IADT

Intellectual Property Policy

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Policy Author	Dr. Marian O'Sullivan
Policy Owner	IADT Research & Development Committee

NOTES TO ACCOMPANY IADT COLLABORATION AGREEMENTS

These notes are for explanatory purposes only and do not constitute legal advice. Each Project will be different and it is unlikely that any of the Agreements will be precisely suited to a particular Project. It is recommended that IADT take legal advice before executing a binding contract based on any of these Agreements.

Below are a number of general comments that are relevant to all of the Agreements. There are further specific comments on each Agreement listed below.

General Comments

The Agreements are drafted to commercially favour the Institute. However, the Agreements are not intended to unreasonably favour the Institute.

The Institute is not a commercial organisation or consultancy selling IP for profit. It is an educational institution and it must protect itself from the types of liability (such as third party IPR infringement and product liability) that could arise from the types of Project contemplated by these Agreements.

Each of the Agreements is drafted on the basis of there being two parties: IADT and a Company. Reference is also made to a Funding Agency (e.g. Enterprise Ireland) and the conditions of that funding but the Funding Agency will not be party to the Agreement. If there is no Funding Agency, the defined terms "Funding Agency" and "Funder" and clauses 2.4 and 2.5 should be deleted.

A description of the relevant Project should be inserted in Schedule 1.

The relevant Commercial Terms should be inserted in Schedule 2 as appropriate. These may include the payment of the costs of the Project, any IPR licence fee, any future royalties on products arising out of the IPR produced in the Project and any other costs, fees or expenses. Payment arrangements (i.e. when the amounts will be paid, in what instalments etc.) should also be included.

If the Company is not an Irish company, it will be necessary to take advice on whether or not withholding tax and other taxes are applicable.

IADT 1

Institute owns IP in Results, exclusive or non-exclusive licence to Company to use Results in a specified field, funding by Funding Agency.

Clause 9.7 sets out the licence that the Institute grants to the Company. It is a relatively simple licence.

The Institute hereby grants to the Company a worldwide, [non-]exclusive, [royalty free,] perpetual, unencumbered licence to use the Intellectual Property in the Results for any purpose in the Field.

Depending on the details of the Project in question, the licence will be exclusive (meaning that the Institute cannot, during the term of the Agreement, licence the Results to any other party for use in the relevant Field) or non-exclusive (allowing the Institute to grant other licences to third parties to use the Results in the relevant Field, during the term of the Agreement).

The "Field" will be the area of activity in which the Company will be entitled to use and exploit the IP that it has licensed. The Institute will need to be careful in drafting what constitutes the Field clearly and precisely. If the Results of a Project are useful in more than one field, the Institute may wish to retain a certain Field to itself or to licence it to another party.

The Institute will probably charge a higher fee for an exclusive licence than for a non-exclusive licence.

If the parties agree that the Institute will be paid a royalty for products sold using the IP arising out of the Project, then the licence is not royalty-free. The words "royalty-free" should be deleted in that case.

Concerning a patent application arising from a Project governed by this Agreement, the application will be prepared by the Institute with the input of the Company, the Institute will pay the costs and the patent will be in the name of the Institute.

IADT 2

Institute owns IP in Results, non-exclusive licence to Company, option to buy exclusive licence, funding by Funding Agency.

Clause 9.7 sets out the initial licence that the Institute grants to the Company. It is a relatively simple licence.

The Institute hereby grants to the Company a worldwide, non-exclusive, [royalty free,] perpetual, unencumbered licence to use the Intellectual Property in the Results for any purpose in the Field

This initial licence is non-exclusive although the Institute cannot offer a licence to another third party until the end of the Option Period.

If the Institute comes to an arrangement with the Company that the Institute will be paid a royalty for products sold using the IP arising out of the Project, then the initial licence is not royalty-free. The words "royalty-free" should be deleted in that case.

The "Field" will be the area of activity in which the Company will be entitled to use and exploit the IP that it has licensed. The Institute will need to be careful in drafting the Field clearly and precisely. If the Results of a Project have two or more uses, and these uses are not in the same area of activity, the Institute may wish to retain a certain Field to itself or to licence it to another party.

The Option Period will be fixed at the start of the Agreement. This will probably be the duration of the Project or the duration of the Project plus a short period (e.g. 30 to 90 days) during which the Company has to exercise its right to purchase an exclusive licence to the IP that was created during the Project.

Once the Company chooses to exercise the Option, the Company and the Institute will have to agree the following points:

- An Option Price (the price to be paid for the exclusive licence).
- The terms of the exclusive licence including some or all of the following issues:
    - Will the licence be worldwide or just for a limited territory (e.g. UK and Ireland)?
    - How long will the licence last?
    - What will the "Field" be for the exclusive licence?
    - What royalties will be paid?
    - Will the Company be entitled to transfer or sublicense the exclusive licence to others?

If the Company does not exercise the Option during the Option Period, the Institute is free to grant other licences to third parties to use the Results as it sees fit.

If, after exercise of the Option, the negotiations that take place during the Negotiation Period do not lead to agreement on the terms of the exclusive licence and the Option Price, the Institute is free to grant other licences to third parties to use the Results as it sees fit.

Concerning a patent application arising from a Project governed by this Agreement, the application will be prepared by the Institute with the input of the Company, the Institute will pay the costs and the patent will be in the name of the Institute.

If the patent application process has been commenced by the Institute prior to the exercise of the Option by the Company, the Institute should consider passing its costs to date in making that application on to the Company as part of the Option Price. The exclusive licence will eventually include a patent licence.

IADT 3

Institute owns IP in Results, non-exclusive licence to Company, option to negotiate an assignment of all IP, funding by Funding Agency.

Clause 9.7 sets out the initial licence that the Institute grants to the Company. It is a relatively simple licence.

The Institute hereby grants to the Company a worldwide, non-exclusive, [royalty free,] perpetual, unencumbered licence to use the Intellectual Property in the Results for any purpose in the Field.

This initial licence is non-exclusive although the Institute cannot offer a licence to another third party until the end of the Option Period.

If the Institute comes to an arrangement with the Company that the Institute will be paid a royalty for products sold using the IP arising out of the Project, then the initial licence is not royalty-free. The words "royalty-free" should be deleted in that case.

The "Field" will be the area of activity in which the Company will be entitled to use and exploit the IP that it has licensed. The Institute will need to be careful in drafting the Field clearly and precisely. If the Results of a Project have two or more uses, and these uses are not in the same area of activity, the Institute may wish to retain a certain Field to itself or to licence it to another party.

The Option Period will be fixed at the start of the Agreement. This will probably be the duration of the Project or the duration of the Project plus a short period (e.g. 30 to 90 days) during which the Company has to exercise its right to purchase an assignment of the IP that was created during the Project.

In choosing whether or not to exercise the Option, the Company and the Institute will have to agree the terms of the assignment and the option price. This will be the price to be paid for the assignment of the IPR.

If the Company does not exercise the Option during the Option Period, the Institute is free to grant other licences to third parties to use the Results as it sees fit.

If, after exercise of the Option, the negotiations that take place during the Negotiation Period do not lead to agreement on the terms of the assignment and the Option Price, the Institute is free to grant other licences to third parties to use the Results as it sees fit.

