

THIS AGREEMENT is made the XX January 2013

BETWEEN

- (1) **THE NATIONAL UNIVERSITY OF IRELAND, MAYNOOTH** having its seat at Maynooth, Co Kildare (“**NUI Maynooth**”);

AND

- (2) **Company X Limited** with company registration number XXX having its registered office at XXXXXX Ireland (“**CompanyX**”).

WHEREAS

- A. NUI Maynooth is the owner of the NUIM Intellectual Property which has been developed as a result of certain research conducted by Dr XXX.
- B. Subject to the terms and conditions of this Agreement, CompanyX wishes to receive and NUI Maynooth is willing to grant an exclusive licence to use the NUIM Intellectual Property.

1. **Definitions**

- 1.1 In this Agreement, and in the Schedules hereto, unless the context otherwise requires, or unless otherwise specified, the following terms shall have the following meanings:

“**Commencement Date**” means the date of this Agreement;

“**Fees**” mean the payments to be made by CompanyX to NUI Maynooth under this Agreement;

“**Field**” means the field or fields of application of the Technology in the field of XXXX;

“**Improvements**” means any improvement, development, adaptation, enhancement, alteration or modification to, or new application of the NUIM Intellectual Property and/or the Technology or any related technology or know-how owned by NUI Maynooth;

“**Intellectual Property Rights**” means all intellectual and/or industrial property rights including copyrights, design rights, trade secrets, rights in confidential information, trade marks, trade names, domain names, service marks, utility models, moral rights, topography rights, rights in databases and know-how in all cases whether or not registered or registerable and including registrations and applications for registration of any of these rights to apply for the same, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.;

“**Minimum Royalty Payments**” means the minimum royalty payments described in Clause 6;

“**Net Income**” means any amount payable by a third party to Company X in respect of any product or service containing the Technology created, sold, licensed or provided, including, but not limited to, any amounts payable to Company X in respect of any Sub License Fees, and provided the amounts are separately charged on the relevant invoice, less any costs of

packaging, insurance, manufacturing, carriage and freight, any value added tax or other sales tax, and any import duties or similar applicable government levies. Where the sale is not at arm's length, the amount payable shall be the price that would have been so invoiced if it had been at arm's length;

“NUIM Intellectual Property” means the Intellectual Property Rights that NUI Maynooth owns in the Technology;

“Sub Licence” means a licence of NUIM Intellectual Property granted by Company X in accordance with this Agreement;

“Sub Licence Fees” means any consideration of whatever nature receivable by Company X under or in consideration of the grant of any Sub Licence;

“Technology” means the inventions, processes and know-how referred to in the Schedule to this Agreement and any experience, drawings, designs and all other technical information, including, where relevant source code, object code and all other technical information relating to it and/or any components or derivatives thereof;

“Term” means the term of this Agreement as outlined at Clause 3 herein;

“Territory” means world-wide.

- 1.2 In this Agreement, save as otherwise provided, any reference to a clause, paragraph, sub-paragraph or Schedule shall be reference to a clause, paragraph, sub-paragraph of or Schedule to (as the case may be) this Agreement, and any reference in a clause to a paragraph or sub- paragraph shall be a reference to a paragraph or sub-paragraph of the clause or paragraph in which the reference is contained, unless it appears from the context that a reference to some other provision is intended.
- 1.3 Words denoting the singular shall include the plural and vice versa and reference to the masculine gender includes reference to the feminine and neuter genders and vice versa.
- 1.4 The headings contained in this Agreement are inserted for convenience of reference only, and shall not in any way form part of or affect or be taken into account in the construction or interpretation of any provision of this Agreement or the Schedules.

