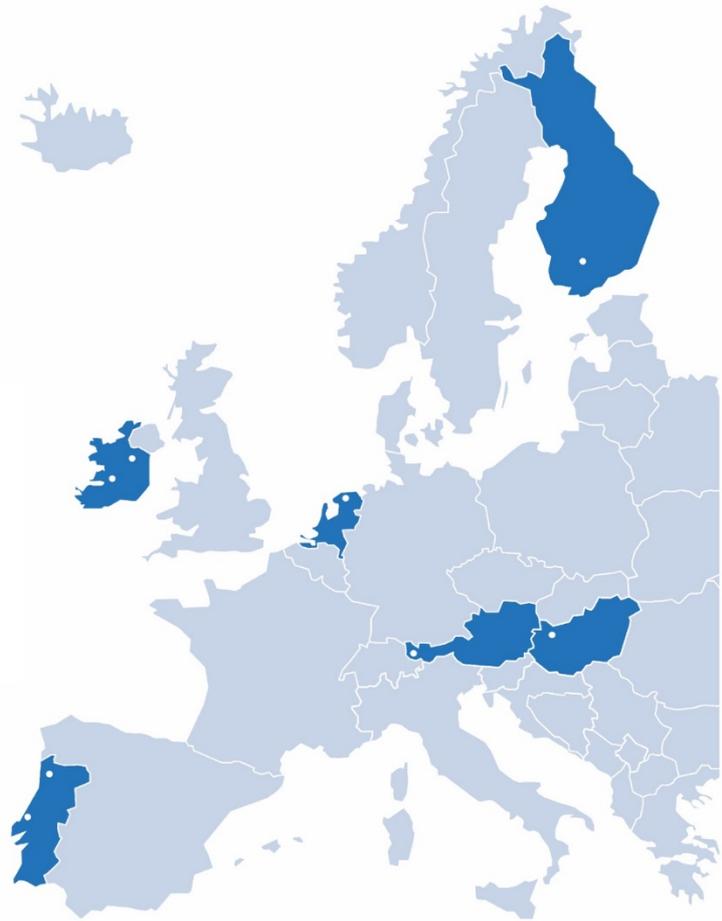
#### Indicative Term Sheet for the Licence to be negotiated under the Option

The Parties intend that the licence agreement will contain terms based on the following principles:

<b>Licence grant:</b>	The RUN-EU RPO's will grant the Industry Party an [non-exclusive/exclusive] licence to use the IP to develop, manufacture, use, and sell or otherwise supply Licensed Products (to be defined in the Licence Agreement) only in the Licence Field and in the Licence Territory.
<b>IP:</b>	The Foreground IP arising in the Project
<b>Licence Field:</b>	[.]
<b>Licence Territory:</b>	[.]
<b>Sub-licensing:</b>	The Industry Party [will/will not] have the right to grant sub-licences of its rights under the IP.
<b>Payments:</b>	Up-Front/Royalty fee payments in respect of prospective IP created in the project will be paid by the Industry Party to the relevant RUN-EU RPO or RUN-EU RPO's in the case of jointly owned IP to be agreed in an IP Licence Agreement.
<b>Other payment terms:</b>	The industry partner also agrees to reimburse the RUN-EU RPO or RUN-EU RPO's in respect of jointly created IP any IP protection & enforcement costs that may arise as a result of project.
<b>Commercialisation:</b>	The Industry Party will use Diligent and Reasonable Efforts (to be defined in the licence agreement) to develop and commercially exploit Licensed Products. In addition, the Industry Party will submit annual statements to the RUN-EU RPOs outlining (amongst other things) the activities taken and planned to bring Licensed Products to market.
<b>Indemnities</b>	The Industry Party shall indemnify the RUN-EU RPOs against any losses relating to the use, manufacture, distribution, sale or supply of any products or services which incorporate the licensed IP, including claims based on product liability laws.
<b>Start date of the licence</b>	To be agreed in license agreement
<b>Duration of the licence</b>	To be agreed in license agreement
<b>Other:</b>	None



**RUN-EU MODEL  
COLLABORATIVE RESEARCH  
AGREEMENT  
(WHOLLY INDUSTRY FUNDED)**



**RUN-EU MODEL COLLABORATIVE RESEARCH AGREEMENT**  
**(WHOLLY INDUSTRY FUNDED)**

Dated \_\_\_\_\_ 20[●]

(1) *[Full legal names of the RUN-EU RPO(s)]*

and

(2) *[Full legal name of the Industry Party]*

**COLLABORATIVE MODEL RESEARCH AGREEMENT  
(WHOLLY INDUSTRY-FUNDED)**

**This Agreement** dated \_\_\_\_\_ 20[●] is between:

- 1.0 [●] (the “**RUN-EU RPO(s)**”); an academic institution whose [principal address(es) *or* registered office(s)] is at [●] and
- 2.0 [●] (the “**Industry Party**”), [a company *or* insert relevant entity type incorporated in [●] with registration number [●,] whose [principal place of business *or* registered office] is at [●].

**Background:**

- A. The Industry Party is engaged in the research and development of [●].
- B. The Industry Party wishes to collaborate with the RUN-EU RPO(s) in respect of the Project and has agreed to bear the full cost of the Project in each case upon the terms and subject to the conditions of this Agreement.

**The Parties agree** as follows:

**1. Interpretation**

*1.1 Definitions.* In this Agreement (and the background recitals above), unless the context requires otherwise or unless otherwise specified the following words shall have the following meanings:

<b>Affiliate</b>	In relation to a Party, means any entity or person that Controls, is Controlled by, or is under common Control with that Party.
<b>Background IP</b>	Any Intellectual Property in the same or related fields to the research contemplated by this Agreement, developed, owned, licensed to or otherwise controlled by a Party prior to the Commencement Date or generated by that Party independently of the Project and, in each case, made available by that Party for use in connection with the Project in accordance with the process set out at Clause 4.2. A list of Background IP as at the date of this Agreement is set out in Schedule 3.
<b>Commencement Date</b>	The commencement date as set out in Schedule 1.
<b>Completion Date</b>	The completion date as set out in Schedule 1.

<b>Confidential Information</b>	<p>Any information relating to the business, affairs, technology, products or processes of a Disclosing Party that:</p> <ul style="list-style-type: none"> <li>➤ 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;</li> <li>➤ in respect of information that is imparted orally, described by the Disclosing Party or its representatives to the Receiving Party as being confidential at the time of disclosure [and confirmed in writing, marked confidential and sent to the receiving party within [28] days of the oral disclosure];</li> <li>➤ is a copy of any of the foregoing; or</li> <li>➤ due to its character or nature, a reasonable person in a like position to the Receiving Party and under like circumstances would consider confidential.</li> </ul>
<b>Control</b>	<p>Possession of the power to direct or cause the direction of the management and policies of a person whether by membership, ownership, contract or otherwise. "Controlled", "Controls" and other cognate words and expressions shall be construed accordingly.</p>
<b>Disclosing Party</b>	<p>The Party disclosing Confidential Information to the other Party in connection with the Project.</p>
<b>Event of Force Majeure</b>	<p>Circumstances beyond the reasonable control of any Party, including labour disputes involving that Party, which may lead to a delay or failure of performance of obligations under this Agreement.</p>
<b>Exercise Notice</b>	<p>Written notice from the Industry Party to the RUN-EU RPO(s) that it wishes to exercise the Option.</p>
<b>Export Control Rules</b>	<p>Any export and import laws and associated embargo and economic sanction regulations, including those administered by the RUN-EU member country, the EU and the United States to the extent they apply to a Party's activities under this Agreement.</p>
<b>Fees</b>	<p>The fees to be paid to the RUN-EU RPO(s) by the Industry Party as set out in Schedule 2.</p>
<b>FOI</b>	<p>The RUN-EU RPO(s) country Freedom of Information legislation/Act as amended, revised, modified or replaced from time to time.</p>
<b>Foreground IP</b>	<p>All Intellectual Property generated by the Parties in the performance of the Project. For the avoidance of doubt, Foreground IP shall include any Non-Severable Improvements.</p>

<b>Government-related Bodies</b>	RUN-EU member Government departments, agencies or State research funding organisations to which the RUN-EU RPO(s) may need to report on their activities.
<b>Industry Contribution</b>	The total contribution of the Industry Party to the Project, including the Fees plus the monetary equivalent of any in-kind contributions as set out in Schedule 2.
<b>[Industry Foreground IP</b>	Foreground IP excluding RUN-EU RPO(s) Non-Severable improvements.]
<b>Intellectual Property (IP)</b>	All intellectual property of any description including Know-How, copyright, trade marks, database rights, design rights, patents, utility models, and applications for, and the right to apply for any of the foregoing items.
<b>Know-How</b>	Any unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain.
<b>Negotiation Period</b>	90 days from and including the date of the Exercise Notice, being the period within which the parties must negotiate and conclude a licence.
<b>Non-Severable Improvement</b>	IP generated by any Party in the performance of the Project where, at a minimum, the IP in question: (i) was created using Significant Background; and (ii) cannot be used without infringing the Significant Background.
<b>Notice Party</b>	A Party in respect of whom notice of termination is issued by the other Party pursuant to Clause 10.1.
<b>Option</b>	The option to negotiate a licence to RUN-EU RPO(s) Background [or RUN-EU RPO(s) Non-Severable Improvements] granted by the RUN-EU RPO(s) to the Industry Party pursuant to Clause 4.7.
<b>Parties</b>	The RUN-EU RPO(s) and the Industry Party, and “ <b>Party</b> ” shall mean either of them.
<b>Personnel</b>	The officers, directors, employees, contractors, researchers or registered students of a Party and those of its Affiliates.
<b>Principal Investigator</b>	[●], the lead researcher(s) from the RUN-EU RPO(s) for the Project.
<b>Project</b>	The programme of work to be carried out by the Parties as described in the project plan in Schedule 1

<b>Publishing Party</b>	Any Party intending to publish any results of the Project.
<b>Receiving Party</b>	The Party receiving Confidential Information from the other Party in connection with the Project.
<b>Restricted Material</b>	Any technical data, technology, services, products or materials that are subject to Export Control Rules.
<b>Reviewing Party</b>	The Party other than the Publishing Party.
<b>[RUN-EU RPO(s) Non-Severable Improvement]</b>	Any Non-Severable Improvement to any Significant Background of the RUN-EU RPO(s).]
<b>Significant Background</b>	A Party's Background IP used in the Project will constitute "Significant Background" where: (i) it is the subject of a granted patent; and/or (ii) the Project substantially relies on this Party's Background IP and without it the Project would be difficult or impossible to carry out. A list of Significant Background as at the date of this Agreement is set out in Schedule 3.

*1.2 Construction.* In this Agreement, unless the context requires otherwise:

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

1.3 If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

## **2. Scope of the Project**

- 2.1 *Project.* The Parties shall carry out the Project according to the project plan described in Schedule 1. The Project shall be carried out under the direction and supervision of the Principal Investigator. Each of the Parties shall use all reasonable endeavours to obtain all regulatory and ethical licences, consents and approvals necessary to allow it to carry out the tasks allotted to it in Schedule 1.
- 2.2 *Duration.* The Project shall be carried out from the Commencement Date until the Completion Date or until such later date as may be agreed in writing between the Parties, or until it is terminated in accordance with the terms of this Agreement.

### **3. Project costs and contributions**

- 3.1 *Invoices.* The RUN-EU RPO(s) shall provide the Industry Party with invoices for the Fees due to the RUN-EU RPO(s) in accordance with the payment schedule set out in Schedule
- 3.2 *Payment.* The Industry Party shall pay all valid invoices in accordance with the provisions of Schedule 2. Interest shall be automatically applied in the event of late payment in accordance with the provisions of Schedule 2.
- 3.3 *Currency and VAT.* All amounts stated are to be paid in Euro. The Industry Contribution is exclusive of value added tax (if applicable) which, subject to the provision of a valid value added tax invoice, shall be paid by the Industry Party in addition.

### **4. Intellectual Property**

- 4.1 *Background IP.* Each Party shall retain all right and title to, and interest in its own Background IP. Nothing in this Agreement shall affect ownership of any Background IP. No licence to use any Background IP is granted or implied by this Agreement except the rights expressly granted in this Agreement.
- 4.2 *Register of IP.*
- a) Schedule 3 sets out a list of Background IP that the Parties have agreed to make available for the Project as at the date of this Agreement, together with details of any restrictions or encumbrances on the use of that Background IP and whether that Background IP is Significant Background.
  - b) Any Party wishing to make available Background IP for use in the Project after the date of this Agreement shall provide the other Party with a written description of the Background IP together with details of any restrictions or encumbrances on the use of that Background IP. The Parties shall also agree whether that Background IP is Significant Background. The introduction of any such Background IP shall be subject to the prior written approval of the other Party (such approval shall not be unreasonably withheld or delayed).
  - c) The RUN-EU RPO(s) shall maintain a register of Background IP contributed to the Project detailing the name of the contributing Party together with details of any restrictions or encumbrances on its use specified by the contributing Party.
  - d) No Party may withdraw or make any amendments to the terms and conditions of any Background IP without the prior written approval of the other Party (such approval shall not be unreasonably withheld or delayed).
- 4.3 *Use of Background in the Project.* Each Party grants to the other Party and its Affiliates a royalty-free, non-exclusive licence to use, and permit its Personnel who are involved in the Project to use, its Background IP for the purposes of carrying out the Project, but for no other purpose. Neither Party may grant any sub-licence to use the other Party's Background IP.

4.4 *Notification of results.* Each of the Parties shall notify the other promptly after identifying any experimental result that it believes is patentable or otherwise protectable, and will supply copies of those results. All other experimental results will be reported according to the reporting arrangements in the Project plan described in Schedule 1.

4.5 *Personnel.* Each Party shall ensure that all its Personnel involved in the Project:

- a) maintain adequate and secure records, either electronically or in laboratory books, for the purpose of establishing intellectual contribution, authorship and/or inventors and invention dates;
- b) assign any rights they may have in any Foreground IP to it in order to be able to give full effect to the provisions of this Agreement; and
- c) otherwise comply with the obligations of that Party under this Agreement.

**Either Alternative A: Where the parties have agreed to the assignment of RUN-EU RPO(s) Non-Severable Improvements to the Industry Party.**

4.6 *Foreground IP.* All right and title to, and any interest in, any and all Foreground IP shall vest and remain vested in the Industry Party. To the extent that any Foreground IP is capable of prospective assignment, the RUN-EU RPO(s) now assigns that Foreground IP to the Industry Party; and to the extent that any Foreground IP cannot be prospectively assigned, shall assign such Foreground IP as and when that Foreground IP is created, at the request of the Industry Party from time to time. At the request and expense of the Industry Party, the RUN-EU RPO(s) shall execute such documents as may be necessary to transfer title to the Industry Party and apply for patents or other protections for such Foreground IP.