Concerning a patent application arising from a Project governed by this Agreement, prior to the exercise of the Option, the application will be prepared by the Institute with the input of the Company, the costs will be paid by the Institute and the patent will be in the name of the Institute. After the exercise of the Option, the application and resulting patent will be in the name of the Company. If an ongoing application is passed over as part of the assignment, the Company should pay all costs that the Institute has incurred as part of the option price.

The difference between IADT 2 and IADT 3 is that (IADT 2) an exclusive licence could be limited in a number of ways (e.g. duration, Field, geographically) therefore reserving certain future possibilities to the Institute, and could include a royalty provision. Also, the resulting patent will be in the name of the Institute. In contrast, a full assignment of the IPR (IADT 3) means that IADT will have no further interest in the IPR arising out of the Project. It will receive a once off fee on assignment and no more.

IADT 4

Company owns IP in Results, licence to Institute to use the Results for academic purposes, funding by Funding Agency.

This is a very simple form of Agreement. Only the details of the Project (Schedule 1) and commercial matters (Schedule 2) will need to be agreed.

Concerning a patent application arising from a Project governed by this Agreement, the application will be prepared by the Company with the input of the Institute, the Company will pay the costs and the patent will be in the name of the Company.

IADT 5

Company owns IP in Results, no licence to Institute to use the Results, funding by Funding Agency.

This is a very simple form of Agreement. Only the details of the Project (Schedule 1) and commercial matters (Schedule 2) will need to be agreed.

Concerning a patent application arising from a Project governed by this Agreement, the application will be prepared by the Company without the input of the Institute, the Company will pay the costs and the patent will be in the name of the Company.

INSTITUTE OF ART, DESIGN AND TECHNOLOGY
DÚN LAOGHAIRE

INTELLECTUAL PROPERTY POLICY AND PROCEDURES

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1. INTRODUCTION

Intellectual Property ("IP") is an area of very substantial importance in the academic environment of Institute of Art, Design and Technology ("IADT"). The purpose of defining an IP policy is to encourage the generation of IP by Staff[1], Students[2], and Other Relevant Parties[3] (together referred to as "Personnel") This IADT IP Policy ("IP Policy") is intended to provide support and guidance regarding commercial exploitation, ownership and income from IP and the use of IADT facilities and resources to ensure that the development of IP is mutually beneficial for Personnel and IADT.

The Institute recognises and encourages the principle that IP developed at IADT ("IADT IP") should be used for the greatest public benefit. Commercialisation is often the most efficient means of promoting the widest possible dissemination and use of IADT IP. In such circumstances, it is appropriate and desirable for both IADT and the originator of the IP to benefit from the commercial exploitation of IP produced at IADT.

In particular, this document sets out the principles and rules that govern the creation, ownership and commercialisation of IP developed by Personnel participating in programmes carried out using IADT facilities, know-how, confidential information and/or IADT IP (together, "IADT Assets").

IADT has a strong interest in promoting the generation of IP in the context of the Government's drive to create a knowledge based economy, to increase the number of patents coming out of third level institutions and to transfer that technology into viable commercial entities.

For the avoidance of doubt, this IP Policy (and any subsequent amendments made to this IP Policy) is the agreed protocol or IP Policy referenced in:

(a) the Staff contract of employment;

(b) the Staff fixed purpose contract;

(c) any document engaging an Other Relevant Party;

(d) the Student Handbook; and

(e) any Acceptance Form or Intellectual Property Assignment Agreement signed by Staff and/or Students and/or Other Relevant Parties.

This IP Policy also forms part of the regulations of IADT which govern the conduct of Students and Staff.

[1] In this IP Policy, the term "Staff" refers at all times to IADT part time and whole time staffing having casual, indefinite duration, permanent, pro rata or temporary contracts (including, without limitation IADT post doctoral researchers) and persons employed by IADT on fixed purpose academic contracts.

[2] In this IP Policy, the term "Students" refers at all times to IADT registered undergraduate students and IADT registered postgraduate students.

[3] In this IP Policy, the term "Other Relevant Parties" refers to individuals other than Staff and Students who are engaged in research at IADT and agree to be bound by the provisions of this IP Policy.

2. DEFINITION

IADT defines IP as the tangible or intangible results of research, development, teaching, or other intellectual activity (a full definition is contained at Annex I). Such IP may be created by academic, research and other Staff, by Students and by Other Relevant Parties such as contractors and consultants.

IP allows creativity and innovation to be captured and owned in the same way that physical property can be owned. IP includes individually and collectively all technical innovations, inventions, improvements, and/or discoveries, information, writings and software, whether or not patentable or otherwise susceptible to IP protection, including technology and materials in their tangible form and includes IP generated from IADT Assets.

See the full definition of Intellectual Property in Annex I.

3. AIMS OF THE POLICY

The objective of this IP Policy is to provide a consistent framework within which IADT IP is developed and managed for the benefit of IADT, the originator and the public good.

The specific aims of the IP Policy are as follows:

- To create an environment that encourages the generation of new knowledge by IADT departments and Personnel.
- To encourage the recognition and identification of IP within IADT and promote an entrepreneurial culture among Personnel that fosters the development of potentially commercial IP arising from their research at IADT.
- To provide an efficient process by which the commercial potential of IP can be assessed by IADT and its advisors and to ensure that the process of IP evaluation, protection and commercialisation are carried out in a timely manner.
- To motivate the development and exploitation of IP by providing appropriate rewards to both originators and IADT, and to provide administrative assistance to originators.
- To provide support and supervision for the creation of economic structures through which IADT IP is developed and used commercially.
- To maximise the earnings potential from commercialisation and to utilise financial and other returns to advance and encourage research in IADT.
- To encourage strategies of commercialisation and technology transfer that provide the greatest benefit to the Irish economy.
- To encourage public use and commercialisation of IADT IP by facilitating its transfer from IADT to industry and business.
- To continue to recognise the traditional IADT practices with respect to education, publication and scholarly works.
- To ensure that the financial return from the development of IADT IP does not distort decisions and operations of IADT in a manner contrary to the mission of IADT.
- To give due regard to the non-financial benefits (e.g. non-cash consideration, benefit of strategic relationships between IADT and third parties, access to IP and confidential information) that will accrue to IADT and to the originators of IP in pursuing the goals of this IP Policy.
- To develop and continually improve a long-term strategy that enables the development of IP, related commercialisation and technology transfer, together with maintenance of high standards of education.

- To foster the general awareness of Personnel of this Policy through dissemination and information campaigns, and to provide specific training to research active Personnel.

4. INTELLECTUAL PROPERTY COMMITTEE

A Committee shall be set up in IADT after the adoption of this IP Policy and shall consist of the following members (the "IP Committee"):

- Director/President (ex officio).
- Head of School/Head of Department/or nominee (from the school to which the proposal is relevant).
- Secretary / Financial Controller (or nominee).
- Head of Development (Chair).
- External Services Manager.
- Innovation Centre Manager.
- Expert in area of technology (appointed in consultation with inventor), as required.
- Student Rep either undergraduate or postgraduate
- Other professional advisors as required.

The IP Committee members will be required to sign a confidentiality agreement regarding proposals submitted and regarding the IP produced at IADT and presented to the IP Committee. This will ensure that new ideas are protected. IADT reserves the right to alter the composition of the IP Committee.

The relevant IADT Project Manager/ IADT Academic Supervisor may be required to put forward a proposal to the IP Committee regarding the IP on a project and may be requested to attend a Committee meeting, where appropriate.