2. **Grant of Rights**

- 2.1 Subject to the terms and conditions of this Agreement and in consideration of the Fees to be paid by Company X to NUI Maynooth, NUI Maynooth hereby grants to Company X an exclusive licence to use and develop the NUIM Intellectual Property in the Field throughout the Territory during the Term.
- 2.2 For the avoidance of doubt, NUI Maynooth shall be entitled to use the NUIM Intellectual Property and the Technology for academic, non-commercial research purposes and for any and all purposes outside the Field.
- 2.3 Company X hereby grants to NUI Maynooth an irrevocable, perpetual, non-exclusive, payment-free right to use any Intellectual Property Rights in the Technology which does not constitute NUIM Intellectual Property for academic, non-commercial research purposes only, and not for commercial purposes, where Company X has the power to do so and for the purpose of NUI Maynooth assisting Company X to commercialise the Technology.

3. Duration of Agreement

3.1 This Agreement shall come into force on the Commencement Date and continue in force until terminated in accordance with the terms of this Agreement.

4. Company XX's Obligations

4.1 Company X shall use all reasonable endeavours to develop and engage in the commercial exploitation of the Technology as permitted by this Agreement.

4.2 If so required in any countries within the Territory, CompanyX shall register this Agreement in accordance with the laws and regulations of such countries, and will provide copies of all documents filed.

4.3 Company X shall not act as agent of NUI Maynooth and, in particular, shall not give any indication that it is acting otherwise than as principal and in advertising or selling products shall not make any representation or give any warranty on behalf of NUI Maynooth.

4.4 Company X acknowledges that all Intellectual Property Rights in the Technology shall vest in NUI Maynooth and Company X will not assert a claim of any proprietary interest in or to any such Intellectual Property Rights. At NUI Maynooth's reasonable expense, Company X will execute, and will cause its employees, agents, sub-contractors and service providers to execute any and all instruments deemed by NUI Maynooth to be necessary or appropriate to ensure NUI Maynooth's proprietary interest set out in this Clause 4.4 is secured.

4.5 Improvements of the Technology developed by NUI Maynooth shall be licensed to Company X for use in the Field on the same basis as the Technology is licensed generally. If any consideration be payable by NUI Maynooth to one or more third parties with regard to the exploitation by Company X of the said Improvements, for whatever reason, Company X shall either be obliged to pay the said cost to NUI Maynooth or negotiate and pay directly the said cost with such third party. Company X shall ensure that improvements of the Technology developed by Company X, any affiliate of Company X, by a third party under contract with Company X, or by a sub-licensee of Company X, which is not severable from the Technology shall be assigned back to NUI Maynooth and any and all such non-severable improvements shall in turn comprise part of the Technology for the purposes of the licence to be granted to Company X.

5. NUI Maynooth's Obligations

5.1 NUI Maynooth shall use reasonable endeavours to assist Company X in the development and commercial exploitation of the Technology as permitted by this Agreement.

6. Payment of Fees and reimbursement of costs

6.1 Subject to Clause 6.9, Company X shall pay to NUI Maynooth by way of Fees an amount equal to 3% of the Net Income received by Company X during each calendar year of this Agreement.

6.2 For the purposes of this Clause 6, any Fees earned in a currency other than the Euro shall be converted into Euro at the rate of exchange applied by the bank when the funds are lodged into the Euro account of Company X less any deductions or charges taken by the bank directly for the transaction. If Company X lodges Fees into an account not denominated in Euro then the Fees will be accounted for in Euro at a rate advised by Company X's Auditors in accordance with normal accounting practices.