4.7 *Access to RUN-EU RPO(s) Background for commercial purposes.*

- a) To the extent that a licence to any RUN-EU RPO(s) Background IP is legally or technically necessary in order to commercially exploit the Foreground IP, the Industry Party shall have the option during the term of the Project to negotiate and conclude a non-exclusive licence to such RUN-EU RPO(s) Background IP provided that the RUN-EU RPO(s) has not indicated otherwise in Schedule 3 or pursuant to Clause 4.2.
- b) If the Industry Party wishes to exercise an Option, it shall give an Exercise Notice to the RUN-EU RPO(s) prior to the completion of the Project. Upon receipt of an Exercise Notice, the Parties acting reasonably shall promptly enter into negotiations in good faith with a view to the conclusion of a licence agreement in respect of the RUN-EU RPO(s) Background IP during the Negotiation Period. If the Industry Party does not exercise its Option during the term of the Project or the Parties are unable to agree the terms of a licence agreement within the Negotiation Period and subject to either Party's right to refer the matter under Clause 11 that Option shall lapse.
- c) Any such licence shall be on fair and reasonable commercial terms and subject to separate agreement.

4.8 *Research rights.* Notwithstanding the provisions of Clause 4.6 the RUN-EU RPO(s) shall have a non-exclusive, irrevocable, perpetual, royalty free right to utilise the Foreground IP for internal teaching and research, but for no other purpose. The RUN-EU RPO(s) shall also have the right to request a non-exclusive, irrevocable, perpetual, royalty free right to utilise the Foreground IP for external research with specified third parties, to be considered by the Industry Party on a case-by-case basis. The Industry Party will give due consideration to such requests. The rights of the RUN-EU RPO(s) under this Clause 4.8 are subject to the confidentiality restrictions in Clause 5 and the rules on publication in Clause 6.

**End of Alternative A**

**OR Alternative B: Where RUN-EU RPO(s) Non-Severable Improvements are to be retained by the RUN-EU RPO(s).**

*4.9 Foreground IP.* All right and title to, and any interest in, any Industry Foreground IP shall vest and remain vested in the Industry Party. To the extent that any Industry Foreground IP is capable of prospective assignment, the RUN-EU RPO(s) now assigns that Industry Foreground IP to the Industry Party; and to the extent that any Industry Foreground IP cannot be prospectively assigned, shall assign such Industry Foreground IP as and when that Foreground IP is created, at the request of the Industry Party from time to time. At the request and expense of the Industry Party, the RUN-EU RPO(s) shall execute such documents as may be necessary to transfer title to the Industry Party and apply for patents or other protections for such Industry Foreground IP.

*4.10 RUN-EU RPO(s) Non-Severable Improvements.* All right and title to, and any interest in, any and all RUN-EU RPO(s) Non-Severable Improvements shall vest and remain vested in the RUN-EU RPO(s). To the extent that any RUN-EU RPO(s) Non-Severable Improvement is capable of prospective assignment, the Industry Party now assigns that RUN-EU RPO(s) Non-Severable Improvement to the RUN-EU RPO(s); and to the extent that any RUN-EU RPO(s) Non-Severable Improvement cannot be prospectively assigned, shall assign such RUN-EU RPO(s) Non-Severable Improvement as and when that RUN-EU RPO(s) Non-Severable Improvement is created, at the request of owning Party from time to time. At the request and expense of the RUN-EU RPO(s), the Industry shall execute such documents as may be necessary to transfer title to and apply for patents or other protections for such RUN-EU RPO(s) Non-Severable Improvements.

*4.11 Access to RUN-EU RPO(s) Background and RUN-EU RPO(s) Non-Severable Improvements for commercial purposes.*

- a) To the extent that a licence to any RUN-EU RPO(s) Background IP or RUN-EU RPO(s) Non-Severable Improvements is legally or technically necessary in order to commercially exploit the Foreground IP, the Industry Party shall have the option during the term of the Project to negotiate and conclude a non-exclusive licence to such RUN-EU RPO(s) Background IP and/or RUN-EU RPO(s) Non-Severable Improvements provided that the RUN-EU RPO(s) has not indicated otherwise in Schedule 3 or pursuant to Clause 4.2.
- b) If the Industry Party wishes to exercise an Option, it shall give an Exercise Notice to the RUN-EU RPO(s) prior to the completion of the Project. Upon receipt of an Exercise Notice, the Parties acting reasonably shall promptly enter into negotiations in good faith with a view to the conclusion of a licence agreement in respect of the RUN-EU RPO(s) Background IP and RUN-EU RPO(s) Non-Severable Improvements during the Negotiation Period. If the Industry Party does not exercise its Option during the term of the Project or the Parties are unable to agree the terms of a licence agreement within the Negotiation Period and subject to either Party's right to refer the matter under Clause 11 that Option shall lapse.
- c) Any such licence shall be on fair and reasonable commercial terms and subject to separate agreement.

*4.12 Research rights.* Notwithstanding the provisions of Clause 4.9 the RUN-EU RPO(s) shall have a non-exclusive, irrevocable, perpetual, royalty free right to utilise the Industry Foreground IP for internal teaching and research, but for no other purpose. The RUN-EU RPO(s) shall also have the right to request a non-exclusive, irrevocable, perpetual, royalty free right to utilise the Industry Foreground IP for external research with specified third parties, to be considered by the Industry Party on a case-by-case basis. The Industry Party will give due consideration to such requests. The rights of the RUN-EU RPO(s) under this Clause 4.12 are subject to the confidentiality restrictions in Clause 5 and the rules on publication in Clause 6.

**End of Alternative B**

## 5. Confidentiality

5.1 *Confidentiality obligations.* Each Receiving Party undertakes:

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

5.2 *Exceptions to obligations.* The provisions of Clause 5.1 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 agents, Personnel, or Affiliates.

5.3 *Disclosure in accordance with legal obligations.* To the extent that the Receiving Party is required to disclose any of the Disclosing Party's Confidential Information by order of a court or other public body that has jurisdiction over it or under other statutory or regulatory obligations it may do so, provided that, before making such a disclosure the Receiving Party shall, unless it is prohibited from so doing by law:

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

Disclosure of any Confidential Information pursuant to any such order or requirement shall not be deemed to render it non-confidential and the Receiving Party's obligations with respect to such Confidential Information shall not be changed or lessened by virtue of any such disclosure, unless such disclosure results in one or more of the exceptions listed in Clause 5.2 above applying to that Confidential Information.

- 5.4 *Freedom of Information Act.* The Industry Party acknowledges and agrees that the RUN-EU RPO(s) is subject to FOI and the codes of practice issued under FOI as may be amended, updated or replaced from time to time. The Industry Party agrees that all requests under FOI relating to this Agreement and any other relevant records will be processed by the RUN-EU RPO(s) under the terms of FOI. The RUN-EU RPO(s) and the Industry Party shall communicate and cooperate in relation to the processing of any requests under FOI.
- 5.5 *Notice of breach.* Each Party shall give notice to each of the other Party of any unauthorised use, disclosure, theft or other loss of that other Party's Confidential Information as soon as is practicable after becoming aware of it.
- 5.6 *Duration of obligations.* The obligations of confidentiality and non-use set out in this Clause 5 shall survive termination of this Agreement for any reason for a period of [five (5)] years from the date of termination.

## **6. Publication**

- 6.1 *Prior consultation.* Each Publishing Party shall submit its proposed publication in writing to the Reviewing Party at least 30 days before submitting it for publication.
- 6.2 *Delay for protection of IP.* If the Reviewing Party believes that delay is needed in order to seek patent or similar protection for any of the Reviewing Party's Background IP or any Foreground IP, the Reviewing Party may by giving written notice to the Publishing Party require the Publishing Party to delay the proposed publication for a maximum of ninety (90) days or other such time as both Parties may agree, or until any affected IP is protected, whichever is the sooner.
- 6.3 *Removal of Confidential Information.* All Foreground IP shall be treated as Confidential Information belonging to the Industry Party. The Reviewing Party may by giving written notice to the Publishing Party require the removal of any of the Reviewing Party's Confidential Information from the publication.
- 6.4 *Assumed permission.* If the Publishing Party does not receive a written objection from the Reviewing Party within 30 days of submission of notification of publication then permission to publish shall be deemed to have been given.

## **7. Notification to RUN-EU Member Government-related Bodies**

- 7.1 *Reporting obligations.* The Industry Party acknowledges that as a publicly funded organisation(s), the RUN-EU RPO(s) may be obliged to report on its activities, including those relating to research to Government-related Bodies.
- 7.2 *Provision of information.* The Industry Party hereby consents to information relating to the Project being reported to Government-related Bodies providing that any such information shall be kept to the minimum required and shall, except for the name of the Industry Party, the amount of the Industry Contribution, and a non-confidential project title, be marked "confidential" to the extent it comprises Confidential Information.

## **8. Warranties and Undertakings**

- 8.1 *No implied warranties, etc.* Each Party 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.

8.2 *Entitlement to enter the contract.* Each Party warrants to the other that it has full power and authority under its constitution and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement.

8.3 *Performance of the Project.* Each Party shall carry out the research and tasks which it is specified to perform in the project plan set out in Schedule 1, and provide the human resources, materials, facilities and equipment that are designated to be provided by in the project plan, in each case in a timely manner, in accordance with good accepted research practice and all applicable laws, and with due regard for the health and safety of those involved in the Project.

8.4 *Use of results or outcome.* Each Party shall be responsible for the use to which it puts any technology, product, process, method, discovery, software, information, material or data developed during the course of or otherwise arising from the Project.

8.5 *No other warranties.* Each Party acknowledges that this Agreement provides for the performance of research and that specific results cannot be guaranteed. Neither Party warrants or undertakes that any result or outcome, whether stated in this Agreement or not, shall be achieved, be achievable or be attained at all or by a given Completion Date or any other date, nor does either Party give any warranty that the content or use of any results, Intellectual Property, reports, information or other materials provided in connection with this Agreement will not constitute or result in any infringement of third-party rights.

## **9. Liability and insurance**

### *9.1 Liability of the Parties.*

- a) To the extent that either Party has any liability to the other Party in contract, tort (including negligence), or otherwise under or in connection with this Agreement, including any liability for breach of warranty, that Party's liability shall be limited in accordance with the following provisions of this Clause 9.1.
- b) Except as provided in Clauses 9.1(c) and 9.1(e), the aggregate liability of each Party to the other Party shall be limited to a sum equal to the total Industry Contribution to the Project under this Agreement.
- c) The aggregate liability of each Party to the other Party in the case of breach of confidentiality, wilful default or negligence (not leading to death or personal injury) shall be limited to a sum equal to three (3) times the total Industry Contribution to the Project under this Agreement.
- d) 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.
- e) Nothing in this Agreement excludes or limits any Party's liability for death or personal injury caused by that Party's negligence, for fraud or fraudulent misrepresentation or for any other liability to the extent it cannot be excluded or limited under applicable law.

9.2 *Insurance.* Each Party shall effect and maintain in force all necessary insurance coverage for the performance of its respective obligations under this Agreement, including as a minimum:

- a) Employer's liability insurance for any one claim in the amount of €13,000,000; and
- b) Public liability insurance for any one claim in the amount of €6,500,000; and
- c) If the Party is providing relevant professional advice under the Project, Professional indemnity insurance in the amount of €1,000,000.

## 10. Termination

*10.1 Early termination.* Without prejudice to any other rights or remedies, a Party may terminate this Agreement, at any time, on written notice to the Notice Party:

- a) if the Notice Party is in material breach of its obligations under this Agreement and, where the breach is capable of remedy within thirty (30) days, the Notice Party has not remedied the breach within thirty (30) days of receiving written notice which specifies the breach and requires the breach to be remedied; or
- b) if: (i) the Notice Party becomes insolvent or unable to pay its debts as and when they become due; (ii) an order is made or a resolution is passed for the winding up of the Notice Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (iii) a liquidator, examiner, receiver, receiver manager, or trustee is appointed in respect of the whole or any part of the Notice Party's assets or business; (iv) the Notice Party makes any composition with its creditors; (v) the Notice Party ceases to continue its business; or (vi) as a result of debt and/or maladministration the Notice Party takes or suffers any similar or analogous action.

*10.2 Consequences of termination.* On termination of this Agreement for any reason except for material breach by the RUN-EU RPO(s), the Industry Party shall pay to the RUN-EU RPO(s):

- a) any payment which was due to the RUN-EU RPO(s) prior to the date of termination but which was not paid prior to termination; and
- b) a proportion of the next payment (if any) falling due after the date of termination reflecting the RUN-EU RPO(s) work prior to the date of termination and any non-cancellable commitments entered into by the RUN-EU RPO(s) [including a proportionate contribution to any redundancy costs that the RUN-EU RPO(s) may incur as a direct result of the termination this Agreement with respect to personnel employed for the purposes of the Project and funded from the Industry Contribution].

*10.3 Survival of obligations.* On termination or expiration of this Agreement for any reason, all rights and duties of the Parties with regard to each other will cease except for rights and remedies which may have accrued prior to termination or expiration and any rights and/or obligations which expressly or by implication are intended to commence, survive or continue in effect on or after termination or expiration. Without prejudice to the generality of this clause, the termination or expiration of this Agreement will not affect Clauses 4, 5, 6, 7, 9, 11 and, to the extent applicable, 12 which shall survive the expiration and/or termination of this Agreement.

## 11. Dispute Resolution

*11.1 Internal escalation.* The Parties shall make every reasonable effort to resolve all issues fairly by negotiation. All disputes which arise between the Parties in connection with this Agreement shall be discussed initially between the project managers for the Project. If the dispute remains it shall be referred to [●] in the case of the RUN-EU RPO(s), and to [●] in the case of the Industry Party in an attempt to resolve the issue in good faith.

*11.2 Mediation.* In the event that the dispute has not been settled within sixty (60) days, it shall be submitted for mediation by a mediator or other appropriate independent third party expert agreed by the Parties. The cost of any such mediator or expert shall be borne equally by the Parties.

*11.3 Injunctive relief.* For the avoidance of doubt, however, nothing in this Clause 11 shall prevent or delay a Party from applying to a court of competent jurisdiction for the purposes of seeking injunctive relief provided that there is no delay in the prosecution of that application.

## **12. General**

### *12.1 Force majeure.*

- a) 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 (except payment obligations) that result from any Event of Force Majeure. The Party affected by an Event of Force Majeure 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.
- b) If a Party is prevented from performing a material obligation under this Agreement by any Event of Force Majeure for a continuous period of 90 days or more, then the other Party shall be entitled to terminate this Agreement with immediate effect by giving notice in writing. Neither Party shall be liable to the other for such termination.

*12.2 Amendments.* This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

*12.3 Independent contractors.* The relationship of the RUN-EU RPO(s) to the Industry Party shall be that of independent contractor. This Agreement is not intended to, and does not, create any contract of employment or other legal relationship between the Parties.

*12.4 Sub-contracting.* The RUN-EU RPO(s) may not sub-contract any part of the Project except with the written authorisation of the Industry Party. Where such authorisation is given the RUN-EU RPO(s) shall be responsible for the work of any sub-contractor and for such sub-contractor's compliance with the provisions of this Agreement.

*12.5 Assignment.* Neither Party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement except to its Affiliates without the prior written agreement of the other Party.

*12.6 Standard form documents.* The Parties recognise that printed form purchase orders, invoices and other commonly used form documents relating to the performance of any obligations under this Agreement may contain terms which conflict with one or more terms of this Agreement. In case of any such conflict, the relevant terms of this Agreement shall prevail.

*12.7 Entire agreement.* This Agreement, including its Schedules, sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter.