Members of the IP Committee will be required to declare their interest in a proposal if such exists and to absent themselves from any discussion pertaining thereto.

The Office of Development is in charge of each of the activities set out in this IP Policy including (without limitation) putting the decisions of the IP Committee into effect.

The importance of appropriate outside professional assistance is acknowledged. The IP Committee and the Office of Development will avail of these resources when appropriate.

5. ROLE OF THE IP COMMITTEE

- Processing of IP applications.
- Determining the commercial value of IP and/or inventions.
- Determining IP agreements with industry regarding collaborative research projects.
- Facilitating a fair and equitable return to those involved in commercialisation of their research/work.
- Nominating negotiators with third parties and ensuring a reasonable financial return to the Personnel involved (where appropriate) and to IADT.

6. GENERAL PROVISIONS OF IADT IP POLICY

6.1 As a general rule (further details of which are set out in paragraph 6.3, and subject to the exceptions set out in this IP Policy), any IP rights in or to any material/works created by Personnel in the course of their employment or education by IADT or in relation to work carried out for IADT is the property of and vests solely and absolutely in IADT or such companies or organisations as IADT may nominate for such purposes. Such material/works include, but are not limited to any:

- copyright (including rights in computer software and moral rights),
- patents,
- design rights,
- trademark rights,
- brand rights,
- database rights,
- know how,
- trade secrets,
- confidential information rights in design,
- semiconductor topography rights,
- or other intellectual property rights or other property rights, (whether vested, contingent or future anywhere in the world).

This applies to any IP in materials which are developed by Personnel which they cause to come into existence:

- during the working or teaching hours of IADT; or
- when using IADT's equipment, supplies, facilities or IADT Assets; or
- using IADT's confidential information, trade secrets, know how or any IADT IP; or
- in relation to any work performed for IADT (including pursuant to any third party funded research programmes).

6.2 At IADT 's reasonable cost, Personnel also agree at any later time to execute any documentation or otherwise provide assistance to IADT to secure, protect, perfect or enforce any of IADT's rights, title and interests in and to IADT IP.

6.3 This IP Policy is applicable to IP that is owned by IADT, including (without limitation) for any of the reasons outlined below:

- It is developed by Personnel in the course of their normal or specifically assigned duties either when IP could be reasonably be expected to result from the carrying out of those duties and/or, at the time the IP was developed, there was a special obligation on the relevant Personnel to further the interest of IADT.

- Under the 2000 Act (as defined in Annex 1 of this IP Policy), IADT is the first owner of any copyright in the work created by Employees in the course of their employment unless precluded by a prior agreement between IADT and a third party (or is covered by paragraph 8 of this IP Policy).

- The IP arises out of funded or non-funded research where such research has, in the opinion of IADT, made use of the equipment, facilities, IADT Assets and/or other resources of IADT (except where ownership of such IP was provided for in a prior agreement between IADT and third parties).

- If it is a condition of the appointment of a Student to perform research that IADT should have ownership of the IP arising from the research performed by such Student.

- If it is a condition of the appointment of an Other Relevant Party to perform research that IADT should have ownership of the IP arising from the research performed by such Other Relevant Party.

6.4 IP arising from research or other work sponsored by an external organisation (e.g. Enterprise Ireland) shall be subject to the IP provisions that are stipulated in the related agreement between IADT and the external organisation ("External Agreement"). Where an External Agreement requires all new IP rights to be assigned to a private company, the entry level (or "background") IADT IP should be defined so that it is not inadvertently assigned to the private company as part of the new IP (also described as "foreground IP" or "results") but is retained as IADT IP. All External Agreements should be reviewed by a legal person representing IADT.

For the avoidance of doubt, where IP is generated from research that is 100% funded by monies provided directly by the State, or by any not-for-profit financial instrument which has been established by an organisation or individual, and awarded through a public service organisation charged with the granting and dissemination of research funds, this IP will be exclusively and absolutely owned by IADT.

6.5 The IP Policy also extends to Other Relevant Parties such as non-employees who participate in research projects at the Institute including visiting academics, industrial personnel etc. unless a specific waiver has been approved. Other Relevant Parties at IADT who have a prior existing and conflicting intellectual property agreement or arrangement with another employer or third party must enter into an agreement with IADT (and their employer or relevant third party) (see Annex III) to abide by the conditions of this IP Policy in the course of their activities in IADT.

6.6 In order to enable the achievement of the aims and goals of this IP Policy, the Office of Development will, through dissemination of information and the holding of general information sessions for Personnel, foster the general awareness of Personnel of this Policy. In addition, the Office of Development intends to provide specific training on this IP Policy and its day to day application and relevance to research active Personnel.

7. CONSULTANCY

Staff are permitted to engage in consultancy projects for third parties subject to compliance with applicable IADT policies in force from time to time and subject to approval by the Director/President of IADT. Any such approved consultancies must be disclosed to the IP Committee.

8. INTELLECTUAL PROPERTY ASSIGNMENTS AND PATENT ASSIGNMENTS

For the avoidance of doubt, the provisions of this paragraph 8 apply to all the departments, centres, institutes, schools and Personnel conducting research or other intellectual activity using IADT Assets and IADT's supplies, facilities, confidential information, trade secrets or existing IADT IP.

As a condition of:

employment or engagement by IADT as Staff;

admission by IADT as a Student; or

engagement by IADT as a Other Relevant Party;

each Student, Staff member and Other Relevant Party (as the case may be) shall comply with this IP Policy and shall agree to assign to IADT (or a person or company nominated by IADT or an agency which provided the funding for the relevant research) any and all IP in and to inventions discovered and produced or otherwise developed while the person was Personnel as the case may be.

When required by the specific circumstances of a project, and on the request of the IP Committee, a member of Personnel will agree:

to sign an Intellectual Property Assignment Agreement (see Annex II); and

to execute such documents of assignment or other documentation required to assign or transfer IP and any moral rights to ensure, protect, perfect and enforce IADT's rights, title and interest in IADT IP;

to do anything that may reasonably be required to assist any assignee of any patent application or other IP to obtain, protect and maintain its rights, title and interest; and

shall use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as may be reasonably required from time to time for the purpose of giving each party hereto the full benefit of the provisions of this IP Policy.

9. RESEARCH FINANCED BY THIRD PARTIES

Any research which is partly or wholly financed by any third party agency shall be subject to the specific provisions of the grant or contract covering that research. In the event of any inconsistency between this IP Policy and the terms of any such grant or contract then the provisions of the said grant or contract shall prevail provided that the IP clauses in such grant or contract have been reviewed by the Office of Development (who will seek external advice if necessary) and, in the case of a contract, such contract has been properly executed by IADT.

10. ADMINSTRATION OF THE IP POLICY

At IADT, the office responsible for supporting the development and commercialisation of IADT IP is the Office of Development. All IADT IP created by Personnel must be disclosed in accordance with the procedures laid down in this IP Policy.

11. DISCLOSURE

It is a condition of:

employment or engagement by IADT as Staff;

admission by IADT as a Student; or

(f) engagement by IADT as an Other Relevant Party;

that the results of all research or projects should be fully, promptly and completely disclosed to IADT.