- 6.3 Fees under Clause 6.1 shall be due and payable within 60 days of the end of the calendar year in which the income was received.
- 6.4 Fees payable under this Agreement shall be:
- (a) be made in euros;
 - (b) made by electronic funds transfer to such bank account of NUI Maynooth as it may specify from time to time, or in such other manner as NUI Maynooth may from time to time stipulate;
 - (c) exclusive of value added tax which, where applicable, shall be paid by Company X to NUI Maynooth in addition to the payment otherwise due; and
 - (d) be paid without set-off or counterclaim, free and clear of and without deduction or withholding for or on account of any taxes.
- 6.5 Subject to Clause 7 herein, Company X will give notice to NUI Maynooth as to what countries (the "Target Countries") of the Territory it considers appropriate to obtain and/or maintain in force appropriate protection of the NUIM Intellectual Property at least 90 days in advance of any deadline for such registration or renewal falling. Company X hereby agrees that it shall pay NUI Maynooth for all costs including but not limited to, any and all costs including legal fees, involved in the application for, registration and/or maintenance of any patents in respect of the NUIM Intellectual Property. Such costs shall be paid by Company X to NUI Maynooth within 30 days of Company X being notified by NUI Maynooth of such costs.
- 6.6 In the event of any delay in effecting payment due under this Agreement by the relevant due date, Company X shall pay to NUI Maynooth interest on the overdue payment from the date such payment was due, to the date of actual payment at the Euribor monthly deposit rate plus 2%.
- 6.7 At the same time as any Fees under this Agreement become payable, Company X shall submit or cause to be submitted to NUI Maynooth a statement in writing (to be accompanied by an auditor's certificate certifying as accurate and complete Company X's calculation of the Fees payable in respect of the calendar year in question) recording the calculation of Fees payable under this Agreement, and recording all sub-licensing arrangements and sales of products which have been developed using and/or embodying the Technology and from which the Fees derive.
- 6.8 During the Term, and for a period of 3 years thereafter, Company X shall keep at its normal place of business detailed and up to date records and accounts sufficient to ascertain the Fees payable to NUI Maynooth under this Agreement at any time and shall supply these records to NUI Maynooth within 30 days of the end of every six months of the Term, beginning six months from the Commencement Date and, after termination, upon written request from NUI Maynooth.
- 6.9 Company X shall make the records and accounts to be maintained by it pursuant to Clause 6.7 available for inspection, on at least 5 Business Days' notice and during business hours, by an accountant nominated by NUI Maynooth for the purposes of verifying the accuracy of any statement or report given to NUI Maynooth under this Agreement. NUI Maynooth shall procure that the nominated accountant shall keep confidential all information acquired during any such inspection. NUI Maynooth shall be responsible for the accountant's fees and expenses unless the accountant certifies and Company X's accountant agrees (such

agreement not to be unreasonably withheld or delayed) that the amount specified in the statement or report given to NUI Maynooth under this Agreement as an amount of the Fees due is lower by 5% than the amount of Fees actually due, in which case Company X shall discharge the fees and expenses of the chartered accountant in respect of the inspection.

6.10 The following minimum annual royalty payments per calendar year under this Agreement (the “**Minimum Royalty Payments**”) shall be as follows:

2013	€000.00
2014	€000.00
2015	€000.00
2016 and each year thereafter	€000.00

If Company X fails to meet the Minimum Royalty Payments for any calendar year then, unless Company X pays a sum equal to the shortfall to NUI Maynooth within 30 days after the end of that calendar year, NUI Maynooth shall be entitled, by giving not less than 30 days’ written notice to Company X within three months after the end of that calendar year, to:

- (a) declare the licence granted pursuant to Clause 2.1 to be non-exclusive; or
- (b) terminate this Agreement.

If this Agreement ends on any day other than the end of a calendar year (i.e. 31 December), the Minimum Royalty Payment for that year shall be reduced, pro-rata, i.e. the minimum amount due shall be the Minimum Royalty Payment for a complete calendar year multiplied by the number of days of the final calendar year during which this Agreement was in force, and divided by 365 days.

7. **Protection of the Technology**

7.1 NUI Maynooth shall not be under any obligation to take any action to defend the NUIM Intellectual Property or the Technology.

7.2 NUI Maynooth and Company X shall together agree strategies of how best to protect the NUIM Intellectual Property or the Technology, whether by trade secret, know-how or by patent registration.

7.3 If, subject to the provisions of Clause 7.2 above, NUI Maynooth and Company X take measures which are deemed necessary to protect the NUIM Intellectual Property or the Technology:

- (a) NUI Maynooth will cover all fees in respect of any first stage priority patent filing in Ireland and will also cover all fees and expenses in respect of any PCT (patent cooperation treaty) stage filing; and
- (b) Subject to Clause 6.5 herein, Company X shall cover all fees and expenses in respect of any national phase patent filing.