12.8 *Notices.* All notices given by either Party to the other pursuant to this Agreement shall be in writing and may be delivered by pre-paid post, registered courier or by hand to:

	Industry Party Contact:	RUN-EU RPO(s) Contact:
Name	[●]	[●]
Title	[●]	[●]
Address	[●]	[●]

➤ Any such notice, if so given, shall be deemed to have been served:

- a) if sent by hand, when delivered;
- b) if sent by post or courier, one business day after posting.

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

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

12.12 *Export and Import Control.*

- a) Any Party making available Restricted Materials for use in connection with the Project shall inform the other Party if Export Control Rules apply to the other Party's use of the Restricted Materials.
- b) Subject to the foregoing, each Party shall adhere to, and reasonably assist each other with adhering to, Export Control Rules and shall not export, re-export, resell, transfer, or disclose, directly or indirectly, any Restricted Materials to any proscribed person, entity, or country, or foreign national thereof, unless properly authorised in accordance with Export Control Rules.
- c) Any Party exporting Restricted Materials shall be solely responsible for obtaining any applicable licences and authorisations.

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

12.14 *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.

12.15 *Law and jurisdiction.* This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the European Union and each Party agrees to submit to the exclusive jurisdiction of the courts of the RUN-EU members country.

**Agreed by the parties through their authorised signatories:**

**SIGNED** For and on behalf of  
*[Insert full legal name of the RUN-EU RPO(s)]*

**SIGNED** For and on behalf of  
*[Insert full legal name of the Industry Party]*

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**We/I not being a party to this Agreement and without intention to create legal relations acknowledge the terms of this Agreement.**

*RUN-EU RPO(s) Principal Investigator*

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Schedule 1

### Project Plan

<b>Work scope</b>	<i>Describe the research to be undertaken and key roles and obligations for each participant</i>
<b>Goals</b>	<i>The main aims of the Project</i>
<b>Commencement Date</b>	
<b>Completion Date</b>	
<b>Timetable</b>	<i>Provide an estimated timetable of activities.</i>
	<i>Milestones:</i>
<b>Staff</b>	<i>List who will work on the Project and who employs them, and where they will work. State if any elements of the research be subcontracted to third parties. Name the project managers for each of the parties.</i>
	<i>Are suitable contractual arrangements in place with personnel? Y/N? If not, is there a suitable recruitment plan? Y/N?</i>
<b>Reporting requirements</b>	<i>Describe how and how often progress will be reported amongst the parties and to research funders (as applicable)</i>
<b>Project management</b>	<i>Describe the project management arrangements for the Project. Who is the primary point of contact for each organisation?</i>
<b>Dissemination</b>	<i>Describe how the results of the research will be disseminated and describe any restrictions to be imposed</i>
<b>Changes</b>	<i>Are any alterations to the Project possible, and if so what steps are needed to make these changes</i>

## Schedule 2

### Payment Schedule

<b>Payment schedule</b> (exclusive of VAT)	<b>Date due</b>	<b>Amount</b>
	[•]	€ [•]
	[•]	€ [•]
	[•]	€ [•]
	<b>Total fees</b>	<b>€ [•]</b>
<b>In Kind contribution by the Industry Party</b>	<b>Type of in kind provision (eg personnel, materials, equipment)</b>	<b>Value</b>
	[•]	€ [•]
	[•]	€ [•]
	[•]	€ [•]
	<b>Total in kind contribution</b>	<b>€ [•]</b>
<b>Total Industry Contribution</b>		<b>€ [•]</b>
<b>RUN-EU RPO(s)'s contact details for invoices</b>	[•]	
<b>Industry Party's contact details for invoices</b>	[•]	
<b>Payment Terms</b>	[30] days net. Payment shall be [by way of bank transfer.]	
<b>Interest on Late Payment</b>	Interest shall be automatically applied if payment has not been received within [forty five (45)] days of receipt of a valid invoice. Interest shall be calculated on a daily basis using an interest rate equal to the European Central Bank main refinancing rate (as at 1 January and 1 July in each year) plus [8] percentage points.	
<b>Payment details for RUN-EU RPO(s)</b>	<b>Bank account name:</b> [•] <b>Bank account number:</b> [•] <b>Bank sort code:</b> [•] <b>Reference:</b> [•]	
<b>VAT</b>	The provision of research activities by the RUN-EU RPO(s) under this contract is expected to be a taxable supply of services because full costs are paid and a	

	<p>benefit is conferred on the Industry Party in the form of assignment of the Intellectual Property arising.</p> <p>VAT will be chargeable on the total Industry Contribution at the relevant prevailing rate.</p>
<b>Industry VAT Number</b>	[●]
<b>RUN-EU RPO(s) VAT Number</b>	[●]

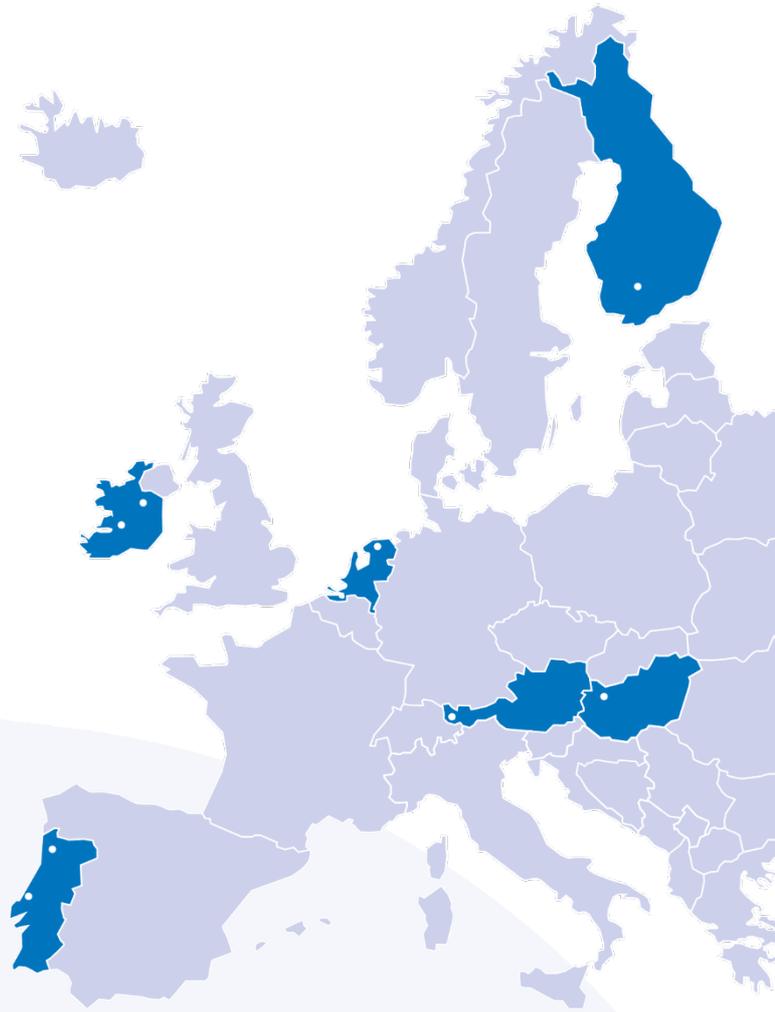
Schedule 3

Register of Background IP

RUN-EU RPO(s) Background IP

Describe Background	List any relevant restrictions and encumbrances associated with the Background	Is this "Significant Background"?
[●]	[●]	Yes / No
[●]	[●]	Yes / No

**RUN-EU MODEL MATERIAL TRANSFER  
AGREEMENT-OUTWARD**



Dated \_\_\_\_\_ 20[●]

(1) [Full legal name of the recipient]

and

(2) [Full legal name of the provider]

## **RUN-EU MODEL MATERIAL TRANSFER AGREEMENT OUTWARD**

(OUTWARD: RUN-EU RPO(s) to recipient)

# MATERIAL TRANSFER AGREEMENT

[RUN-EU RPO(s) name], the Provider of the Material]

<b>1.</b>	<i>Insert the RUN-EU RPO name and address</i>	
		(the “ <b>Provider</b> ”), has collected and/or developed the materials known as
<b>2.</b>	<i>Insert description of materials</i>	
		and includes any constructs, strains, progeny, derivatives, portions, improvements and components (as the case may be) obtained from or as a result of the use of the materials (together, the “ <b>Materials</b> ”).
<b>3.</b>	<i>Insert name of recipient Researcher, the principal user of the materials</i>	
		(the “ <b>Recipient Researcher</b> ”), who is an employee of
<b>4.</b>	<i>Insert name and address of Recipient Researcher’s Institution, the recipient of the materials</i>	
		(the “ <b>RECIPIENT</b> ”)
		and the Institution wishes to acquire a sample of the Materials for academic research relating to:
<b>5.</b>	<i>Insert description of academic research for which Materials are to be used</i>	
		(the “ <b>Research Programme</b> ”) to be undertaken by the Researcher.
<b>6.</b>	<i>Insert quantity of Materials to be supplied and period for which they are to be provided</i>	The Provider is willing to provide a sample of _____ of the Materials for a period of _____ year(s) (the “ <b>Term</b> ”) on the terms and conditions shown overleaf, and the Institution agrees to comply with those terms and conditions.

**AGREED by the parties through their authorised signatories:**

For and on behalf of [RUN-EU Institution] [Provider]

For and on behalf of the recipient

Acknowledged by the RUN-EU Researcher (*who is not a party to this Agreement*)

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

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Print name

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Print name

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Print name

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Title

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Title

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Title

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Date

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Date

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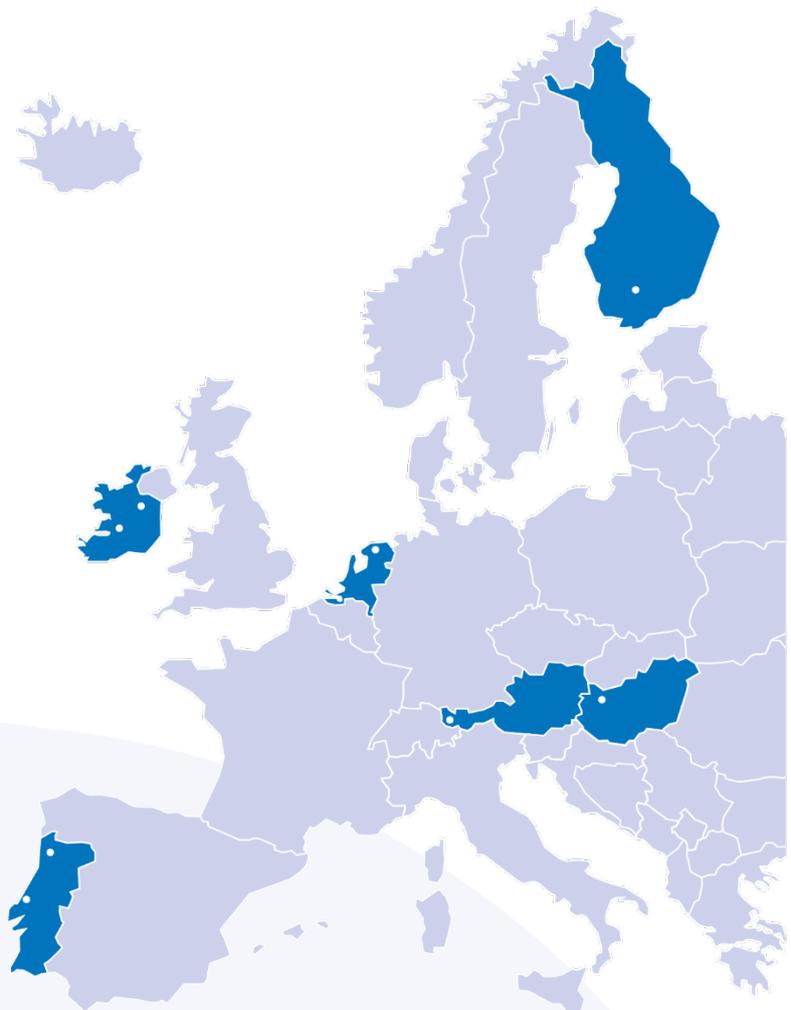
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### Standard Terms and Conditions for release of Materials

1. The recipient institution shall keep the Materials secure at the Researcher's laboratory and ensure that no-one other than the Researcher and authorised co-workers ("**Co-workers**") has access to them.
2. The recipient institution shall ensure that the Materials are used only for the Research Programme and not for any commercial purpose or commercially-sponsored research without the prior written consent of the Provider even if those purposes are being pursued in the Researcher's laboratory.
3. The recipient institution shall not supply the Materials to any other party. The Materials shall under no circumstances be used in humans.
4. The Term may be extended with the prior written agreement of the Provider. Permission to extend the term of this Agreement must be sought by the recipient institution three (3) months before the expiry of the Term.
5. The recipient institution shall ensure that the Researcher and the Co-workers acknowledge the Provider as the source of the Materials in any publication which mentions them. The recipient institution shall send the Provider a copy of any reports or publications which describe work carried out using the Materials, and shall make available on request any raw data and the Provider shall be entitled to use all such data, reports and publications and make them available to third parties.
6. The Materials (and any copies thereof made by or in possession of or under the control of the recipient institution) shall be and remain the property of the Provider and shall be immediately returned (or if the Provider so requires, destroyed) (i) on termination of this Agreement, or (ii) if the recipient institution is in breach of any provision of this Agreement, and (iii) at any other time on request of the Provider.
7. No licence under any Provider intellectual property is granted or implied by this Agreement.
8. In the event that the recipient institution, the Researcher or the Co-workers make or observe any new discovery, improvement or invention ("**Invention**") relating to the Materials or as a direct result of the Research Programme, recipient institution will promptly bring this to the attention of the Provider. The recipient institution shall not, and shall ensure that the Researcher and the Co-workers shall not, make, or seek to make, actual commercial gain from such an Invention, nor make any patent application or secure any other proprietary rights to legally protect any such Invention except with the prior written consent of the Provider. The Provider will, at all times, retain the right to use all Inventions for non-commercial research purposes.
9. If any revenues result from any use of the Materials by the recipient institution, the Researcher or the Co-workers, the Provider shall be entitled to a reasonable share of any such revenues.
10. The recipient institution shall ensure that the Researcher and the Co-workers use the Materials in accordance with good laboratory practice and the highest standards of skill and care and shall ensure compliance with any applicable laws and regulations governing the transportation, keeping or use of the Materials.
11. The Materials are supplied without cost but the recipient institution shall reimburse the Provider for any reasonable shipping and related costs that may be incurred when preparing and sending the Materials to the Researcher.
12. The Materials are experimental in nature and the Provider makes no representation and gives no warranty or undertaking, in relation to them. As examples, but without limiting the foregoing, the Provider gives no warranty that (i) it owns all necessary property and other rights in the Materials and that their use will not infringe any patent, copyright, trade mark or other right owned by any third party, or (ii) the Materials are of merchantable or satisfactory quality or fit for any particular purpose, have been developed with reasonable care and skill or tested, for the presence of pathogens or otherwise, or are viable, safe, or non-toxic.