In order to enable IADT to ensure that it fulfils its obligations to organisations such as Science Foundation Ireland, Enterprise Ireland, companies and other third parties in both the public and private sectors, who are funding research at IADT, all Personnel must disclose any IP arising from such research to IADT through the Office of Development as soon as possible after such IP is apparent. The IP should be kept confidential for a period of time until a timely evaluation of the case assessment (including, without limitation, patentability) has taken place. No publication should be made prior to disclosure. Confidentiality agreements and/or non-disclosure agreements should be used where appropriate.

Procedures to be followed in respect of IP protection applications

1. Submission of Invention Declaration Form (see Annex IV):

- Regarding any discovery or invention made that might be useful, patentable or otherwise protectable, the IP Policy requires that Personnel complete an Invention Declaration Form.

- This form should be promptly submitted to the Office of Development.

2. Commercial Evaluation of IP:

- Any IP reported in an Invention Declaration Form shall be submitted to the IP Committee for assessment under the guidelines of the IP Policy and for recommendations to IADT regarding the patentability and/or potential commercialisation.

- The IP Committee may recommend that other suitably qualified advisors or external consultants be engaged to advise on the assessment of the IP.

- The criteria to assess the commercial value of the IP should include (without limitation):

    - Assessment that the IP does not cater for a once-off need and that it has a potential long-term benefit.
    - Technical and commercial feasibility.
    - Proof of concept (business plan, access to finance etc.).
    - Potential for sale or licensing of technology or consultancy.
    - Demonstrates a competitive advantage based on differentiated or innovative product or service.
    - Development stage of the subject matter.
    - Commercial focus and profit motive.
    - Study of comparable existing subject matter, licences and commercialisation practices.
    - Proximity to market.
    - Market valuations – in other words 'what is the current market willing to pay?'
    - Barriers to entry into markets.
    - Estimated projected sales based on market research.
    - Third party assistance including for example input from industry and state agencies.
    - Estimated cost of patent process.

- Whilst the criteria listed above are not exhaustive, it provides guidance to persons submitting an application as well as to those determining the commercial value. As it is a complex decision, the IP Committee may refer to other expertise (internal or external) where necessary, and further criteria may be applied.

- A decision will be made by the IP Committee within a reasonable time (e.g. 60/90 days, but in any event no longer than one year from date of report) of receipt of the application, where practicable, and the originator of the IP will be notified in writing of the decision made.

- If the evaluation is rejected by the IP Committee, the IP Committee may decide in appropriate circumstances, to offer the opportunity to the originator of the IP to pursue exploitation independently if appropriate under agreed written terms. IADT will have no rights if it subsequently proves successful, subject to any agreed terms.

3. Submission of a patent application or an application for other protection:

- IADT shall have the right, but not the obligation, either directly or through an outside agent, to seek patent or other protection of the IP and to undertake efforts to introduce the invention into public use.

- Where a decision is made by the IP Committee to proceed with a patent application, the originator of the IP is required to cooperate in every reasonable way, to execute all necessary documents and to assist the IP Committee in completing the patent application form. The application should remain confidential until such time as the process is complete. Confidentiality agreements will be used where appropriate.

- Commercialisation activities should recognise specific terms and conditions in appropriate funding contracts including any External Agreements.

- The cost of the submission of the application shall be paid by IADT. Any expenses incurred will be reimbursed to IADT prior to the distribution of any royalty income (if any) from the IP.

- The originator of the IP and IADT shall take all reasonable precautions to protect the integrity and confidentiality of the IP in question. The originator of the IP should be aware that publication prior to the filing of patent applications may prevent the granting of certain patents.

- IADT may decide at any stage to withdraw from the process of exploiting an particular piece of IP. This may arise where:

    - Concern exists regarding the technical or commercial feasibility of a particular piece of IP,
    - costs of exploiting the IP are excessive, or
    - external sponsorship of the process is no longer available.

- The originator of the IP will be notified in writing of the intention of IADT to withdraw from the process and the withdrawal will apply from immediate effect.
- The IP may, at IADT's entire discretion, be assigned or licensed to the originator in appropriate circumstances, offering the opportunity to the originator of the IP to pursue exploitation independently.

- No patent application, assignment, licensing or other agreement may be entered into or will be considered valid with respect to IADT IP except when properly and lawfully executed by IADT.

12. COMMERCIALISATION

The Office of Development will assist, provide advice, or procure the provision of outside professional advice in relation to the various options for commercialisation and technology transfer that may be appropriate in order to best meet the aims of this IP Policy, including:

- Licensing the IP to a third party for a fixed sum or a royalty related to future sales.

- Assigning the IP to a third party for a fixed sum or a royalty related to future sales.

- Developing the commercial potential of the IP through a campus company.

- Developing the commercial potential of the IP through a joint venture with a third party.

- Any other arrangement that may be considered appropriate.

In providing this advice and assistance, the Office of Development will give due consideration to the retention of the right to use and access know-how and research materials for the purpose of continuing and further research.

13. LICENSING AND DIVISION OF INCOME

Technology Transfer Fund

IADT will establish a research fund to be used to promote and enhance research and development activity and facilities within IADT as determined by the Research and Development Committee ("R&D Committee") from time to time - the Technology Transfer Fund ("TT Fund"). The R&D Committee will give due cognisance to the research area/centre that secured the funding in deciding on its expenditure.

The TT Fund will be used to assess, protect and facilitate the commercialisation of IADT IP through the pursuit of patent or other protection, the granting of licenses, the development of campus companies and/or otherwise to ensure maximum benefit to the Institute and the public good, as determined by the IP Committee in line with the IP Policy and approval of the R&D Committee.

Division of Income – General Principles

The following points apply in relation to licensing and division of income from commercialising IADT IP resulting from IADT research:

- IADT welcomes the development by industry, for public use and benefit, of inventions and other IP resulting from IADT research. IADT will maintain a flexible and open approach to bringing IADT IP into commercial use. Each case will be considered individually and will involve an assessment of all the potential risks and potential rewards.

- The definition of "income" includes revenue derived from the relevant patents or any other IADT IP in question, which are commercialised by IADT, and also includes (without limitation) up-front licence fees, down payments, minimum annual payments, royalties on sales and is net of any expenses incurred by the IADT in commercialising or protecting the relevant patents or other IADT IP.

- All direct expenses incurred by IADT in:

    - the patenting or other registration or protections of IADT IP; and
    - the commercialisation of an invention or any other IADT IP;

  including (without limitation) administrative, licensing, legal, and any other expenses and costs and any subsequent investigation, development and promotion, will be deducted from the initial royalty income or lump sum. No royalty income will be made available for distribution until such expenses have been recovered.

- If more than one inventor or department is involved, unless formally agreed amongst themselves, with due regard to the value and substance of their respective contributions, the Inventor's share set out above shall be divided equally among them.

- The division of royalty income will be carried out within 2 months of the receipt of such income by IADT.

- The originator of the IP's share shall continue to be paid even though he/she may have left IADT.

- For the avoidance of doubt, Personnel (whether originators of IP or otherwise) that are not Staff or Students but are Other Relevant Party shall not be entitled to royalty income arising from IADT IP to which they have contributed unless this is stated in their contract of engagement or IADT agrees otherwise in writing.