8. Intellectual Property Rights Infringement

- 8.1 Each party shall immediately, upon becoming aware of it, give notice in writing to the other party of any infringement, or suspected or threatened infringement of the NUIM Intellectual Property or misappropriation or misuse of the Technology which shall at any time come to its knowledge, and provide all details within its knowledge with respect to the same.
- 8.2 NUI Maynooth and Company X shall together agree any such actions relating to NUIM Intellectual Property as they shall, together, consider necessary to prevent or terminate any such infringement, misappropriation or misuse, including the institution of legal proceedings where necessary, and NUI Maynooth and Company X shall provide or procure such assistance, including the furnishing of documents and information and the execution of all necessary documents and being joined as a party to or conducting any legal proceedings, as NUI Maynooth and Company X may request in respect of any such actions it may decide to take. For the avoidance of doubt, neither party shall not be obliged to take any of the actions outlined in this Clause 8.2. The cost and expenses of any actions or proceedings jointly taken or require to be taken under this Clause 8.2 shall be borne by NUI Maynooth in the proportion that the NUIM Intellectual Property consists of the Intellectual Property Rights in the Technology infringed, and NUI Maynooth shall retain all damages or other sums received as a consequence of such action in that proportion.
- 8.3 If NUI Maynooth notifies Company X that it does not intend to take an action in relation to any infringement or threatened infringement of the NUIM Intellectual Property or misappropriation or misuse of the Technology or fails, within a reasonable time, to take such action, or discontinues any such action, then Company X shall be entitled, at its own expense, to take such action at its cost and NUI Maynooth shall do all acts and things (including joining in any litigation) which Company X may reasonably request of it for the purposes of doing so, provided that Company X covers all costs and expenses borne by NUI Maynooth in so doing. For the avoidance of doubt, in such case, Company X shall retain all damages or other sums received as a consequence of such action.
- 8.4 If Company X notifies NUI Maynooth that it does not intend to take an action in relation to any infringement or threatened infringement of the NUIM Intellectual Property or misappropriation or misuse of the Technology or fails, within a reasonable time, to take such action, or discontinues any such action, then NUI Maynooth shall be entitled, at its own expense, to take such action at its cost and Company X shall do all acts and things (including joining in any litigation) which NUI Maynooth may reasonably request of it for the purposes of doing so, provided that NUI Maynooth covers all costs and expenses borne by Company X in so doing. For the avoidance of doubt, in such case, NUI Maynooth shall retain all damages or other sums received as a consequence of such action.

9. Confidentiality

- 9.1 Both parties shall keep and shall procure that its employees keep secret and confidential this Agreement and all information (whether or not technical and including, without limitation, the NUIM Technology and the Technology), which has been communicated to it by the other, either preparatory, in connection with, to or as a result of, this Agreement (the “**Confidential Information**”) and shall not disclose the same or any part of the same to any person whatsoever other than to its employees on a need to know basis, **AND PROVIDED THAT** such parties have undertaken to maintain the confidentiality of the Confidential Information, on terms no less onerous than those set out in this Clause 9.

- 9.2 The provisions of Clause 9.1 shall not apply to Confidential Information which:
- (a) was, at the time of receipt, published or otherwise generally available to the public; or
 - (b) has, after receipt, been published, or become publicly available through no act or omission of the receiving party; or
 - (c) the receiving party can demonstrate was already lawfully in its possession at the time of receipt, without any restrictions on its disclosure; or
 - (d) the receiving party can demonstrate, was independently developed (without use of or reference to the NUIM Intellectual Property) by the receiving party or on its behalf; or
 - (e) is obtained by the receiving party from a third party without any undertaking of confidentiality being imposed on the receiving party; or
 - (f) information which is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulatory authority.
- 9.3 The provisions of this Clause 9 shall remain in force notwithstanding expiry or termination of this Agreement for any reason.