13. The Provider shall have no liability to the Researcher, the Co-workers or the recipient institution, whether in contract, tort, negligence or otherwise, in relation to the supply of the Materials to the Researcher, the Co-workers or the recipient institution or their use or keeping by the Researcher, the Co-workers, or the recipient institution or by any other person, or the consequences of their use, to the maximum extent permitted under applicable law. The recipient institution shall indemnify the Provider from and against all Claims and Losses arising from such supply, use or keeping, including Claims and Losses arising from: (i) injury to the recipient institution 's employees and third parties; (ii) infringement of third party intellectual property rights; and (iii) use of the Materials within or outside the scope of this Agreement.
14. For the purposes of this Agreement, (i) "**Claims**" shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort, negligence or otherwise); and (ii) "**Losses**" shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.
15. If the Provider seeks indemnification pursuant to Clause 13, the Provider shall provide prompt written notice to the recipient institution of the initiation of any action or proceeding that may reasonably lead to a claim for indemnification. Upon receipt of such notice, the recipient institution 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 Provider's prior written consent. The Provider and the recipient institution shall co-operate with each other in the defence of such claim.
16. The recipient institution agrees to be bound by this Agreement in consideration of the Provider making the Materials available to the Researcher.
17. The laws of the European Union shall apply to this Agreement, and the courts of the country of the materials provider have jurisdiction over any matter relating to it.

**RUN-EU MODEL MATERIAL TRANSFER  
AGREEMENT-INWARD**



Dated \_\_\_\_\_ 20[●]

(1) [Full legal name of the Provider]

and

(2) [Full legal name of the recipient]

## **RUN-EU MODEL MATERIAL TRANSFER AGREEMENT INWARD**

(INWARD: Provider to RUN-EU MEMBER RPO)

## MATERIAL TRANSFER AGREEMENT

([RUN-EU RPO(s) name], the recipient of the Material)

<b>1.</b>	<i>Insert Provider's name and address</i>	 <hr/> (the " <b>Provider</b> "), has collected and/or developed the materials known as:
<b>2.</b>	<i>Insert description of materials</i>	 <hr/> and includes any constructs, strains, progeny and unmodified derivatives (as the case may be) obtained from or as a direct result of the use of the materials (together, the " <b>Materials</b> ").
<b>3.</b>	<i>Insert name of RUN-EU Researcher, the principal user of the materials</i>	 <hr/> (the " <b>Researcher</b> "), who is an employee of:
<b>4.</b>	<i>Insert name and address of the RUN-EU Researcher's institution (RPO), recipient of the materials</i>	 <hr/> (the " <b>Institution</b> ")
		and the Institution wishes to acquire a sample of the Materials for academic research relating to:
<b>5.</b>	<i>Insert description of academic research for which Materials are to be used</i>	 <hr/> (the " <b>Research Programme</b> ") to be undertaken by the Researcher.
<b>6.</b>	<i>Insert quantity of Materials to be supplied and period for which they are to be provided</i>	The Provider is willing to provide a sample of _____ of the Materials for a period of _____ year(s) (the " <b>Term</b> ") on the terms and conditions shown overleaf, and the Institution agrees to comply with those terms and conditions.

**AGREED by the parties through their authorised signatories:-**

**For and on behalf of [Provider]**

**For and on behalf of [RUN-EU  
Institution][Recipient]**

**Acknowledged by the RUN-EU  
Researcher (*who is not a party to  
this Agreement*)**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

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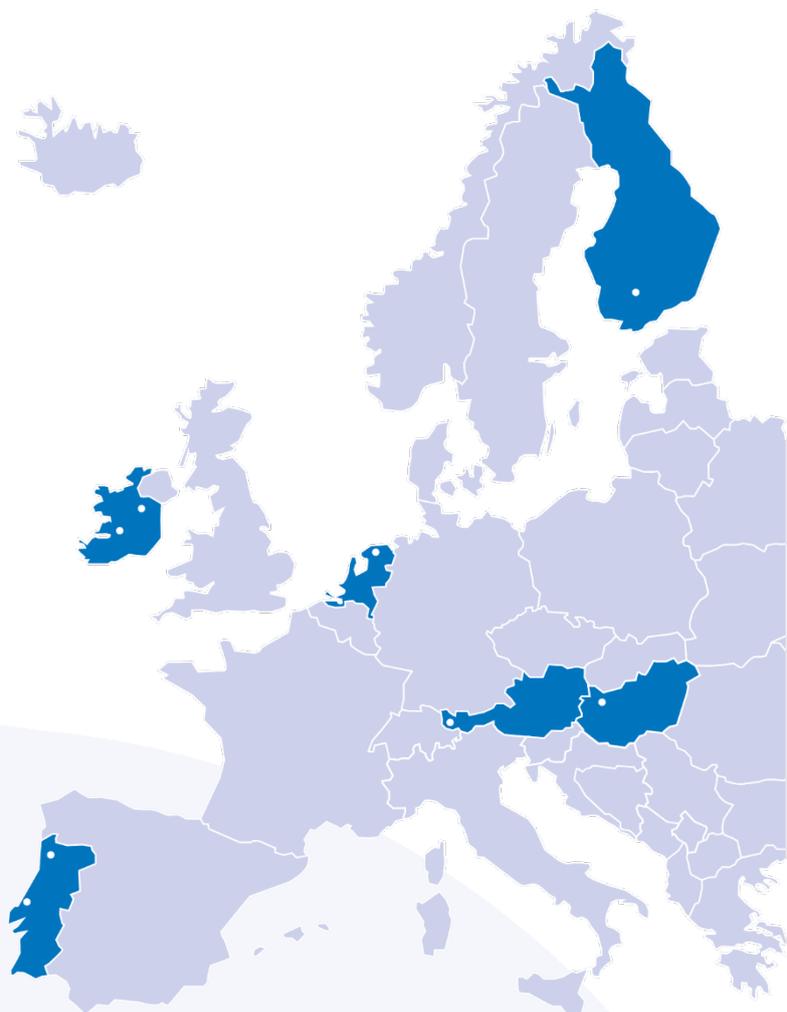
\_\_\_\_\_  
Date

**Standard Terms and Conditions for the receipt of the Materials**

1. The RUN-EU member Institution shall keep the Materials secure at the Researcher's laboratory and ensure that no-one, other than the Researcher and authorised co-workers, has access to them.
2. The RUN-EU member Institution shall ensure that the Materials are used only for the Research Programme, subject to the following sentences of this Clause. Any intellectual property generated by the Institution using the Materials shall belong to the RUN-EU member Institution (the "**Resulting IP**"). However, for the avoidance of doubt and notwithstanding the preceding sentence, any intellectual property that may subsist in the Materials or any copies of the Materials generated by the Institution shall belong to the Provider. The RUN-EU member Institution may commercialise any Resulting IP so generated without restriction, subject to Clauses 4 and 5.
3. The RUN-EU member Institution shall ensure that the Researcher and any authorised co-workers acknowledge the Provider as the source of the Materials in any publication which mentions them.
4. The Materials shall remain the property of the Provider and shall be returned on request, except for those Materials used in the creation of the Resulting IP as described in Clause 2. No licence to use any intellectual property provided to the RUN-EU member Institution by the Provider ("**Provider IP**") is granted or implied by this Agreement[, except that the Institution shall have a non-exclusive licence to use any Provider IP which is reasonably necessary for the commercialisation of the Resulting IP. Such licence shall be irrevocable,

royalty-free, worldwide, without limit of time and with the right to sub-licence.

5. If any revenues result from the RUN-EU member Institution's use of the Materials, the Provider shall be entitled to a reasonable share of any such revenues that accrue to the Institution.
6. The RUN-EU member Institution shall ensure that the Materials are used in accordance with good laboratory practice and the highest standards of skill and care and shall ensure compliance with any applicable laws and regulations governing the transportation, keeping or use of the Materials.
7. The RUN-EU member Institution shall reimburse the Provider for any reasonable shipping and related costs that may be incurred when preparing and sending the Materials to the Institution.
8. The RUN-EU member Institution agrees to be bound by this Agreement in consideration of the Provider making the Materials available to the Researcher.
9. The laws of the European Union shall apply to this Agreement, and the courts of the country of the materials provider shall have jurisdiction over any matter relating to it.



**RUN-EU Model Innovation/IP  
Disclosure Form**

**RUN-EU Innovation/IP Disclosure Form**

Title of intellectual property:

Project identification number:

Date Received: / /

INNOVATION / IP NAME:

INNOVATION/ IP DETAILS:

(1.1) Explain the concept and how it works.

(1.2) Describe the problem to be solved by the innovation/IP and/or explain the need clearly.

(1.3) Identify other technologies, products or processes (both existing and potential) which are used to solve this problem?

(1.4) What are the problems associated with these technologies, products or processes?

(1.5) Explain how this innovation/IP overcomes these problems (*i.e.* what are its advantages).

(1.6) What is the current stage of development of the innovation/IP?

(1.7) What do you consider to be the most inventive aspect of the proposed innovation/IP?

(1.8) Are there other possible applications of the innovation/IP?

(1.9) List the names of companies which you think would be interested in using, developing or marketing this innovation/IP

**PRIOR ART**

(2.1) Please list relevant references from the scientific literature (use separate sheet if necessary)

(2.2) Please list the results of the patent search which you have conducted (use separate sheet if necessary)

(2.3) Has any public disclosure of the innovation occurred already, without the protection of a Non-Disclosure Agreement? (*Disclosure can be oral (meeting, presentations) or written (abstracts, journal articles, etc)*)

Yes  No  (please tick as appropriate)

If Yes, please provide details.

<b>Date of Disclosure</b>	<b>Type</b> (e.g. journal, conference, meeting)	<b>Details</b> (incl. paper title, journal or conference name, location, etc.)

Is any disclosure pending?

Yes  No  (please tick as appropriate)

If Yes, please provide details.

Date of Disclosure	Type (e.g. journal, conference, meeting)	Details (incl. paper title, journal or conference name, location, etc.)

#### FUNDING AND CONTRACTS

(3.1) Please list all sources of funding which were used in support of the research which contributed to the generation of the innovation/IP.

Source of Funding	Title of Project	Agency Project Code

(3.2) Is the innovation/IP linked to any of the following whether past, present or currently under negotiation?:

- a. material transfer agreement(s)      Yes        No
- b. licence agreement(s)                      Yes        No
- c. personal consultancy(s)                    Yes        No
- d. provision of equipment                    Yes        No
- e. open-source software licence Yes        No

If Yes to any of the above, please provide details (use separate sheet if necessary)

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#### INVENTOR / CONTRIBUTOR DETAILS

(4.1) Please list all individuals whom you consider to have made a conceptual and inventive contribution to the generation of the innovation/IP and list those who have made a practical (non-inventive contribution)

Name + Home Address	RUN-EU Institution	Position (e.g. staff or student)	Nationality	Type of Contribution	Contribution (%)

**Note:** Unlike authorship of a scientific publication, where patents are concerned inventorship is a matter of law and a patent that fails to name the correct inventors either because those listed are not true inventors or true inventors were excluded, may be ruled invalid.

Actual entitlement to inventorship can only be correctly assigned when prosecution of a patent application is fully complete, as it is the content of the final claims that are granted which establishes entitlement and this can be different from the original claims in the initial application. Hence, in certain circumstances, it may be necessary to amend the listing of inventors at a later date at the patent office.

**Important Notice**

THE ABOVE INFORMATION IS USED TO ASSESS OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS AND OF RIGHTS TO SUBSEQUENT ROYALTIES. FAILURE TO PROVIDE FULL AND ACCURATE INFORMATION MAY JEOPARDISE OR INVALIDATE ANY SUBSEQUENT PATENT APPLICATION (IF SUCH IS APPROPRIATE).

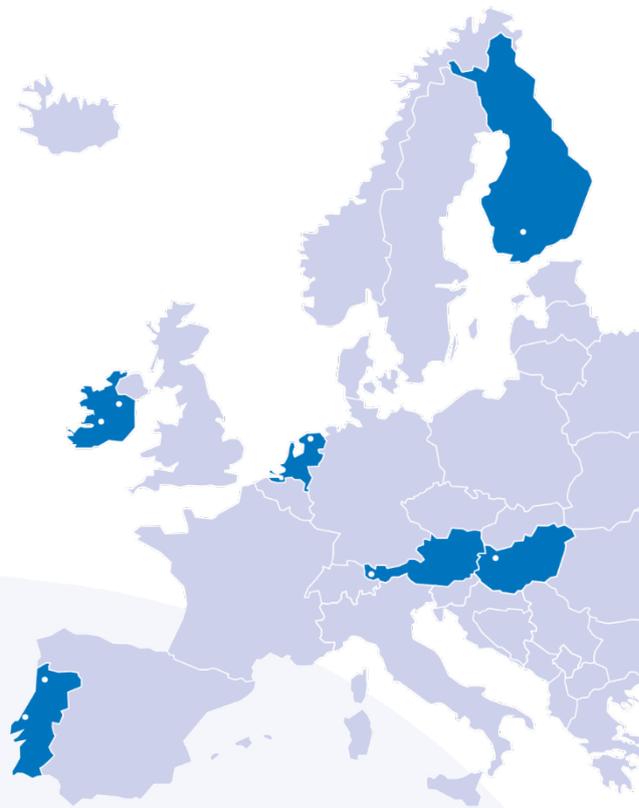
I/we declare that to the best of my/our knowledge that the information provided in this form is correct and complete and I/we assign the intellectual property to [●] (the "RUN-EU RPO(s)") in accordance with [●] (the "RUN-EU RPO(s)") Intellectual Property Policy and Procedures.

<b>Inventor/Contributor Name</b>	<b>Signature</b>	<b>Date</b>

When completed, the form should be sent by e-mail to [●] (TTO Contact) with a signed original to be sent to the address below:

Name of RUN-EU TTO Contact:

Address of EUN-EU TTO:



## **RUN-EU Model Joint Ownership and Management Agreement**

Dated \_\_\_\_\_ 20[●]

(3) *[Full legal name of the RUN-EU RPO]*

and

(4) *[Full legal name of the Industry Party]*

## **RUN-EU MODEL JOINT OWNERSHIP & MANAGEMENT AGREEMENT**

## JOINT OWNERSHIP AND MANAGEMENT AGREEMENT

This Agreement dated \_\_\_\_\_ 20[●] is between:

- 4 [●] (the “RUN-EU RPO”); [an academic institution incorporated or established under [statute or charter in the RUN-EU RPO member country],] whose [principal address or registered office] is at [●] and
- 5 [●] (the “Industry Party”), [a company or insert relevant entity type incorporated in [●] with registration number [●],] whose [principal place of business or registered office] is at [●].

### Background:

- C. The RUN-EU RPO and the Industry Party are engaged in a collaborative research project relating to [insert description of the subject matter] and have entered into the Collaborative Research Agreement.
- D. The RUN-EU RPO and the Industry Party wish to agree terms for the protection and commercial exploitation of Joint IP.