Division Of Income From Patents

Subject to the General Principles set out above, income derived from inventions or other IP which are patented and commercialised by IADT in accordance with the provisions of this IP Policy will (subject to any ministerial/government department consents which may be required from time to time) be distributed between the originator(s), the originator(s)' Department(s) and the IADT Research and TT Fund. While it is recognised that each project may have to be negotiated on its own merits, the following scale will apply (subject to final determination by the IP Committee):

Net Income	Researcher	Department	IADT
Up to €20,000	85%	5%	10%
€20,001 - €50,000	75%	10%	15%
€50,001 - €200,000	50%	20%	30%
Over €200,000	30%	30%	40%

Division Of Income From Intellectual Property Other Than Patents

Subject to the General Principles set out above, division of income derived from commercialising IADT IP which is not patented may occur from time to time and must be approved by the Financial Controller of IADT on a case by case basis. It is intended that the division of income will where possible be agreed in advance of commencing a research project. However, it is acknowledged that it is more difficult to calculate the level of income that is derived from IP that is not patented than from patents due to issues such as the following:

- Non-patented IP is often used in bundles where a number of kinds of IP are involved e.g. trade secrets, confidential information and know-how with each kind of IP belonging to a separate originator.

- Where non-patented IP is supplied in bundles, it can be difficult to attribute specific value to each of the parts of the bundle.

- Third party IP may form part of the bundle in question.

- IADT non-patented IP may include or be based on third party IP and it may be difficult to separate out the value of each.

The ranges of income that might be approved by the IP Committee are set out below in the Guide Table, however the final division of income will be approved by that Committee (and in certain circumstances, may require the approval of the Minister of Education and Science). IADT reserves the right to offer a lump sum payment in lieu of an ongoing royalty payment.

Net Income	Researcher	Department	IADT
Up to €20,000	85%	5%	10%
€20,001 - €50,000	75%	10%	15%
€50,001 - €200,000	50%	20%	30%
Over €200,000	30%	30%	40%

14. INTELLECTUAL PROPERTY CREATED OUTSIDE IADT EMPLOYMENT

The IADT will have no interest in any inventions or other IP created by Personnel entirely on their own time without the use of any IADT Assets. The onus shall be on Personnel asserting their rights under this paragraph 14 to prove to the satisfaction of the IADT that the relevant invention or IP was in fact created by them on their own time without the use of any IADT Assets. Personnel must not infringe the Intellectual Property Rights of any third parties.

15. PUBLICATION OF RESEARCH RESULTS

It is IADT Policy to encourage staff and students to place the results of their research in the public domain either through publication in learned journals or presentation at conferences. This is a vital factor for academic recognition. It is mandatory that such disclosure is not in violation of the terms of any agreement that has been entered into by IADT with a sponsor or other third party.

It must be recognised that premature publication or disclosure except on a confidential basis may make it impossible to obtain valid patent protection. Where possible the delay in publication to enable a patent application to be filed should be for a period of 90 days from the date when this IP is ready for publication. The placing of a thesis in the IADT library without ensuring that accessibility is restricted constitutes publication.

16. ARBITRATION

Any dispute between IADT and the originator of IP will be forwarded to an independent arbitrator to be agreed by the parties. Failing agreement, the arbitrator will be appointed by the President for the time being of the Law Society of Ireland. Expenses incurred in arbitration shall be deducted from royalty income before distribution.

17. CONFLICT OF INTEREST RELATING SPECIFICALLY TO EXTERNAL OR CONSULTANCY AGREEMENTS

IADT encourages full disclosure of potential areas of conflict and open discussion at an early stage. IADT will endeavour to help alert Staff and Other Relevant Party to recognise where conflicts may occur and to manage and resolve these conflicts.

18. ORGANISATIONS AND COMPANIES COLLABORATING WITH IADT ON RESEARCH PROJECTS

As a public organisation, IADT has an obligation to ensure the maximum public benefit from the exploitation of IP created from both publicly funded research and collaborative co-funded research. This is usually best maximised when IP is commercially exploited.

The IADT IP Committee will conduct a commercial evaluation on the IP created/to be created in a research project and will seek information from the collaborating organisation on how it intends to commercialise the IP, and also determine the IP ownership rights they require from the project. The evaluation to determine the commercial value and IP ownership rights will include an examination of the criteria listed in paragraph 11 of this policy. All such information requested and provided will be treated in strict confidence.

Upon above assessment, the IP Committee will decide on the IP ownership rights IADT require and will agree the sale/assignment, licensing (exclusive or non-exclusive), or joint venture agreements or otherwise with the collaborating company to ensure maximum commercial benefits. A legal agreement will be executed between the parties, setting out the rights, entitlements and obligations of each party prior to the commencement of work on the project.

19. MONITORING AND EVALUATION OF POLICY

This IP Policy will be monitored by the Office of Development on an on-going basis. The IP Policy and related research, commercialisation and technology transfer will be monitored and evaluated on an annual basis and may be amended by IADT from time to time. All amendments to this IP Policy shall be posted on the IADT Intranet and such amendments shall be fully valid and effective from the date of posting.

ANNEX I

DEFINITION OF INTELLECTUAL PROPERTY

1 Intellectual Property

The IADT defines intellectual property as the tangible or intangible results of research, development, teaching, or other intellectual activity. Intellectual property allows creativity and innovation to be captured and owned in the same way as physical property can be owned. Intellectual property includes individually and collectively all technical innovations, inventions, improvements, and/or discoveries, information, writings and software, whether or not patentable or otherwise susceptible to intellectual property protection, including technology and materials in their tangible form.

1.1 Patents

Patents are intended to protect new and improved products and processes that have some technical innovation and are capable of industrial application.

A Patent gives its owner the right, for a limited period, to stop others from making, using or selling the invention without the permission of the owner in a particular territory. Patent rights are territorial in that an Irish Patent does not give Patent rights outside Ireland. Most Patents are for improvements in a known technology rather than the devising of a completely new technology.

1.2 Copyrights

Most of the Copyright and Related Rights Act, 2000 came into force on January 1, 2001. This was intended to transpose a number of EU Directives into Irish law and to bring Irish law into conformity with its obligations under various International Treaties.

Copyright gives the right to control use of certain material such as books and other literature, art, music, sound recordings, films and broadcasts. However, copyright does not protect inventions (see Patents) or brand names (see Trademarks). Most, but not all, uses of copyright material will require permission from the copyright owner.

Copyright protection is automatic in Ireland in that there is no official application or recording system.

1.3 Trademarks

Trademarks are intended to protect a brand's identity so as to distinguish the goods or services of one trader from those of another trader. A Trademark may be a word, logo, slogan, colour, three-dimensional shape and even a sound or smell. The Trademark must be capable of being represented in words and/or pictures.

1.4 Industrial Design and Unregistered Design Right

The Industrial Designs Act 2001, which brings Irish law into compliance with EU Directive 98/71/EC, came into force on **July 1, 2002**. Designs cover the appearance of a product, either the whole or a part, resulting from such features as lines, contours, colours, shape, texture or materials of the product itself or its ornamentation. The term **product** embraces any industrial or handicraft item. The term **product** has a wide meaning that includes packaging, get-up and graphic symbols (e.g. Desktop icons) etc.

Registration is not available for features of a design which are dictated by the technical function of the product. The new law contains a *must fit* exclusion under which it is not possible to obtain registration for features which are dictated by the need for the product to fit another. However, modular products, i.e, made up of several components which can be fitted together in different ways, are protectable.