10. **Right to Sub-licence and sub-contract**

- 10.1 Company X shall be entitled to grant Sub Licences of its rights under this Agreement to any person provided that:
- (a) the Sub Licence shall include obligations binding on the sub-licensee which are equivalent to the obligations on Company X under this Agreement save for the obligation to pay any Fees or make any other payments to NUI Maynooth;
 - (b) no Sub Licence shall grant more extensive rights than are granted under this Licence in respect of the NUIM Intellectual Property;
 - (c) any Sub Licence, and any sublicences granted under it, shall terminate automatically on the termination of this Agreement subject to Clause 10.2 herein; and
 - (d) any purported grant of a Sub Licence in breach of this Clause 10.1 shall be void.

Company X shall promptly provide to NUI Maynooth a copy of any Sub Licences and all such information in its possession in relation to sub-licensees as NUI Maynooth may reasonably request from time to time.

- 10.2 In the event of any breach of any Sub Licence by the sub-licensee, Company X shall use all reasonable endeavours to procure that the sub-licensee remedies the breach and shall use all reasonable endeavours to recover from the sub-licensee on behalf of NUI Maynooth all costs and losses which may be suffered or incurred by NUI Maynooth as a result of any such breach by the sub-licensee. In the event that this Agreement is terminated in accordance with the provisions of Clause 13 herein or for any other reason, NUI Maynooth may require Company X to assign, transfer and novate any Sub Licence to NUI Maynooth. Company X shall give all reasonable assistance to NUI Maynooth in this regard and shall procure that its sub-licensees are made aware of and agree to comply with the provisions of this Clause.

11. **Sub-Contracting, Assignment and Company X Options**

- 11.1 Nothing in this Agreement shall restrict the right of Company X to enter into sub-contracts for the manufacture of components for the creation of products derived from or containing the Technology provided that if the component contains Confidential Information Company X shall take all steps to safeguard the confidential nature of the Confidential Information.
- 11.2 Subject to the provisions of this Clause 11, NUI Maynooth shall be entitled to assign the benefit and burden of this Agreement to any third party. Company X shall not be entitled to assign the benefit or burden of this agreement without the prior written consent of NUI Maynooth, such consent not to be unreasonably withheld or delayed.
- 11.3 NUI Maynooth shall not sell, assign or otherwise dispose of its interests in the NUIM Intellectual Property for 3 years after the date of this Agreement. Thereafter, where NUI Maynooth wishes to sell, assign or otherwise dispose of its interest in the NUIM Intellectual Property, or any part thereof, the following procedure shall apply:
- (a) NUI Maynooth shall notify Company X in writing of its wish to assign or otherwise dispose of its interest in the NUIM Intellectual Property;
 - (b) Within 30 days of receiving such notice from NUI Maynooth, Company X shall notify NUI Maynooth in writing whether it wishes to obtain an assignment of any such interest. If no such notice is received, NUI Maynooth may dispose of the NUIM Intellectual Property as it sees fit without further notice;
 - (c) In circumstances where Company X does notify NUI Maynooth that it wishes to obtain an assignment of such interest, the parties shall use their reasonable endeavours to agree a price and terms and conditions for such an assignment;
 - (d) In the event that the parties do not agree on the terms of the assignment for the NUIM Intellectual Property within 90 days of NUI Maynooth's receipt of the notice sent pursuant to Clause 11.3(b) the matter shall be referred to an independent expert of not less than 5 years standing, appointed by agreement between the parties, or failing their agreement within 21 days, on the appointment by the President of the Institute of Chartered Accountants of Ireland, whose decision on the terms and price of the assignment shall be final and binding on the parties. Such person shall act as an expert and not as an arbitrator, and shall be required by the parties to make his determination, within 3 weeks of his appointment. The costs of such expert shall be paid as he may direct or, in the absence of any direction, shall be shared equally between the parties.