The Parties agree as follows:

### 1. Interpretation

- 1.1 *Definitions.* In this Agreement (and the background recitals above), unless the context requires otherwise or unless otherwise specified the following words shall have the following meanings:

<b>Affiliate</b>	In relation to a Party, means any entity or person that Controls, is Controlled by, or is under common Control with that Party.
<b>Claims</b>	All demands, claims, suits or proceedings (whether criminal or civil, in contract, tort (including negligence) or otherwise).
<b>Collaborative Research Agreement</b>	The research agreement dated [●] relating to the Project entered into between the RUN-EU RPO and the Industry Party.
<b>Control</b>	Possession of the power to direct or cause the direction of the management and policies of a person whether by membership, ownership, contract or otherwise. “Controlled”, “Controls” and other cognate words and expressions shall be construed accordingly.
<b>[Exercise Notice</b>	Written notice from the Industry Party to the RUN-EU RPO that it wishes to exercise the Option.]
<b>[Fees</b>	The share of the direct costs for the application, prosecution and maintenance of registered intellectual property rights to be paid to the Lead Party by the other Party as set out in Schedule 2.]

<b>Insolvency Event</b>	The occurrence of any of the following events in respect of a Party: (i) that Party becomes insolvent or unable to pay its debts as and when they become due; (ii) an order is made or a resolution is passed for the winding up of that Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (iii) a liquidator, examiner, receiver, receiver manager, or trustee is appointed in respect of the whole or any part of that Party's assets or business; (iv) that Party makes any composition with its creditors; (v) that Party ceases to continue its business; or (vi) as a result of debt and/or maladministration that Party takes or suffers any similar or analogous action
<b>Joint IP</b>	All intellectual property (IP) that is jointly owned by the Parties according to the terms of the Collaborative Research Agreement.
<b>Lead Party</b>	The Party which is nominated to take the lead in filing, management and protection of the Joint IP under Clause 3.1.
<b>Licence Field</b>	[•]
<b>Licence Territory</b>	[•]
<b>Loss</b>	Includes any loss, costs, expense, fee, fine, penalty, judgment, award of damages.
<b>[Negotiation Period]</b>	[90] days from and including the date of the Exercise Notice, being the period within which the parties must negotiate and conclude a licence.]
<b>Notice Party</b>	A Party in respect of whom notice of termination is issued by the other Party pursuant to Clause 7.2.
<b>[Option]</b>	The option to negotiate a licence to the RUN-EU RPO interest in the Joint IP granted by the RUN-EU RPO to the Industry Party pursuant to Clause 4.4.]
<b>[Option Period]</b>	[90] days from and including the date of formal notification of the creation of the Joint IP in question.]
<b>Parties</b>	The RUN-EU RPO and the Industry Party, and " <b>Party</b> " shall mean either of them.
<b>Project</b>	The programme of work carried out by the Parties as described in the project plan in the Collaborative Research Agreement.

1.2 *Construction.* In this Agreement, unless the context requires otherwise:

- (a) the headings are used for convenience only and shall not affect its interpretation;

- (b) references to persons shall include incorporated and unincorporated persons; references to the singular include the plural and vice versa; and references to either gender include the other and the neuter;
- (c) references to Clauses mean clauses of this Agreement;
- (d) references in this Agreement to termination shall include termination by expiry;
- (e) where the word “including” is used it shall be understood as meaning “including without limitation”;
- (f) time shall be construed by reference to time of the RUN-EU RPO member country;
- (g) ‘this Agreement’ mean the Clauses of, and the Schedules to, this Agreement, all of which shall be read as one document; and
- (h) ‘business day’ shall be construed as a reference to a day (other than a Saturday or Sunday) on which the banks are generally open for business in the RUN-EU RPO member country.

1.3 If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

## 2. Ownership

The Parties agree that all right and title to, and interest in the Joint IP shall be beneficially owned jointly by the Parties as tenants in common in equal shares. Schedule 1 sets out a list of Joint IP in existence at the date of this Agreement. Any Joint IP created after the date of this Agreement may be added to Schedule 1 by way of an addendum in writing signed by both parties.

## 3. Patent filings and management

### **[Start of Alternative A – Equal sharing of costs]**

3.1 *Lead Party:* The [RUN-EU RPO][Industry Party] (the “**Lead Party**”) shall be responsible for the preparation, filing and prosecution of any applications for patents, designs or other registered rights in respect of the Joint IP, and in which countries of the world such application(s) are to be filed. The Lead Party shall consult with the other Party in good faith regarding the filing, prosecution and maintenance of any such applications or granted rights. This consultation shall be carried out in good time to allow the other Party sufficient time to consider and respond, and for any requests to be delivered to the Lead Party in sufficient time to allow the Lead Party to implement the request. The final decision on the actions to be taken will rest with the Lead Party.

3.2 *Costs:*

- (a) All direct costs relating to any such applications and granted patents or other registered rights (including filing, prosecution, and renewal fees) shall be borne by the Parties equally.
- (b) The Lead Party shall provide the other Party with invoices for the Fees due to the Lead Party in accordance with the payment schedule set out in Schedule 2.

- (c) The other Party shall pay all valid invoices in accordance with the provisions of Schedule 2. Interest shall be automatically applied in the event of late payment in accordance with the provisions of Schedule 2.
- (d) All amounts stated are to be paid in Euro.

3.3 *Step in rights:* If one Party does not wish to continue to bear its share of the costs of filing and maintenance of a patent or other registered right in any jurisdiction or territory or the Lead Party becomes the subject of an Insolvency Event, then the other Party shall have the right to file, maintain, and prosecute such protection at its own expense and shall have full control over such filing, maintenance and prosecution, even though the title to any issuing patent will be joint. The ownership interest of the Party who does not contribute to any such expenses shall remain unaffected.

**End of Alternative A]**

**[Start of Alternative B – One Party pays all costs**

- 3.4 *Lead Party:* The [RUN-EU RPO][Industry Party] (the “**Lead Party**”) shall be responsible for the preparation, filing and prosecution of any applications for patents, designs or other registered rights in respect of the Joint IP, and in which countries of the world such application(s) are to be filed.
- 3.5 *Costs:* The Lead Party shall pay all costs relating to any such applications and granted patents or other registered rights (including filing, prosecution, and renewal fees).
- 3.6 *Step in rights:* If the Lead Party does not wish to continue to bear the costs of filing and maintenance of a patent or other registered right in any jurisdiction or territory or the Lead Party becomes the subject of an Insolvency Event, then the other Party shall have the right to file, maintain, and prosecute such protection at its own expense and shall have full control over such filing, maintenance and prosecution, even though the title to any issuing patent will be joint. The ownership interest of the Lead Party in such rights shall remain unaffected.

**End of Alternative B]**

- 3.7 *Joint applications:* It is agreed that any such applications shall be registered in the joint names of the RUN-EU RPO and the Industry Party.
- 3.8 *Provision of information:* The Lead Party shall keep all patent notices, applications and correspondence filed in connection with any such applications and shall provide copies of such documents to the other Party on reasonable request.
- 3.9 *Assistance:* Each Party shall give the other Party all assistance reasonably necessary in respect of the filing, prosecution and maintenance of any registered rights in respect of the Joint IP.
- 3.10 *Enforcement:* Each Party shall inform the other Party promptly of any infringement or suspected or threatened infringement of the Joint IP of which it becomes aware, and the Parties shall promptly consult with each other in good faith with a view to reaching agreement on the action to be taken in respect of the infringement in question, with due regard to the terms of any agreements covering the licensing of the Joint IP or any part of it to third parties. If a Party elects not to participate in any litigation action against any third party then that Party shall have no obligation to share the costs related to such actions, but shall also have no rights to share in any recovery.

## 4. Commercial exploitation

- 4.1 *Exploitation:* Except as provided in this Agreement, each Party shall be entitled to use and to exploit the Joint IP as it sees fit (including for teaching and research, both internally and with third parties), and to grant non-exclusive licences (including the right to sub-licence) to its rights in the Joint IP without obtaining any consent from, paying compensation to, or otherwise accounting to the other Party.
- 4.2 *Retention of exploitation rights in the event of non-payment of costs:* For the avoidance of doubt, any Party which does not contribute to the costs of filing and maintenance of any registered right shall nevertheless retain its rights to own and exploit the Joint IP under Clause 4.1.
- 4.3 *Assignment of Joint IP:*
- (a) Except as expressly provided in the remainder of this Clause 4.3, neither Party may assign, mortgage, charge or otherwise transfer any or all of its rights in any Joint IP without the prior written agreement of the other Party.
  - (b) Each Party shall procure that before it transfers or assigns its share in any Joint IP to any person (other than to the other Party) such person shall enter into an agreement with the other Party substantially in the form of this Agreement.
  - (c) Subject to its compliance with Clause 4.3(b), each Party may assign ownership of its share of any Joint IP:
    - (i) to an Affiliate without the prior agreement of the other Party; and
    - (ii) to a third party (not being an Affiliate) provided that it gives the other Party not less than [30] days' prior notice in writing.
- 4.4 *[Grant of option:* In consideration of the payment of €10 to the RUN-EU RPO by the Industry Party (the receipt and sufficiency of which the RUN-EU RPO acknowledges), the RUN-EU RPO grants to the Industry Party an exclusive option during the Option Period to elect to negotiate an exclusive licence in the Licence Field in the Licence Territory to the RUN-EU RPO interest in the Joint IP. Any such licence shall:
- (a) be on fair and reasonable commercial terms; and
  - (b) be concluded by way of a separate licence.
- 4.5 *Procedure for the exercise of Options:*
- (a) If the Industry Party wishes to exercise an Option, it shall give an Exercise Notice to the RUN-EU RPO prior to the expiry of the Option Period. No Option may be exercised more than once in respect of the same IP.
  - (b) Upon receipt of an Exercise Notice, the Parties acting reasonably shall promptly enter into negotiations in good faith with a view to the conclusion of a licence agreement in respect of the RUN-EU RPO interest in the Joint IP during the Negotiation Period.
  - (c) If the Industry Party does not exercise its Option during the applicable Option Period or the Parties are unable to agree the terms of a licence agreement within the Negotiation Period that Option shall lapse.]

- 4.6 *Research use:* Notwithstanding the grant of any licence to the RUN-EU RPO's interest in any Joint IP pursuant to this Clause 4, the RUN-EU RPO shall have a non-exclusive, irrevocable, perpetual, royalty-free right to use that Joint IP for internal teaching and research.

## 5. Indemnity

Each Party (the "**Indemnifying Party**") shall indemnify and keep indemnified the other Party on demand from and against any and all Losses arising out of or in connection with any third party Claims in relation to any use or exploitation of any Joint IP by any of the Indemnifying Party or its licensees.

## 6. Duration

This Agreement shall, subject to early termination in accordance with Clause 7, continue in full force and effect in respect of each item of Joint IP from the date of signature until the later of:

- (a) in the case of any registered IP right granted in respect of any Joint IP, the expiry of that registered right; or
- (b) [10] years from and including the date of signature of this Agreement by both parties.

## 7. Termination

- 7.1 *Cessation of ownership.* This Agreement shall automatically cease to bind the Parties in respect of any item of Joint IP upon either Party ceasing to hold any legal ownership interest in that Joint IP in accordance with this Agreement.
- 7.2 *Early termination.* Without prejudice to any other rights or remedies, a Party may terminate this Agreement, at any time, on written notice to the Notice Party if the Notice Party is in material breach of its obligations under this Agreement and, where the breach is capable of remedy within thirty (30) days, the Notice Party has not remedied the breach within thirty (30) days of receiving written notice which specifies the breach and requires the breach to be remedied.
- 7.3 *Survival of obligations.* On termination or expiration of this Agreement for any reason, all rights and duties of the Parties with regard to each other shall cease except for rights and remedies which may have accrued prior to termination or expiration and any rights and/or obligations which expressly or by implication are intended to commence, survive or continue in effect on or after termination or expiration.

## 8. Dispute Resolution

- 8.1 *Internal escalation.* The Parties shall make every reasonable effort to resolve all issues fairly by negotiation. All disputes which arise between the Parties in connection with this Agreement shall be discussed initially between the project managers for the Project. If the dispute remains it shall be referred to [•] in the case of the RUN-EU RPO, and to [•] in the case of the Industry Party in an attempt to resolve the issue in good faith.
- 8.2 *Mediation.* In the event that the dispute has not been settled within sixty (60) days, it shall be submitted for mediation by a mediator or other appropriate independent third party expert agreed by the Parties or, in default of agreement, appointed by the Centre for Dispute Resolution in Dublin. The cost of any such mediator or expert shall be borne equally by the Parties.

8.3 *Injunctive relief.* For the avoidance of doubt, however, nothing in this Clause 8 shall prevent or delay a Party from applying to a court of competent jurisdiction for the purposes of seeking injunctive relief provided that there is no delay in the prosecution of that application.

9. General

9.1 *Amendments.* This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

9.2 *Independent contractors.* The relationship of the RUN-EU RPO to the Industry Party shall be that of independent contractor. This Agreement is not intended to, and does not, create any contract of employment or other legal relationship between the Parties.

9.3 *Entire agreement.* This Agreement and the Collaborative Research Agreement set out the entire agreement between the Parties relating to the ownership, use, protection of and rights of the Parties in the Joint IP and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter. This Agreement and the Collaborative Research Agreement shall be construed as being mutually explanatory of one another; however, in the event of a conflict, the terms of this Agreement shall prevail.

9.4 *Notices.* All notices given by either Party to the other pursuant to this Agreement shall be in writing and may be delivered by pre-paid post, registered courier or by hand to:

	Industry Party Contact:	RUN-EU RPO Contact:
Name	[●]	[●]
Title	[●]	[●]
Address	[●]	[●]

Any such notice, if so given, shall be deemed to have been served:

- (a) if sent by hand, when delivered;
- (b) if sent by post or courier, one business day after posting.

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

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

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

9.8 *Counterparts and Signatures.* This Agreement may be executed in counterparts all of which taken together shall constitute one single agreement between the Parties. Transmission of an executed counterpart of this Agreement by fax or e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an

executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

- 9.9 *Announcements.* Neither Party shall make any press or other public announcement concerning any aspect of this Agreement, or make any use of the name of the other Party in connection with or in consequence of this Agreement, without the prior written consent of the other Party.
- 9.10 *Law and jurisdiction.* This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the RUN-EU RPO member country and each Party agrees to submit to the exclusive jurisdiction of the courts of the RUN-EU RPO member country.
- 9.11 *Binding on Successors.* This Agreement and all of its provisions shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- 9.12 *Assignment.* Save as expressly provided in this Agreement, neither Party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party save that a Party may assign or transfers its rights and obligations under this Agreement to an Affiliate.

**Agreed by the parties through their authorised signatories:**

**SIGNED** For and on behalf of  
*[Insert full legal name of the RUN-EU RPO]*

**SIGNED** For and on behalf of  
*[Insert full legal name of the Industry Party]*

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Schedule 1

### **Joint IP**

The Collaborative Research Agreement will have described the type of intellectual property that may be jointly owned if it is generated jointly between both Parties during the Project. This schedule should reflect that agreement, and list the specific items of IP that are covered by this JOMA.