Design Registration gives the owner the right, for a limited period (up to 25 years, with renewals every 5 years), to stop others from making, using or selling a product to which the design has been applied, or in which it is incorporated.

From early 2003, it will be possible to obtain a *Registered Community Design* covering all member states of the EU. Registered Community Design Applications will be handled by the office (OHIM) which currently handles Community Trade Marks.

An *unregistered design right* is available at Community level and eligibility for protection is the same as for a Registered Design. The right comes into existence automatically by the mere fact of making the product incorporating the design available to the public within the European Community. Protection is limited to 3 years and to preventing the use of copies of original designs. It is important to note that a Registered Design gives exclusivity whereas an *unregistered design right* can only be enforced where copying can be proved.

1.5 Confidential Information and Know How

Protection for confidential information and know-how arises from the law of confidentiality. The confidential information may be know-how associated with a Patent or a Patent Application, or material in existence
before, for example, a Patent Application is filed, or material already protected by another form of intellectual property, for example,
copyright.

1.6 Domain Names

A domain name is a unique address on the Internet. There are various generic TLDs, such as .com and .biz, as well as, ccTLDs (Country code), such as .ie.

1.7 Tangible Research Property

This includes biological materials such as cell lines, plasmids, hybridomas, monoclonal antobodies and plant varieties; computer software, data bases, integrated circuit chips, prototype devices and equipment, circuit diagrams: and analytical procedures and laboratory methods, whether or nor not intellectual property protection is available through Patents and/or copyright or otherwise.

1.8 Other Forms of Intellectual Property

Other forms of intellectual property include, but are limited to, database right for certain types of database (under Copyright and Related Rights Act, 2000); protection for semi-conductor topographies; plant breeders' rights in certain plant varieties; and protection against unfair competition under "passing off" law.

The IP Policy is applicable to *IADT Intellectual Property* that is owned by the IADT for any of the reasons outlined below:

- It is developed by IADT Personnel in the course of their normal or specifically assigned duties either when intellectual property could be reasonably expected to result from the carrying out of those duties and/or, at the time the intellectual property was developed, there was a special obligation on the relevant IADT Personnel to further the interest of IADT.

- Under the 2000 Act (as defined below), the IADT is the first owner of any copyright in the work created by IADT Personnel in the course of his/her employment unless precluded by a prior agreement between the IADT and a third party (or is covered by paragraph 5 of this IP Policy).

- The intellectual property arises out of funded or non-funded research where such research has, in the opinion of IADT, made use of the equipment, facilities, IADT Assets and other resources of the IADT unless such action was precluded by prior agreement between the IADT and third parties.

- If it is a condition of a research contract with a third party that the IADT should have ownership of the intellectual property arising from the contract.

- **COPYRIGHT AND RELATED RIGHTS ACT, 2000 (2000 Act)**

First ownership of copyright.

Section 23 (1) of the 2000 Act provides that: "The author of a work shall be the first owner of the copyright unless .... the work is made by an employee in the course of employment, in which case the employer is the first owner of any copyright in the work, subject to any agreement to the contrary".

Maker of database.

Section 322 (2) of the 2000 Act provides that: Where a database is made by an employee in the course of employment, his or her employer shall be regarded as the maker of the database, subject to any agreement to the contrary".

- **PATENTS ACT 1992 (1992 Act)**

Right to patent.

Section 16(1) of the 1992 Act provides that: "The right to a patent shall belong to the inventor or his successor in title, but if the inventor is an employee the right to a patent shall be determined in accordance with the law of the state in which the employee is wholly or mainly employed or, if the identity of such state cannot be determined, in accordance with the law of the state in which the employer has his place of business to which the employee is attached."

ANNEX II

Institute of Art, Design and Technology ("IADT")

Intellectual Property Assignment Agreement for Staff, Students and Other Relevant Parties[4]

Research Project(s) Title:_____ (the "Project(s)")

Research Project(s) Number:_____

I understand that, consistent with applicable laws and regulations, IADT is governed in the handling of intellectual property by its official IP Policy[5] entitled *Intellectual Property Policy and Procedures*, (a copy of which I have received), and I agree to abide by the terms and conditions of this IP Policy in the course of my IADT activities and in the work that I carry out on the Project.

As a general rule (and subject to the exceptions set out in this IP Policy) any intellectual property rights in any material, (including any copyright (including rights in computer software and moral rights), patent, design right, trademark rights, brand rights, database rights, know how, trade secrets, confidential information rights in design, semiconductor topography rights or other intellectual property rights or other property rights, whether vested, contingent or future anywhere in the world), created by me in the course of my work with IADT (and in particular in the course of my work on the Project) are the property of and vest solely and absolutely in IADT ("IADT IP").

Pursuant to the IP Policy, and in consideration of my participation in projects (and the Project(s)) administered by IADT, access to or use of facilities provided by IADT and/or other consideration, I hereby agree as follows:

1. I will disclose to IADT all potentially patentable inventions and other IADT IP conceived or first reduced to practice in whole or in part in the course of my IADT responsibilities, my participation in the Project(s) at IADT or with more than incidental use of IADT resources. I further assign to IADT all my right, title and interest in such patentable inventions and other IADT IP created in connection with IADT and/or the Project(s) and to execute and deliver all documents and do any and all such things necessary and proper on my part to effect such assignment. Such assignment is not inconsistent with the terms of my continuing employment outside of IADT (if any) or with any other agreement I have entered into.

2. I will not use any information defined as confidential or proprietary by any non-IADT employer (if any) in the course of my IADT responsibilities and I will not do consulting or research work for any non-IADT employer (unless such work is approved of in writing by IADT).

[4] As the terms Staff, Students and Other Relevant Parties are defined in the IADT IP Policy.

[5] This Intellectual Property Assignment Agreement forms Annex II of the IADT IP Policy.

3. I will not enter into any agreement creating copyright or patent obligations in conflict with this Agreement. I hereby waive any moral rights to which I may be entitled under any legislation now existing or in future enacted in any part of the world and for the avoidance of doubt this waiver shall extend to the licensees and successors in title to the copyright in the IADT IP and the Project(s).

4. This Agreement is effective on date of my IADT hire, enrolment or participation in projects administered by IADT, and is binding on me, my estate, heirs and assigns.

5. [I hereby agree and acknowledge that in respect of the Project and in respect of my assignment of IP to IADT in this Agreement, my full and final entitlement to payment, royalty or other income arising therefrom is set out in the Schedule to this Agreement and I further agree and acknowledge that I shall have no other entitlement or claim against IADT or any party to whom IADT assigns or licences this IP in respect of payment, royalty or other income arising therefrom.][6]

Signed this ------- day of ----------, 20••

----------	----------
Signature	Printed or typed name
----------	----------
IADT title	IADT Department

[Schedule]

[Insert details of payment, royalty or other income

OR

I agree and acknowledge that I have no right to any payment, royalty or other income in respect of the Project and in respect of my assignment of IP to IADT in this Agreement.]

[6] In the event that this document is to be signed by an Other Relevant Party (as that term is defined in the Introduction of the IP Policy), it may be appropriate to include this provision and the Schedule. To be considered on a case by case basis.

ANNEX III

Institute of Art, Design and Technology ("IADT")

Intellectual Property Assignment Agreement for Staff, Students and Other Relevant Parties[7] who have a prior existing and/or conflicting Intellectual Property Agreement or arrangement with another employer or a third party

I understand that, consistent with applicable laws and regulations, IADT is governed in the handling of intellectual property by its official IP Policy[8] entitled *Intellectual Property Policy and Procedures*, (a copy of which I have received), and I agree to abide by the terms and conditions of this IP Policy in the course of my IADT activities.