12. **Force Majeure**

- 12.1 If and to the extent that either party (the **"Affected Party"**) is hindered or prevented by circumstances not within its reasonable ability to control, including, but not limited to, acts of God, inclement weather, flood, lightning, fire, trade disputes, strikes, lockouts, acts or omissions of Governments or other competent authority, acts of terrorism, war, military operations, acts or omissions of third parties for whom the Affected Party is not responsible (**"Force Majeure"**) from performing any of its obligations under this Agreement, the Affected Party shall be relieved of liability for failure to perform such obligations.
- 12.2 The Affected Party shall promptly notify the other party (the **"Other Party"**) of the estimated extent and duration of such inability to perform its obligations (the **"Force Majeure Notification"**).

- 12.3 Upon the cessation of the event of Force Majeure the Affected Party shall notify the Other Party of such cessation.
- 12.4 If, as a result of Force Majeure, the performance by the Affected Party of its obligations under this Agreement is only partially affected, the Affected Party shall subject to the provisions of Clause 12.5 nevertheless remain liable for the performance of those obligations not affected by Force Majeure.
- 12.5 In the case a Force Majeure Notification then:-
- (a) any obligation outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the Force Majeure event has ended, save to the extent that such fulfilment is no longer possible or is not required by the Other Party;
 - (b) if the Force Majeure lasts for more than one hundred and twenty days from the date of the Force Majeure Notification and notice of cessation has not been given pursuant to Clause 12.3 and such Force Majeure prevents the Affected Party from performing its obligations in whole or to a material extent during that period, the Other Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than fourteen days written notice to the Affected Party after expiry of the said sixty day period **PROVIDED THAT** such notice shall be deemed not to have been given in the event that notice of cessation of the Force Majeure given pursuant to Clause 12.3 is received by the Other Party prior to the expiry of the fourteen days' notice. If this Agreement is not terminated in accordance with the provisions of this sub-clause 12.5(b) then any obligations outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the Force Majeure event has ended, save to the extent that such fulfilment is no longer possible or is not required by the Other Party.

13. **Termination**

- 13.1 NUI Maynooth shall have the right to terminate this Agreement immediately by notice in writing to Company X if:-
- (a) Company X fails to make any payment due under this Agreement within 30 days of the due date;
 - (b) Company X is in material breach of any of the terms of the Agreement and, in the event of a breach capable of being remedied, fails to remedy the breach within 30 days of receipt of notice in writing of such breach.
 - (c) a receiver, examiner or administrator is appointed of the whole or any part of Company X's assets or Company X is struck off the Register of Companies in the jurisdiction where it was incorporated or an order is made or a resolution passed for winding up the other party (unless such order or resolution is part of a voluntary scheme for the reconstruction or amalgamation of the party as a solvent corporation and the resulting corporation, if a different legal person, undertakes to be bound by this Agreement).
 - (d) Company X challenges the validity of the NUIM Intellectual Property or any application by NUI Maynooth to register a patent in respect of the NUIM Intellectual Property for any reason;

13.2 Company X may terminate this Agreement at any time on 180 days prior written notice to NUI Maynooth.

14. **Consequences of Termination**

14.1 On termination of this Agreement however arising:-

- (a) Company X shall, at the request of NUI Maynooth, promptly return to NUI Maynooth all NUIM Intellectual Property including any physical embodiment of same and other material in its possession relating to the Technology and the Patents provided to it pursuant to this Agreement; and
- (b) Company X shall co-operate with NUI Maynooth in the termination of all or any Sub Licences granted pursuant to this Agreement, and shall execute any and all such documents and do all acts and things as may be necessary in such connection; and
- (c) Company X shall have the right to dispose of all stocks of the products created through or embodying the Technology in its possession, provided that any Fees payable under the provisions of Clause 6 in relation to same shall be paid to NUI Maynooth.

14.2 The termination of this Agreement shall be without prejudice to any rights of either party which may have arisen on or before the date of termination. In particular, but without limitation to the generality of the foregoing, all Fees due and owing by Company X to NUI Maynooth as at the date of termination of the Agreement shall be payable on that date, and any interest payable upon such sums in accordance with Clause 6.6 shall continue to accumulate on the debts, until the settlement of all outstanding sums due to NUI Maynooth.