*[List each specific item of Joint IP that has been generated during the project and is to be covered by the JOMA]*

## Schedule 2

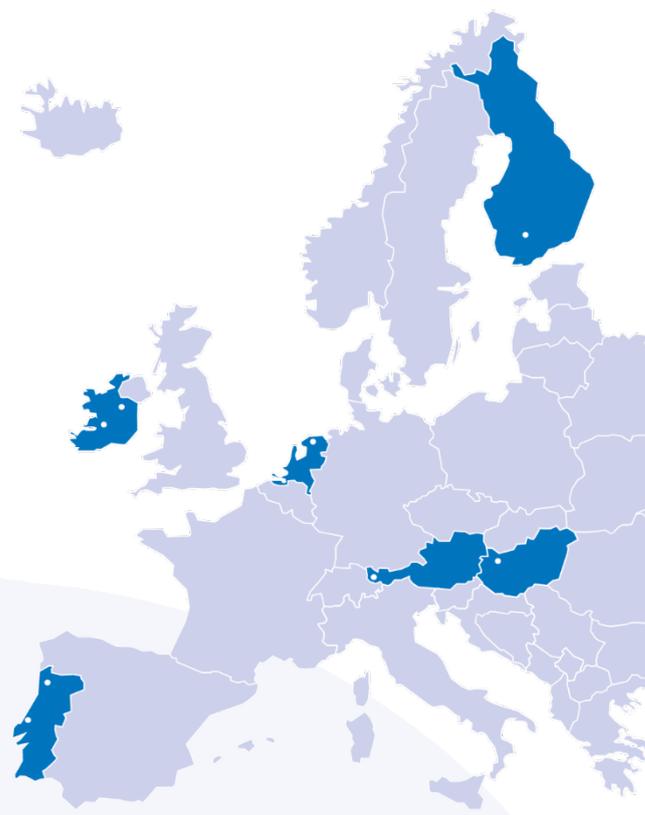
### Payment Schedule

<b>Invoicing</b>	The Lead Party shall issue an invoice to the other Party for 50% of any direct costs relating to any applications for patents, designs or other registered rights and granted patents or other registered rights (including filing, prosecution, and renewal fees). Such invoices shall only be issued after the costs have been incurred by the Lead Party.
<b>RUN-EU RPO's contact details for invoices</b>	[•]
<b>Industry Party's contact details for invoices</b>	[•]
<b>Payment Terms</b>	[30] days net. Payment shall be [by way of bank transfer.]
<b>Interest on Late Payment</b>	Interest shall be automatically applied if payment has not been received within [forty five (45)] days of receipt of a valid invoice. Interest shall be calculated on a daily basis using an interest rate equal to the European Central Bank main refinancing rate (as at 1 January and 1 July in each year) plus [8] percentage points.
<b>Payment details for Lead Party</b>	<b>Bank account name:</b> [•] <b>Bank account number:</b> [•] <b>Bank sort code:</b> [•] <b>Reference:</b> [•]
<b>Industry VAT Number</b>	[•]
<b>RUN-EU RPO VAT Number</b>	[•]

## Annex 1

### **Alternative Definitions for insertion in Clause 1.1 where Joint IP is not provided for in the Collaborative Research Agreement**

Joint IP	Any patentable invention or copyright generated by the Personnel of both the RUN-EU RPO Party and the Industry Party during the course of the Project. A person shall be taken to participate in the generation of: (i) a patentable invention, only if he is considered the, or an, inventor of that invention under Irish patent law as it stands on the date on which the invention is made; and (ii) copyright, only if he is the, or an, author of the work in question for the purposes of Irish copyright law as it stands on the date on which the work is generated, and the term 'generated' includes a reference to the expressions 'discovered', 'conceived', 'first reduced to practice', 'created', and 'developed', and terms cognate with the term 'generated' shall be understood accordingly.
Personnel	The officers, directors, employees, contractors, researchers of registered students of a Party and those of its Affiliates.



## RUN-EU Model Exclusive Licence Agreement

Dated \_\_\_\_\_ 20[●]

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

and

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

## **RUN-EU MODEL EXCLUSIVE LICENCE AGREEMENT**

## MODEL EXCLUSIVE LICENCE AGREEMENT

This Agreement dated \_\_\_\_\_ 20[●] is between:

- (1) [●] (the “RUN-EU RPO”), [an academic institution incorporated or established under [statute or charter in RUN-EU Member Country,]] whose [principal address or registered office] is at [●]; and
- (2) [●] [LIMITED][INC.] (the “Licensee”), [a company incorporated in [●] under registration number [●],] whose [principal place of business or registered address] is at [●].

### Background:

- E. The RUN-EU RPO has developed certain technology and owns certain intellectual property rights relating to [●], including the IP and the Know-how.
- F. 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:

<b>Affiliate</b>	In relation to a Party, means any entity or person that Controls, is Controlled by, or is under common Control with that Party.
<b>Bribery Event</b>	A breach by a Party and/or its Affiliates and/or their respective officers, directors, employees and representatives of the Prevention of Corruption Acts 1889 to 2010 and/or any corresponding anti-bribery or anti-corruption legislation in the Territory.
<b>Claims</b>	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.
<b>Commencement Date</b>	[●].
<b>Confidential Information</b>	<p>(a) All IP and Know-how; and</p> <p>(b) All other technical or commercial information that:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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</li> <li>(iii) any copy of any of the foregoing.</li> </ul>
<b>Control</b>	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.
<b>Diligent and Reasonable Efforts</b>	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.
<b>Disclosing Party</b>	Has the meaning given in Clause 3.
<b>Field</b>	[●].
<b>IP</b>	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).

<b>Know-how</b>	Technical information in the Field developed by the RUN-EU RPO and relating directly to the inventions claimed in the IP, as described in the attached Schedule 1 Part B.
<b>Licensed Products</b>	[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.]
<b>[Net Receipts]</b>	<p>[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:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(c) where any sub-licence is to be granted under cross-licensing arrangements, the value of any third party licence obtained under such arrangements;</li> <li>(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 RUN-EU RPO had not granted, nor agreed to grant, any rights to the Licensee in respect of any of the IP and Know-how);</li> <li>(e) any loan, guarantee or other financial benefit made or given other than on normal market terms; and</li> <li>(f) any shares, options or other securities obtained from a third party.]</li> </ul>
<b>[Net Sales Value]</b>	<p>[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:</p> <ul style="list-style-type: none"> <li>(a) normal trade discounts actually granted and any credits actually given for rejected or returned Licensed Products;</li> <li>(b) costs of packaging, insurance, carriage and freight, provided in each case that the amounts are separately charged on the relevant invoice;</li> <li>(c) Value Added Tax or other sales tax; and</li> <li>(d) import duties or similar applicable government levies,</li> </ul>

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

- (a) an exclusive 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; and
- (b) a non-exclusive 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.* 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 RUN-EU 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 RUN-EU RPO, which consent shall not be unreasonably withheld. Where the RUN-EU 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-licence 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 RUN-EU 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 RUN-EU RPO against any losses, damages, costs, claims or expenses which are awarded against or suffered by the RUN-EU RPO as a result of any such breach by the sub-licensee.

#### *2.4 Reservation of rights.*

- (a) The RUN-EU 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 RUN-EU RPO reserves all its rights. Without prejudice to the generality of the foregoing, the RUN-EU 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 RUN-EU RPO (through the Principal Investigator) shall make available the Know-how to the Licensee.
- (b) The RUN-EU 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 RUN-EU RPO to provide any such support, the Licensee shall give the RUN-EU RPO written notice thereof. The RUN-EU 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 RUN-EU 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 RUN-EU 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.

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 RUN-EU RPO, in any advertising, promotional or sales materials without prior written consent obtained from the RUN-EU RPO in each case;
- (b) do, or omit to do, anything to diminish the rights of the RUN-EU 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**

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

- (a) pay to the RUN-EU RPO the non-refundable[, non-deductible] lump-sum of [●] Euro (€[●]) [*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 RUN-EU 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 RUN-EU RPO the amount(s) set out next to such milestone event in the table:]*

<i>Milestone event</i>	<i>Amount to be paid</i>

5.3 *[Royalties on Net Sales Value. The Licensee shall pay to the RUN-EU 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. The Licensee shall pay to the RUN-EU RPO a royalty of [●] per cent ([●]%) of Net Receipts.]*

5.5 *[Annual licence fees. 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 RUN-EU RPO the annual licence fee of [●] Euro (€[●]). If the Licensee fails to pay any such amount by such date, the RUN-EU 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. 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 RUN-EU 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*. 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*. 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 RUN-EU 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 RUN-EU 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*. 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 RUN-EU 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*. 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 RUN-EU RPO in addition;
  - (b) shall be paid in Euro in cash by transferring an amount in aggregate to the following account: number [●], sort code [●], account name [●], held with [●] Bank plc, [address], and 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 RUN-EU 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 RUN-EU RPO with such certificates or other documents as it can reasonably obtain to enable the RUN-EU 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 RUN-EU RPO may charge interest on any outstanding amount on a daily basis at a rate equivalent to [●] per cent ([●]%) above the [●] Bank plc base lending rate then in force in Dublin.

5.12 *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 RUN-EU RPO, the Licensee shall deposit the royalty payments due in the currency of the relevant country either in a bank account designated by the RUN-EU RPO within such country or such royalty payments shall be made to an associated company of the RUN-EU RPO designated by the RUN-EU RPO and having offices in the relevant country designated by the RUN-EU RPO.

5.13 *[Royalty statements.* The Licensee shall send to the RUN-EU 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.*

- (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 RUN-EU RPO for the purpose of verifying the accuracy of any statement or report given by the Licensee to the RUN-EU 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 RUN-EU RPO only such details as may be necessary to report on the accuracy of the Licensee's statement or report. The RUN-EU 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 RUN-EU 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

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 RUN-EU 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 RUN-EU 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.* If the RUN-EU 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 RUN-EU 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 RUN-EU 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.

## 7. Intellectual property

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

- (a) endeavour to obtain valid patents in the name of the RUN-EU 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 RUN-EU RPO and its licensee(s) outside the Field (if any);
- (c) consult with the RUN-EU 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 RUN-EU 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 RUN-EU 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.*

- (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 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 RUN-EU RPO as to the advisability of the action or settlement, its effect on the good name of the RUN-EU 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 RUN-EU RPO's other licensees (if any) in relation to any such action.
- (e) The Licensee shall reimburse the RUN-EU RPO for any reasonable expenses incurred in assisting it in such action. The Licensee shall pay the RUN-EU 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.
- (f) The RUN-EU RPO shall agree to be joined 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 RUN-EU 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 RUN-EU RPO.

### *7.3 Infringement of third party rights.*

- (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 RUN-EU RPO must be obtained before taking such action or making such settlement.

## **8. Warranties and liability**

### *8.1 Warranties by RUN-EU RPO.* The RUN-EU 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

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 RUN-EU 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 RUN-EU 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 RUN-EU 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.
- (b) Without limiting the scope of Clause 8.3(a), the RUN-EU 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; or

- (iv) that the Know-how or any other information communicated by the RUN-EU 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 RUN-EU 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 RUN-EU RPO in the event that any third party supplies Licensed Products to customers located in the Territory.

**8.4 Indemnity.** The Licensee shall indemnify the RUN-EU RPO against all third party Claims that may be asserted against or suffered by the RUN-EU 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 RUN-EU RPO seeks indemnification pursuant to Clause 8.4, the RUN-EU 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 RUN-EU RPO's prior written consent. The RUN-EU 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 RUN-EU RPO shall be limited to an amount equal to the total income that the RUN-EU RPO has received from the Licensee (less any expenses that the RUN-EU 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 (10<sup>th</sup>) anniversary of the first commercial sale of a Licensed Product in the Territory,

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 RUN-EU 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 RUN-EU 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; 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) 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:
  - (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 and at the RUN-EU 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 RUN-EU 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 RUN-EU RPO or its nominee;
  - (iii) grant the RUN-EU 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 RUN-EU 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 RUN-EU 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 RUN-EU 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 and 10] shall remain in force.

## 10. General

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. 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 RUN-EU 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.

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: the RUN-EU 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 the RUN-EU RPO member country and each Party agrees to submit to the exclusive jurisdiction of the courts of the RUN-EU RPO member country.

(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, RUN-EU RPO member country 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 RUN-EU 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]

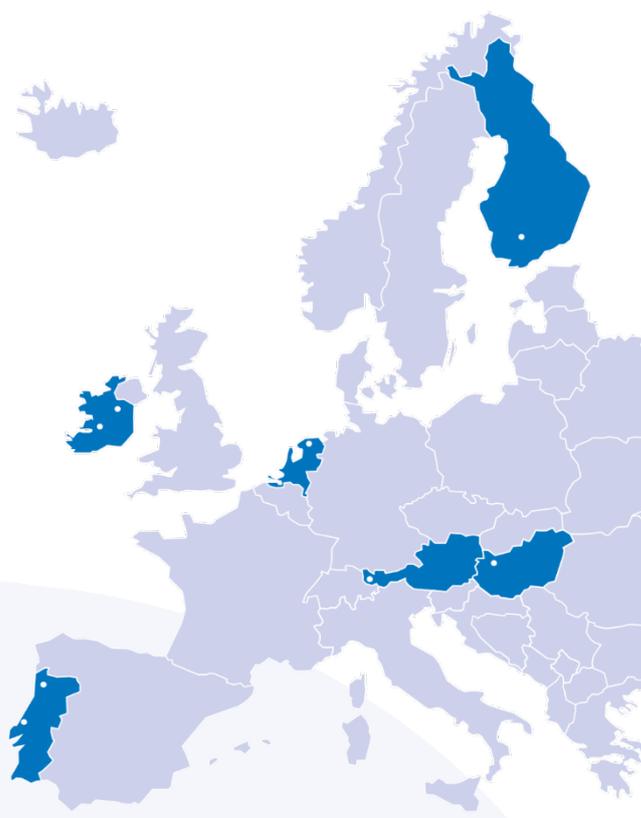
### ***Part B: The Know-how***

[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 RUN-EU 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 RUN-EU RPO member country.
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.



## **RUN-EU Model Non-Exclusive Licence Agreement**

Dated \_\_\_\_\_ 20[●]

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

and

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

## **RUN-EU MODEL NON EXCLUSIVE LICENCE AGREEMENT**

## MODEL NON-EXCLUSIVE LICENCE AGREEMENT

This Agreement dated \_\_\_\_\_ 20[●] is between:

- (1) [●] (the “RUN-EU RPO”), [an academic institution incorporated or established under [statute or charter in ,]] whose [principal address or registered office] is at [●]; and
- (2) [●] [LIMITED][INC.] (the “Licensee”), [a company incorporated in [●] under registration number [●],] whose [principal place of business or registered address] is at [●].

### Background:

- A. The RUN-EU RPO owns certain IP relating to [●].
- B. The Licensee wishes to acquire rights under such IP in accordance with the provisions of this Agreement.