As a general rule (and subject to the exceptions set out in the IP Policy) any intellectual property rights in any material, (including any copyright (including rights in computer software and moral rights), patent, design right, trademark rights, brand rights, database rights, know how, trade secrets, confidential information rights in design, semiconductor topography rights or other intellectual property rights or other property rights, whether vested, contingent or future anywhere in the world), created by you in the course of your work with IADT are the property of and vest solely and absolutely in IADT ("IADT IP")**.**

Pursuant to the IP Policy, and in consideration of my participation in projects administered by IADT, access to or use of facilities provided by IADT and/or other consideration, I hereby agree as follows:

1. I will disclose to IADT all potentially patentable inventions and other IADT Intellectual Property conceived or first reduced to practice in whole or in part in the course of my IADT responsibilities, my participation in research projects at IADT or with more than incidental use of IADT resources. I further assign [jointly] to IADT [and to my non-IADT employer][9] all my right, title and interest in such patentable inventions and other IADT Intellectual Property created in connection with IADT and to execute and deliver all documents and do any and all such things necessary and proper on my part to effect such assignment. Such assignment is not inconsistent with the terms of my continuing employment outside of IADT or with any other agreement I have entered into.

2. I will not use any information defined as confidential or proprietary by my non-IADT employer in the course of my IADT responsibilities and I will not do consulting or research work for my non-IADT employer while at any facility owned or leased by IADT.

3. I am free to place my inventions in the public domain as long as in so doing neither I nor IADT violates the terms of any agreements that governed the work done or my agreements with my non-IADT employer.

4. I will not enter into any agreement creating copyright or patent obligations in conflict with this Agreement.

[7] As the terms Staff, Students and Other Relevant Parties are defined in the IADT IP Policy.

[8] This Intellectual Property Assignment Agreement forms Annex III of the IADT IP Policy.

[9] To be considered on a case by case basis

5. This Agreement is effective on date of my IADT hire, enrolment or participation in projects administered by IADT, and is binding on me, my estate, heirs and assigns.

6. [I hereby agree and acknowledge that in respect of the Project and in respect of my assignment of IP to IADT in this Agreement, my full and final entitlement to payment, royalty or other income arising therefrom is set out in the Schedule to this Agreement and I further agree and acknowledge that I shall have no other entitlement or claim against IADT or any party to whom IADT assigns or licences this IP in respect of payment, royalty or other income arising therefrom.][10]

Signed this ------- day of ----------, 20••

---------- ----------
Signature Printed or typed name

---------- ----------
IADT title IADT Department

Acknowledged and accepted:

Non-IADT Employer: ----------
(Insert name)

Signature

Title

Date

[10] In the event that this document is to be signed by an Other Relevant Party (as that term is defined in the Introduction of the IP Policy), it may be appropriate to include this provision and the Schedule. To be considered on a case by case basis.

[Schedule]

[Insert details of payment, royalty or other income

OR

I agree and acknowledge that I have no right to any payment, royalty or other income in respect of the Project and in respect of my assignment of IP to IADT in this Agreement.]

ANNEX IV

INVENTION DECLARATION FORM

1. Title of Invention

2. Inventors

Name	Department	Affiliation with Institute (i.e. department, student, staff, visitor)	Address, contact phone no., e-mail	% Contribution to the Invention

3. Contribution to the Invention

Each contributor/potential inventor should write a paragraph relating to his/her contribution and include a signature and date at the end of the paragraph.

4. Description of Invention

(Please highlight the novelty/patentable aspect. Attach extra sheets if necessary including diagrams where appropriate).

5. Why is this invention more advantageous than present technology?
What are its novel or unusual features?
What problems does it solve?

6. Sponsorship
`

Government Agency & Department	
% Support	
Contract/Grant No.	
Contact Name	
Phone No.	
Address	

Industry or other Sponsor	
% Support	
Contract/Grant No.	
Contact Name	
Phone No.	
Address	

7. Where was the research carried out?

8. What is the potential commercial application of this invention?

9. Was there transfer of any materials/information to or from other institutions regarding this invention?
If so please give details and provide signed agreements where relevant.

10. Have any third parties any rights to this invention?
If yes, give names and addresses and a brief explanation of involvement.

11. Are there any existing or planned disclosures regarding this invention?
Please give details.

12. Has any patent application been made? Yes/No

If yes, give date:_____ Application No.: _____

Name of patent agent:
_____

Please supply copy of specification.

13. Is a model or prototype available? Has the invention been demonstrated practically?

I/we acknowledge that I/we have read, understood and agree with this form and the Institute's *Intellectual Property and Procedures* and that all the information provided in this disclosure is complete and correct.

I/we shall take all reasonable precautions to protect the integrity and confidentiality of the IP in question.

Inventor: _____ _____
Signature **Date**

Inventor: _____ _____
Signature **Date**

Inventor: _____ _____
Signature **Date**

Inventor: _____ _____
Signature **Date**

ANNEX V

Data Protection And Confidentiality Undertaking for Employees, Contractors or Students taking part in a project involving IADT and an outside Partner:

DATA PROTECTION AND CONFIDENTIALITY UNDERTAKING

Name:
Employee/Student ID Number (if applicable):
Function:
Project Title:
Project Number:

In consideration of my appointment by Institute of Art, Design and Technology (IADT) as a [research assistant] in the performance of services ("Services") under the [research agreement] ("Agreement") between IADT and [NAME OF PARTNER] ("Partner") and the related opportunity to gain experience in the Services, I hereby acknowledge that I will acquire certain confidential information ("Confidential Information") relating to IADT's intellectual property, products and strategies and the intellectual property, products and strategies of the Partner.

I hereby undertake to use the Confidential Information only as may be necessary to perform the Services under the Agreement and not to disclose it to any person other than those who have agreed to the same confidentiality undertaking.

I shall use all precautions necessary to protect the Confidential Information from unauthorized disclosure.

I hereby acknowledge that the Confidential Information is a trade secret of IADT and/or the Partner and that IADT and/or the Partner may claim damages from the undersigned for loss of business in the event of any unauthorized disclosure.

For the purposes of the Data Protection Acts 1988 to 2003, I hereby consent to the processing of all personal data that I provide to IADT in connection with the performance of the Services and the Agreement.

This undertaking will continue indefinitely until

(a) the Confidential Information is published or otherwise made public by IADT; or
(b) I am expressly released from this undertaking by IADT,

and is not conditional on my being or remaining an employee or student of IADT.

I hereby acknowledge that this undertaking will also benefit the successors and assigns of IADT together with its related bodies corporate.

Dated:

_____
Signature of person giving the undertaking

_____
Signature of Witness
Name of Witness:

ANNEX VI

NON-DISCLOSURE AGREEMENT

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on • 200•.

PARTIES:

(1) INSTITUTE OF ART, DESIGN AND TECHNOLOGY of ... address... ("IADT**"**); and

(**2**) • of • ("Receiving Party" which expression shall be deemed to include those of its employees or advisors to whom any Confidential Information is to be disclosed).