15. **Liability**

15.1 Company X shall at all times indemnify and keep indemnified, on demand, NUI Maynooth against all costs, claims, damages and expenses suffered or incurred by NUI Maynooth, arising out of or in connection with the use or application by Company X of any of the NUIM Intellectual Property and/or the Technology pursuant to this Agreement.

15.2 Company X shall effect and maintain at all times during the Term such insurances in respect of any product liability in connection with the products using NUIM Intellectual Property as a prudent person in the position of Company X would effect and maintain. Upon written request of NUI Maynooth from time to time but in no event more frequently than twice per annum, Company X shall deliver to NUI Maynooth copies of all certificates, policy documents and receipts for the payment of premiums in respect of any insurances which Company X is obliged to effect and maintain pursuant to this Clause.

15.3 Notwithstanding anything else contained in this Agreement in no event shall NUI Maynooth be liable for any special, incidental, indirect or consequential damages or loss suffered by Company X or any other third party, including any damages or costs incurred as a result of loss of time, loss of savings, loss of data or loss of profits.

15.4 Without prejudice to the provisions of this Agreement limiting and excluding the liability of NUI Maynooth, save in respect of death or personal injury caused by the negligence of NUI Maynooth, NUI Maynooth's liability for any claim whether in contract, tort (including negligence) or otherwise, for any loss or damage, arising out of or in connection with this Agreement or otherwise shall in no case exceed the Fees paid to NUI Maynooth in respect of any event or series of connected events.

16. **Warranties**

- 16.1 NUI Maynooth represents and warrants to Company X that it has full capacity and authority to enter this Agreement.
- 16.2 To the extent permissible by law, the NUIM Intellectual Property, the Technology and any use of them pursuant to this agreement are provided “as is” by NUI Maynooth to Company X without warranty or representations of any kind, either express or implied, including but not limited to warranties of satisfactory quality, merchantability, fitness for particular purpose or non-infringement of any third party rights.
- 16.3 Company X acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation or warranty other than those expressly made by NUI Maynooth in this Agreement, and any conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law. Without prejudice to the generality of the foregoing, nothing in this Agreement shall be construed as:
- (a) a representation or warranty that any applications comprised from time to time in the Technology will proceed to grant of a patent or other right or that any patents granted pursuant to those applications will be valid;
 - (b) a representation or warranty that the Technology or any other information communicated by NUI Maynooth to Company X under or in connection with this Agreement will produce products of satisfactory quality or fit for the Purposes intended;
 - (c) imposing any obligation on NUI Maynooth to bring or prosecute actions or proceedings against third parties for infringement or to defend any action or proceedings for revocation of an NUIM Intellectual Property, including any registered NUIM Intellectual Property; or
 - (d) imposing any liability on NUI Maynooth in connection with any product based on or incorporating the Technology.

17. **Communications**

- 17.1 Notices or other communications given pursuant to this Agreement shall be in writing and shall be sufficiently given:
- (a) if delivered by hand or sent by post to the address and for the attention of the person set forth in this Clause of the party to which the notice or communication is being given or to such other address and for the attention of such other person as such party shall communicate to the party giving the notice or communication; or
 - (b) if sent by facsimile to the correct facsimile number of the party to which it is being sent.
- 17.2 Any notice, or communication, given or sent by post under this Clause, shall be sent by ordinary post. Every notice or communication given in accordance with this Clause shall be deemed to have been received as follows:

Means of Dispatch

Deemed Received

Delivery by hand:

the day of delivery;

Post: 2 Business Days after posting; and

Facsimile when sender receives a completed transmission sheet or otherwise receives a mechanical confirmation of transmission

Provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours (being 9 a.m. to 5 p.m. on a Business Day) such notice or other communication shall be deemed to be given or made at the start of working hours on the next Business Day.