### The Parties agree as follows:

#### 1. Definitions

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

<b>Affiliate</b>	In relation to a Party, means any entity or person that Controls, is Controlled by, or is under common Control with that Party.
<b>Claims</b>	All demands, claims and liability (whether criminal or civil, in contract, tort (including negligence) or otherwise) for losses, damages, legal costs and other expenses of any nature whatsoever and all costs and expenses (including without limitation legal costs) incurred in connection therewith.
<b>Commencement Date</b>	[●].
<b>Confidential Information</b>	(a) The IP; 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

	<p>or by necessary implication that it is imparted in confidence; and</p> <p>(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</p> <p>(iii) any copy of any of the foregoing.</p>
<b>Control</b>	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.
<b>Disclosing Party</b>	Has the meaning given in Clause 3.
<b>Field</b>	The area of [●].
<b>IP</b>	The intellectual property referred to in the Schedule.
<b>Licensed Products</b>	[Any and all products that are manufactured, sold or otherwise supplied by the Licensee or its Affiliate(s) or sub-licensee(s) (if any) and which incorporate or make use of any of the IP.]
<b>[Net Receipts]</b>	<p>[The amount of any payment (excluding value added tax), and the value of any non-monetary receipt, obtained by, or due to, the Licensee or its Affiliate(s), in relation to the development or sub-licensing (including the grant of any option over a sub-licence) of any of the IP, and including any of the following:</p> <p>(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;</p> <p>(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;</p> <p>(c) where any sub-licence is to be granted under cross-licensing arrangements, the value of any third party licence obtained under such arrangements;</p> <p>(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 RUN-EU RPO had not granted, nor agreed to grant, any rights to the Licensee in respect of any of the IP);</p>

	<p>(e) any loan, guarantee or other financial benefit made or given other than on normal market terms; and</p> <p>(f) any shares, options or other securities obtained from a third party.]</p>
<b>[Net Sales Value]</b>	<p>[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:</p> <p>(a) normal trade discounts actually granted and any credits actually given for rejected or returned Licensed Products;</p> <p>(b) costs of packaging, insurance, carriage and freight, provided in each case that the amounts are separately charged on the relevant invoice;</p> <p>(c) Value Added Tax or other sales tax; and</p> <p>(d) import duties or similar applicable government levies;</p> <p>provided that such deductions do not exceed reasonable and customary amounts in the markets in which such sales or other supplies occurred . Sales and other supplies between any of the Licensee, its Affiliates and sub-licensees shall not be considered for the purposes of this definition unless there is no subsequent sale or other supply to a person who is not the Licensee, its Affiliate or sub-licensee.]</p>
<b>Parties</b>	The RUN-EU RPO and the Licensee; and " <b>Party</b> " shall mean either of them.
<b>Receiving Party</b>	Has the meaning given in Clause 3.
<b>Territory</b>	[●].

## 2. Grant of rights

2.1 *Licence.* The RUN-EU RPO hereby grants to the Licensee, subject to the provisions of this Agreement, a non-transferable and non-exclusive licence to use the IP to develop, manufacture, have manufactured, use and sell or otherwise supply, Licensed Products in the Field and in the Territory only.

2.2 *Sub-licensing.* The Licensee shall not be entitled to grant sub-licences of its rights under this Agreement, except with the prior written consent of the RUN-EU RPO, which consent shall not be unreasonably withheld.

2.3 *Reservation of rights.*

- (a) Except for the licence expressly granted by Clause 2.1, the RUN-EU RPO reserves all its rights. Without limiting the scope of the preceding sentence, the RUN-EU RPO grants no rights to any intellectual property other than the IP and reserves all rights outside the Field.
- (b) As the licence granted in Clause 2.1 is non-exclusive, the Licensee acknowledges and agrees that this Agreement places no restriction on the RUN-EU RPO's activities with respect to the IP. Without limiting the scope of the preceding sentence, the RUN-EU RPO reserves for itself and its Affiliates the irrevocable, worldwide, and royalty-free right to use the whole or any part of the IP for any and all purposes, whether commercial or non-commercial and whether in or out of the Field. For the avoidance of doubt, and without limitation, such purposes shall include the purposes of research, teaching and publication.

### 3. Confidentiality

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

- (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; and
- (c) 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 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, 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 law.* The Licensee shall, in exercising its rights under this Agreement, comply with all applicable laws, regulations and other similar instruments in the Territory and shall at all times be solely liable and responsible for such due observance and performance.
- 4.2 *No diminishing of rights.* The Licensee shall not, nor directly or indirectly assist any other person to do or omit to do anything to diminish the rights of the RUN-EU RPO in the IP.
- 4.3 *Licensee restrictions.* The Licensee shall not use, and shall ensure that its Affiliates and sub-licensees do not use, the name, any adaptation of the name, any logo, trademark or other device of the RUN-EU RPO, in any advertising, promotional or sales materials without prior written consent obtained from the RUN-EU RPO in each case.

#### 5. Payments

- 5.1 *Initial payment.* Within thirty (30) days of the Commencement Date, the Licensee shall pay to the RUN-EU RPO the non-refundable, non-deductible lump-sum of [●] Euro (€[●]).
- 5.2 *[Royalties on Net Sales Value.* The Licensee shall pay to the RUN-EU RPO a royalty of [●] per cent ([●]%) of the Net Sales Value of all Licensed Products, or any part thereof, sold or otherwise supplied by Licensee or its Affiliates.]
- 5.3 *[Royalties on Net Receipts.* The Licensee shall pay to the RUN-EU RPO a royalty of [●] per cent ([●]%) of Net Receipts. For the avoidance of doubt, the provisions of this Clause 5.3 and any references to sub-licensees in this Agreement are without prejudice to the provisions of Clause 2.2.]
- 5.4 *[Minimum royalties.* If the royalties payable under Clause 5.2 and Clause 5.3 are less than [●] Euro (€[●]) ("**Minimum Royalty**") in any calendar year, the Licensee shall pay to the RUN-EU 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 RUN-EU RPO shall be entitled to terminate this Agreement and the licence granted under this Agreement by notice in writing to the Licensee given at any time after the expiry of the said sixty (60) day period.]

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

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

- (a) are exclusive of value added tax which where applicable will be paid by the Licensee to the RUN-EU RPO in addition;
- (b) shall be paid in Euro in cash by transferring an amount in aggregate to the following account : number [●], sort code [●], account name [●], held with [●] Bank plc, [address];
- (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 RUN-EU 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 RUN-EU RPO with such certificates or other documents as it can reasonably obtain to enable the RUN-EU 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 RUN-EU RPO may charge interest on any outstanding amount on a daily basis at a rate equivalent to [●] per cent ([●]%) above the [●] Bank plc base lending rate then in force in Dublin.

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

## **6. Intellectual property**

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

6.2 *Infringement of third party rights.* If any warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a Party, alleging infringement of third party rights in

the manufacture, use or sale of any Licensed Product or use of any IP, that Party shall promptly provide full details to the other Party, and the Parties shall discuss the best way to respond.

## **7. Acknowledgements and liability**

### *7.1 Acknowledgements.*

(a) Each of the Licensee and the RUN-EU RPO acknowledges and agrees that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

(b) Without limiting the scope of Clause 7.1(a), the RUN-EU RPO does not make any representation nor give any warranty or undertaking:

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

(ii) that the use of any of the IP, the manufacture, sale or use of the Licensed Products or the exercise of any of the rights granted under this Agreement will not infringe any other intellectual property or other rights of any other person.

*7.2 Indemnity.* The Licensee shall indemnify the RUN-EU RPO against all third party Claims that may be asserted against or suffered by the RUN-EU RPO and which relate to:

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

(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.

*7.3 Conditions for indemnity.* If the RUN-EU RPO seeks indemnification pursuant to Clause 7.2, the RUN-EU 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 RUN-EU RPO's prior written consent. The RUN-EU RPO and the Licensee shall co-operate with each other in the defence of such claim.

### *7.4 Liability.*

(a) To the extent that the RUN-EU RPO has any liability in contract, tort (including negligence), or otherwise under or in connection with this Agreement, including any liability for breach of warranty, its aggregate liability shall be limited to an amount equal to the total income that the RUN-EU RPO

has received from the Licensee during the period of [●] years preceding the date on which the liability arises, or [●], whichever is the higher.

- (b) 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.
- (c) Nothing in this Agreement excludes any person's liability to the extent that it may not be so excluded under applicable law, including any such liability for death or personal injury caused by that person's negligence, or liability for fraud.

7.5 *Insurance.* Without limiting its liabilities under this Agreement the Licensee shall take out with a reputable insurance company and maintain at all times during the term of this Agreement public and product liability insurance including against all loss of and damage to property (whether real, personal or intellectual) and injury to persons including death arising out of or in connection with this Agreement and the Licensee's and its Affiliates' and sub-licensees' use of the IP and use, sale of or any other dealing in any of the Licensed Products. Such insurances may be limited in respect of one claim provided that such limit must be at least six million five hundred thousand Euro (€6.5 million) and shall continue to be maintained by the Licensee for a further six (6) years from the end of the term of this Agreement.

## 8. Duration and termination

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

8.2 *Termination.*

- (a) 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) at any time on [twelve (12)] months' notice in writing to the Other Party;
  - (ii) 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
  - (iii) 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.

- (b) A Party's right of termination under this Agreement, and the exercise of any such right, shall be without prejudice to any other right or remedy (including any right to claim damages) that such Party may have in the event of a breach of contract or other default by the other Party.

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

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

## 9. **General**

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

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

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

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

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

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

9.7 *Interpretation.* In this Agreement:

- (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".

9.8 *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 9.8. The fax numbers of the Parties are as follows: the RUN-EU 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 on the next working day after transmission (in the case of fax messages, but only if a transmission report is generated by the sender's fax machine recording a message from the recipient's fax machine, confirming that the fax was sent to the number indicated above and confirming that all pages were successfully transmitted).

9.9 *Law and jurisdiction.*

- (a) This Agreement shall be governed by and construed in accordance with laws of RUN-EU RPO member country and each Party agrees to submit to the exclusive jurisdiction of the courts of the RUN-EU RPO member .country.
- (b) Notwithstanding Clause 9.9(a), before commencing any litigation, each Party shall consider in good faith whether it would be reasonable in the circumstances for the Parties to agree to pursue any alternative dispute resolution processes. Such alternative dispute resolution processes may include internal escalation procedures, and/or mediation in accordance with the WIPO mediation rules. For the avoidance of doubt, however, nothing in this Agreement shall prevent or delay a Party from seeking an interim injunction.

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

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

9.12 *Entire agreement.* This Agreement, including its Schedules, sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter.

9.13 *Export Control Regulations.*

(a) "**Export Control Regulations**" mean any United Nations trade sanctions, RUN-EU RPO member country 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, including in using the IP and in selling Licensed Products, it shall not and nor shall its or its Affiliates employees or sub-contractors breach or compromise, directly or indirectly, compliance with any Export Control Regulations.

**Agreed by the Parties through their authorised signatories:**

For and on behalf of  
*[Full legal name of the RUN-EU RPO]*

For and on behalf of  
*[Full legal name of the Licensee]*

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Title

\_\_\_\_\_  
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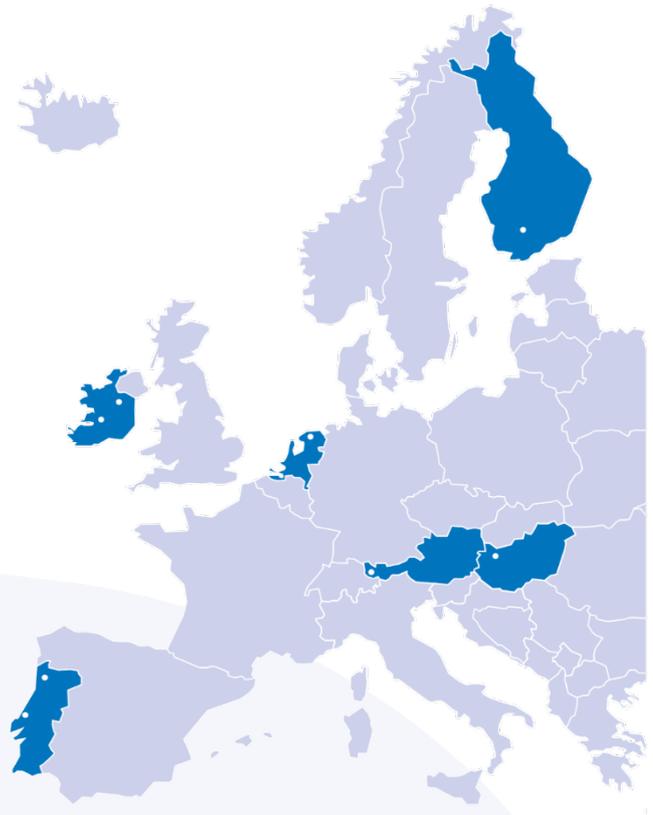
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **Schedule**

### **The IP**

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



## RUN-EU Model Option and Evaluation Agreement

Dated \_\_\_\_\_ 20[●]

(1) [Full legal name of the RUN-EU RPO]

and

(2) [Full legal name of the Company]

## **RUN-EU MODEL OPTION AND EVALUATION AGREEMENT**

# MODEL OPTION AND EVALUATION AGREEMENT

This Agreement dated \_\_\_\_\_ 20[●] is between:

1. [●] (the “**RUN-EU RPO**”), [an academic institution incorporated or established under [statute or charter in RUN-EU RPO member country],] whose [principal address or registered office] is at [●]; and
2. [●] [**LIMITED**][**INC.**] (the “**Company**”), [a company incorporated in [●] under registration number [●],] whose [principal place of business or registered address] is at [●].

## Background:

- A. The RUN-EU RPO has developed certain technology and owns certain intellectual property rights relating to [●], including the Patents and the Know-how; and
- B. The Company wishes to evaluate the Patents and the Know-how and the RUN-EU RPO is willing to grant the Company a limited licence to use the Patents and the Know-how in accordance with the provisions of this Agreement; and
- C. The Company wishes to acquire an option to obtain rights under the Patents and to use the Know-how for the purposes set out in this Agreement and the RUN-EU RPO is willing to grant the Company such an option 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:

<b>Commencement Date</b>	[●].
<b>Confidential Information</b>	(c) All Patents and Know-how; and (d) All other technical or commercial information that: <ol style="list-style-type: none"><li>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</li><li>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</li></ol>

	iii. any copy of any of the foregoing.
<b>Evaluation Exercise</b>	The process of evaluating the Patents and Know-how which shall be restricted to the activities described in Schedule 4.
<b>Field</b>	[●].
<b>Know-how</b>	Technical information in the Field developed by the RUN-EU RPO and relating directly to the inventions claimed in the Patents, as described in the attached Schedule 1 Part B.
<b>Licence Rights</b>	The licence rights described in Schedule 2.
<b>Option</b>	The option described in Clause 2.1.
<b>Option Fee</b>	The sum of €[●] ([●] Euro).
<b>Option Period</b>	The period of [90] days from the Commencement Date, subject to any earlier termination of the Option under Clause 7.
<b>Patents</b>	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 the foregoing.
<b>Research Fees</b>	The amounts detailed in Schedule 4 and payable by the Company as detailed in Schedule 4 in respect of any further research or work to be performed by the RUN-EU RPO as part of the Evaluation Exercise.
<b>Territory</b>	[●].

## 2. Option

- 2.1. In consideration of the payment of the Option Fee by the Company to the RUN-EU RPO, the RUN-EU RPO hereby grants to the Company an [exclusive] option, with effect from the Commencement Date and during the Option Period and subject to the provisions of this Agreement, to negotiate a separate, written licence agreement to use the Patents and the Know-how in the Field and in the Territory.
- 2.2. During the Option Period, the RUN-EU RPO and the Company shall negotiate in good faith the

terms of a separate, written licence agreement between them under which the Company would be granted the Licence Rights. [Any such licence agreement would include, without limitation, terms based on the provisions of Schedule 3.] [Any such licence agreement will be upon the terms recorded in Schedule 3.] Upon agreement of the terms of the licence agreement during the Option Period, the Parties shall forthwith execute a licence agreement between them on such terms.