17.3 The relevant addressee, address and facsimile number of each party for the purposes of this Agreement, subject to Clause 17.4 are:

Name of Party
NUI Maynooth

Address/Fax no
Maynooth, Co. Kildare, Ireland
FAO: Commercialisation Office
Fax: 01 708 6953
commercialisation@nuim.ie

Company X

Address XXX
XXX
FAO:

17.4 A party shall notify the other of a change to its name, relevant addressee, address or facsimile number for the purposes of Clause 17.3. Such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than 5 Business Days after the date on which notice is given, the date falling 5 Business Days after notice of any such change has been given.

18. General

18.1 This Agreement constitutes the entire Agreement, and supersedes any previous agreement, between the parties relating to the subject matter of this Agreement.

18.2 A variation of this Agreement is valid only if it is in writing and executed by behalf of each party.

18.3 A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of that right or remedy or the exercise of another right or remedy.

18.4 Except where this Agreement provides otherwise the rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.

18.5 No provision of this Agreement creates a partnership between the parties or makes a party the agent of the other party for any purpose. A party has no authority or power to bind, to

contract in the name of, or to create a liability for, the other party in any way or for any purpose.

- 18.6 Except to the extent that they have been performed the warranties, representations, indemnities, and obligations contained in this Agreement remain in force after the Commencement Date
- 18.7 If at any time any provision of this Agreement (or any part of a provision of this Agreement) is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:
- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement (including the remainder of a provision, where only part thereof is or has become illegal, invalid or unenforceable); or
 - (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 18.8 This Agreement may be executed in any number of counterparts each of which when executed and delivered by one or more of the parties to this Agreement is an original, but all the counterparts together constitute the same document provided that this Agreement shall not be effective until each party has executed and delivered at least one counterpart.
- 18.9 Any liability to any party under the provisions of this Agreement may in whole or in part be released, varied, compounded or compromised by such party in its absolute discretion as regards any party under such liability without in any way prejudicing or affecting its rights against any other party under the same or a like liability whether joint and several or otherwise.
19. **Dispute Resolution**
- 19.1 If any dispute arises concerning either party's rights or obligations under this Agreement, the parties shall attempt to resolve the dispute through negotiations.
- 19.2 If any dispute cannot be settled amicably through ordinary negotiations by the authorised representatives of the parties, the parties will refer the dispute to mediation in accordance with the Centre for Dispute Resolution (“CEDR”) procedures then in force. The mediation process will be commenced by service by one party on the other of a written notice that the issue is to be referred to mediation (the “**Mediation Notice**”). The parties shall agree on a choice of mediator with at least five years mediation experience and who has knowledge and experience in the industry sufficient to comprehend any technical and economic issues raised. In the event that the parties are unable to agree on a choice of mediator within fifteen (15) days of the date of service of the Mediation Notice, the parties shall accept a mediator nominated by CEDR. Each party shall bear its own costs in respect of the mediation.
- 19.3 Subject to Clause 19.4, only if the dispute remains unresolved sixty (60) days after the date of service of the Mediation Notice (or such longer period as the parties may agree) shall either party be entitled to resort to legal proceedings.
- 19.4 Nothing contained in this Clause 19 shall restrict the parties' freedom to seek a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage or to preserve any legal right or remedy (including the protection of any Intellectual Property Rights).

20. Governing Law and Jurisdiction

20.1 This Agreement is governed by, and shall be construed in accordance with, the laws of Ireland.

IN WITNESS HEREOF, the parties hereto or their duly authorised representatives have executed this Agreement on the day and year first above written.

**SIGNED FOR AND ON BEHALF OF
NATIONAL UNIVERSITY OF IRELAND MAYNOOTH**

Name:

Date:

In the presence of:

Name:

Date:

**SIGNED FOR AND ON BEHALF OF
COMPANY X LIMITED**

Name:

Date:

In the presence of:

Name:

Date:

SCHEDULE

THE TECHNOLOGY

1. UK Patent Application Number: National University of Ireland Maynooth.
2. All know-how, XXX.