- 2.3. If the Parties are unable to agree the terms of a separate, written licence agreement during the Option Period, despite negotiating in good faith, the Option will lapse and this Agreement shall terminate by expiry.
- 2.4. During the Option Period, the RUN-EU RPO reserves for itself and its collaborators the [exclusive,] irrevocable, worldwide, royalty-free right to use, the Patents and Know-how for the purposes of research that is not directed to the development of commercial products and services, publication and teaching.

### **3. Licence to evaluate**

- 3.1. In consideration of the payment of the Option Fee by the Company to the RUN-EU RPO, the RUN-EU RPO hereby grants to the Company an [exclusive] non-transferable, non-sub-licensable, royalty-free licence, with effect from the Commencement Date and during the Option Period and subject to the provisions of this Agreement, to use and evaluate the Patents and the Know-how for the limited purpose of performing the Evaluation Exercise.
- 3.2. The Company shall promptly disclose to the RUN-EU RPO the information resulting from the Evaluation Exercise.
- 3.3. All information and any intellectual property (including, but not limited to, developments, improvements and further know-how) arising from the Evaluation Exercise that incorporates or arises directly from the Patents and Know-how (whether generated by the RUN-EU RPO or by or on behalf of the Company) shall:
  - (a) be treated as confidential information owned by the RUN-EU RPO in accordance with Clause 5; and
  - (b) [be assigned to and vest in the RUN-EU RPO and the Company shall take any steps necessary to complete such assignment promptly and at its own expense]. If the RUN-EU RPO subsequently grants the Company a licence pursuant to Clause 2.2 then the intellectual property arising from the Evaluation Exercise shall be included in the licence granted to the Company.

### **4. Payments**

- 4.1. In consideration of the Option, the Company shall pay to the RUN-EU RPO the Option Fee (plus VAT and any other taxes or duties that are applicable) within [30] days of the Commencement Date.

- 4.2. The Company shall pay to the RUN-EU RPO the Research Fees by way of funding the RUN-EU RPO's contribution to the Evaluation Exercise on receipt of an invoice from the RUN-EU RPO.
- 4.3. All amounts stated or referred to in this Agreement are exclusive of VAT and any other taxes or duties that are applicable. These will be charged by the RUN-EU RPO to the Company and are payable by the Company in addition, if applicable and at the appropriate rate.

## 5. No warranty

- 5.1. 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 RUN-EU 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 RUN-EU 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.

## 6. Confidentiality obligations

- 6.1. 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 (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 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, 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.
- 6.2. The provisions of this Clause 6.1 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.

6.3. 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 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.

## 7. Termination

7.1. This Agreement shall come into effect on the Commencement Date and, subject to any earlier termination in accordance with this Clause 7, shall continue in force until the expiry of the Option Period. Upon expiry of the Option Period, this Agreement, and the Option, shall terminate by expiry.

7.2. The Company may terminate this Agreement at any time on giving no less than 60 days' notice in writing to the RUN-EU RPO.

7.3. 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.

- 7.4. The RUN-EU RPO may terminate this Agreement by giving written notice to the Company, such termination to take effect forthwith or as otherwise stated in the notice:
- (a) if the Company fails to perform any part of the Evaluation Exercise as agreed or by any agreed date; or
  - (b) if the Company fails to pay any amount payable under this Agreement by the due date; or
  - (c) if the RUN-EU RPO has reasonable grounds to believe that the Company or any of its employees or representatives are in breach of any applicable anti-corruption legislation.
- 7.5. A Party's right of termination under this Agreement, and the exercise of any such right, shall be without prejudice to any other right or remedy (including any right to claim damages) that such Party may have in the event of a breach of contract or other default by the other Party.
- 7.6. Upon termination of this Agreement for any reason, including without limitation upon termination by expiry under Clause 7.1:
- (a) the Company shall immediately cease to make any further use of the Patents, Know-how and any Confidential Information provided by the RUN-EU RPO under this Agreement and shall, at the RUN-EU RPO's option return or destroy any documents or other materials under its possession or control recording any of the Patents, Know-how or Confidential Information;
  - (b) the Option shall lapse, and in such circumstances, the RUN-EU 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 the other save that obligations under Clauses 3.3, 6, 7.6 and 8 of this Agreement shall remain in force.

## **8. General**

- 8.1. 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 without limitation 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.
- 8.2. This Agreement may only be amended in writing signed by duly authorised representatives of the

RUN-EU RPO and the Company.

- 8.3. Subject to Clause 8.4, neither Party shall assign, mortgage, charge or otherwise transfer any rights or obligations under this Agreement, nor any of the Patents or rights under the Patents, without the prior written consent of the other Party.
- 8.4. Either Party may assign all its rights and obligations under this Agreement together with its rights in the Patents to any company or other organisation 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.
- 8.5. 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.
- 8.6. Any notice to be given under this Agreement shall be in writing and shall be sent by post or by fax (confirmed by post) to the address of the relevant Party set out at the head of this Agreement, or to the relevant fax number set out below, or such other address or fax number as that Party may from time to time notify to the other Party in accordance with this Clause 8.6. The fax numbers of the Parties are as follows:
  - (a) RUN-EU RPO – [●];
  - (b) Company – [●].
- 8.7. Notices sent as above shall be deemed to have been received three working days after the day of posting, or on the next working day after transmission (in the case of fax messages, but only if a transmission report is generated by the sender's fax machine recording a message from the recipient's fax machine, confirming that the fax was sent to the number indicated above and confirming that all pages were successfully transmitted).
- 8.8. This Agreement shall be governed by and construed in accordance with the laws of the RUN-EU RPO member country and each Party agrees to submit to the exclusive jurisdiction of the courts of the RUN-EU RPO member country. 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. 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.
- 8.9. 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.

8.10. 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.

8.11. 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 RUN-EU RPO]

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

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **Schedule 1**

### **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**

### **Licence Rights**

[Insert key points to be incorporated in 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.]

## **3**

[Insert details of any pre-agreed term sheet (including commercial details) or insert a copy of the finalised licence agreement that will be signed if the evaluation period is satisfactory]

## **Schedule 4**

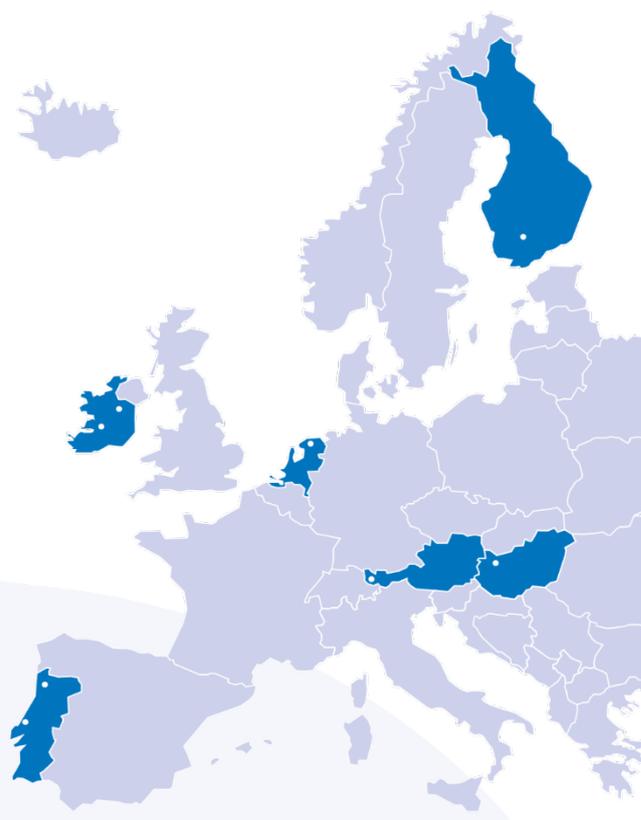
### **Evaluation Exercise**

[Insert details of the agreed evaluation process which may include some or all of the following by either the Company or the RUN-EU RPO:

- performing defined experiments and tests in order to evaluate the technology;
- investigating the feasibility and implications of developing products based on the technology;
- performing market research and preparing market forecasts; and
- preparing an outline programme for the commercial exploitation of the technology.]

### **Research Fees**

[Insert details of any fees payable by the Company to the RUN-EU RPO to perform any further research or any other part of the Evaluation Exercise]



**RUN-EU Model Confirmatory  
Assignment Agreement**

Dated \_\_\_\_\_ 20[●]

(5) *[Full name of the Researcher]*

and

(6) *[Full legal name of the RUN-EU RPO]*

## **RUN-EU MODEL CONFIRMATORY ASSIGNMENT**

# CONFIRMATORY ASSIGNMENT

This Assignment dated \_\_\_\_\_ 20[●] is between:

- 1 [●] (the “**Researcher**”), an individual, whose home address is at [●]; and
- 2 [●] (the “**RUN-EU RPO**”), [an academic institution incorporated or established under [statute or charter in RUN-EU RPO member country],] whose [principal address or registered office] is at [●].

The RPO and the Researcher together shall be referred to as the “**Parties**”, and individually shall be referred to as a “**Party**”.

## BACKGROUND

- A. The Researcher is [an employee of] OR [enrolled as a student at] the RUN-EU RPO and has developed certain [technology, inventions, and know-how] relating to [insert a brief description of the IP to be assigned] (together, the “**Technology**”).
- B. The Researcher is willing to assign and transfer all his/her right, title and interest in and to such Technology to the RUN-EU RPO, and the RUN-EU RPO is willing to accept such assignment and transfer, all in accordance with the provisions of this Assignment.

The Parties agree as follows:

### 1. Definitions

- 1.1 *Definitions.* In this Assignment, the following words shall have the following meanings:

**Assigned Property** [All [Patents,] know-how, inventions, and other items of intellectual and physical property described in the attached Schedule].

**[Patents]** [The patent(s) and patent application(s) identified in the Schedule[, and any future patents and patent applications which are based upon or derive priority from those listed in the Schedule.]]

### 2. Assignment

- 2.1 *Assignment.* In consideration of the sum of [●] Euro (€[●]) now paid by the RUN-EU RPO to the Researcher, receipt of which is acknowledged by the Researcher, the Researcher hereby assigns and transfers to the RUN-EU RPO absolutely all his/her right, title, and interest in and to the Assigned Property [free from any encumbrance and free from the benefit or burden of any licence or other right to use], which assignment and transfer is hereby accepted by the RUN-EU RPO.
- 2.2 *Further details of assignment.* Without limiting the scope of Clause 2.1, the assignment effected by Clause 2.1 shall include the assignment and transfer to the RUN-EU RPO of:

- (a) all patents and other intellectual property that may be granted pursuant to any applications listed in the Schedule, [as well as all patents and other intellectual property that may derive priority from or have equivalent claims to or be based upon the Assigned Property in any country of the world (and including supplementary protection certificates, divisions, continuations, continuations in part, reissues, and extensions), and the Assigned Property shall be deemed to include all such items of property];
- (b) the right to apply for, and obtain, any item of intellectual property referred to in Clause 2.2(a);
- (c) any unregistered intellectual property listed in the Schedule;
- (d) the entire right, title, and interest in and to the existing and/or future copyright, and rights in the nature of copyright, in the works listed in the Schedule throughout the world for the full term of the copyright in them and all renewals and extensions of such rights;
- (e) all rights in respect of any know-how that is listed in the Schedule;
- (f) all rights of ownership of any materials that are listed in the Schedule; and
- (g) all rights of action, powers, and benefits arising from ownership of the Assigned Property, including the right to sue for damages and other legal and equitable remedies in respect of all causes of action arising before, on, or after the date of this Assignment.

2.3 *Further assurances.* The Researcher agrees to execute all such documents and give all such assistance as the RUN-EU RPO may reasonably require, at the RUN-EU RPO's reasonable expense, including:

- (a) to secure the vesting in the RUN-EU RPO of all rights in the Assigned Property;
- (b) to uphold the RUN-EU RPO's (or any successor in title's) rights in the Assigned Property;
- (c) to defeat any challenge to the validity of, and resolve any questions concerning, the Assigned Property;
- (d) to enable the RUN-EU RPO or its nominee to enjoy (i) the full benefit of the property and rights assigned in this Assignment, and (ii) the exclusive benefit of any extension or further grant of patents vested in the RUN-EU RPO by virtue of this Assignment; and
- (e) to apply for, and endeavour to assist in the obtaining of, patents and/or similar protection for the Assigned Property and any improvements of it in any country of the world.

2.4 *Registration.* The RUN-EU RPO is entitled to notify, on the Researcher's behalf, the assignment provided for by this Clause 2, to the relevant IP registers. The costs of making such notifications will be borne by the RUN-EU RPO.

### **3. Warranties**

3.1 *Disclosure.* The Researcher warrants that he/she has disclosed to the RUN-EU RPO in writing the names of all persons of whom he/she is aware who might have rights in the Assigned Property, including any other persons who were involved in developing the Assigned Property, and any organisations that funded the development of the Assigned Property.

3.2 *Acknowledgements.* The RUN-EU RPO acknowledges that the Researcher:

- (a) does not warrant or guarantee the validity of any of the Assigned Property or that the Assigned Property does not infringe any valid and subsisting patent or other rights held by any third party; and
- (b) has not performed any searches or investigations into the existence of any third-party rights that may affect any of the Assigned Property.

#### **4. General**

4.1 *Interpretation.*

- (a) Except where otherwise stated:
  - (i) any reference in this Assignment to a Clause or a Schedule is to a clause of or a schedule to this Assignment;
  - (ii) the provisions of the Schedule shall form part of this Assignment as if set out here;
  - (iii) the headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Assignment; and
  - (iv) where the word “including” is used in this Assignment, it shall be understood as meaning “including without limitation”.
- (b) This Assignment is without prejudice to any ownership rights that the RUN-EU RPO may have in the Assigned Property by virtue of any employment or other contract with the Researcher.

4.2 *No time limit.* The obligations under this Assignment shall continue in force without limit of time.

4.3 *Governing law and jurisdiction.* The validity, construction, and performance of this Assignment shall be governed by the laws of the RUN-EU RPO member country and shall be subject to the exclusive jurisdiction of the courts of the RUN-EU RPO member country to which the Parties submit. Notwithstanding the preceding sentence, any question concerning the validity of any intellectual property right shall be subject to the law and jurisdiction of the country in which such intellectual property right exists.

**Agreed by the Parties through their authorised signatories:**

By

*[Insert full name of Researcher]*

\_\_\_\_\_

Signed

\_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

For and on behalf of

*[Insert full legal name of the RUN-EU RPO]*

\_\_\_\_\_

Signed

\_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

# Schedule

## Assigned Property

[1 *Patents and patent applications*]

Title	Inventor	Application Number	Date Filed	Publication Number	Date Granted

[2 *Copyright works, design rights, database rights, etc.*]

[3 *Know-how*]

[4 *Materials*]

## Industry Party Background IP

Describe Background	List any relevant restrictions and encumbrances associated with the Background	Is this "Significant Background"?
[•]	[•]	Yes / No
[•]	[•]	Yes / No





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