BACKGROUND:

IADT proposes to allow the Receiving Party access to certain information concerning its business to enable the Receiving Party to consider and evaluate a possible commercial relationship between IADT and the Receiving Party ("Project"). The Receiving Party agrees to hold and maintain as confidential all such information provided by IADT for such purposes, on the terms and conditions of this Agreement.

AGREED TERMS:

Now it is hereby agreed as follows consideration of IADT disclosing the Confidential Information (as defined below) to the Receiving Party:

1. **Definition**

"Confidential Information" means any and all information in whatever form disclosed by IADT to the Receiving Party whether orally or in writing or whether eye readable, machine readable or in any other form including, without limitation, the form, materials and design of any relevant software (including source and object code) or equipment or any part thereof, the methods of operation and the various applications thereof, processes, formulae, plans, business plans, strategies, data, know-how, ideas, designs, photographs, drawings, specifications, technical literature, information relating to employees, customers, subscribers, students, post doctoral students, contractors registered with IADT, suppliers or content providers and any other material made available by IADT to the Receiving Party or gained by the visit by the Receiving Party to any establishment of IADT whether before or after this Agreement is entered into, for the purpose of considering, advising in relation to or furthering the Project (and any information derived from such information) and provided that such information is by its nature clearly confidential (whether or not that information is marked or designated as confidential or proprietary).

2. **Undertakings**

The Receiving Party hereby undertakes with IADT:

(a) to maintain the Confidential Information in strict confidence;
(b) save as provided in this Agreement, not divulge any of the Confidential Information to any third party or communicate, indicate or suggest to any third party the existence of the Project;

(c) not to make use of the Confidential Information other than for the purpose of the Project;
(d) not at any time contest or dispute the ownership of the Confidential Information;
(e) to restrict access to the Confidential Information only to its own responsible employees or professional advisers who need to have such access for the purposes of the Project and to impose upon such persons obligations of confidentiality equivalent to those contained in this Agreement (and to be responsible for any breach of the terms of this Agreement by its own employees or professional advisers);
(f) not at any time to reverse engineer, decompile or disassemble any software disclosed to it in the course of the Project and not to remove, overprint or deface any notice of copyright, trademark, logo, legend or other notices of ownership from any originals or copies of Confidential Information;
(g) to take or to permit to be taken only such copies of any document or other material (in whatsoever medium) embodying any of the Confidential Information as are reasonably necessary for the purposes of the Project
(h) if the Receiving Party receives any communication requesting disclosure of any of the Confidential Information or indicating an intention to obtain or the fact that there has been obtained any order which would oblige the Receiving Party in law to disclose any of the Confidential Information, the Receiving Party will (immediately and by the fastest means possible, confirmed in writing) communicate to IADT the fact that the communication has been received and all details of the same with a view to the parties co-operating in taking all reasonable and proper steps to ensure so far as is possible that the Confidential Information and the Project are maintained in the strictest confidence; and
(i) to confirm to IADT in writing at any time on request that it has complied and continues to comply with the provisions hereof.

3. Acknowledgements and Confirmations

The Receiving Party hereby further acknowledges and confirms to IADT as follows:

(a) that the Confidential Information is proprietary information of IADT, the disclosure of which could adversely affect the business of IADT and result in economic harm;
(b) that neither IADT nor any of its advisers nor any of its agents, officers, students, post doctoral students, contractors registered with IADT, or employees accept responsibility or liability for or make any representation, statement or expression of opinion or warranty, express or implied, with respect to the accuracy or completeness of the Confidential Information or any oral communication in connection therewith unless and save to the extent that such representation, statement or expression of opinion or warranty is expressly incorporated into any legally binding contract executed between the parties;
(c) that the provisions of this Agreement shall continue in effect notwithstanding any decision by the parties not to proceed with the Project or any return or destruction of the Confidential Information;
(d) that damages alone would not be an adequate remedy for any breach of the provisions of this Agreement and, accordingly, without prejudice to any and all other rights or remedies that IADT may have against the Receiving Party, IADT shall be entitled without proof of special damage to the remedies of temporary or permanent injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement;

(e) that if IADT furnishes or has furnished any confidential information of an affiliated company, the Receiving Party will have the same obligations to such affiliated company with respect to such information as it has to IADT with respect to the Confidential Information as if all references in this Agreement to IADT were references to such affiliated company; and

(f) that the disclosure of the Confidential Information by IADT shall not be deemed to confer any proprietary rights upon the Receiving Party nor shall such disclosure be construed as granting any license of rights of any intellectual property in the Receiving Party.

4. Exceptions

The undertakings contained in Clause 2 and the confirmations and acknowledgements contained in Clause 3 shall not apply to Confidential Information which:

(a) is or becomes publicly available, other than as a result of a breach of this Agreement, or becomes lawfully available to the Receiving Party from a third party free from any confidentiality restriction;

(b) was already in the possession of the Receiving Party (as shown by its pre-existing written records) before it was disclosed to the Receiving Party;

(c) was independently developed without access to or use of the Confidential Information;

(d) the Receiving Party is required to disclose:

(i) by law;
(ii) by any rule or regulation of any stock exchange;
(iii) by any Court procedure; or
(iv) by any rule or regulation of any governmental or other competent authority,

provided that, so far as is practicable to do so the Receiving Party shall consult with IADT prior to such disclosure with a view to agreeing its timing and content.

5. Return of Confidential Information

The Receiving Party hereby undertakes with IADT:

(a) upon demand by IADT or its professional advisers, to either return to such person as they may direct, or destroy, at the option of IADT all the Confidential Information (including all printed and electronic copies thereof) in its possession or control; and

(b) upon the return or destruction (as the case may be) of all the Confidential Information, to provide IADT with a certificate from an authorised officer stating that it has complied with its obligations under this Clause.

6. Indemnity

The Receiving Party agrees to fully indemnify, keep indemnified and hold harmless IADT against all losses, damages, claims, costs, expenses, liabilities, proceedings and demands which IADT may suffer or incur or which may be made against IADT as a result of any unauthorised disclosure or use of the Confidential Information by the Receiving Party, its employees and/or professional advisers.

7. Term

(a) The Receiving Party agrees that its agreements, covenants and undertakings set out in this Agreement will continue in full force and effect and will apply to the Confidential Information for the period of [3] years from the date of this Agreement.

(b) The provisions of this Agreement shall continue in force notwithstanding the fact that the Project is not proceeded with or has been terminated and regardless of the reasons for such termination.

8. General

(a) The laws of Ireland (excluding Northern Ireland) shall govern this Agreement and any disputes, claims or proceedings arising out of or in any way relating to this Agreement.

(b) The courts of Ireland (excluding Northern Ireland) shall have exclusive jurisdiction for the purpose of any proceedings arising out of or in any way relating to this Agreement.

(c) This Agreement contains the entire agreement between the parties and supersedes all prior oral, or written representations, understandings, or agreements.

(d) Both parties must agree any changes to this Agreement in writing.

(e) Each Clause of this Agreement is severable if deemed void, illegal or unenforceable by a court or competent authority.

Signed for and on behalf of
IADT by its authorised signatory:

_____

Signed for and on behalf of •
by its authorised signatory:

_____

TEMPLATE COLLABORATION AGREEMENT

IADT 1 - Institute owns IP in Results, exclusive or non-exclusive licence to Company to use Results in a specified field, funding by Funding Agency.

THIS AGREEMENT is made on the ● day of ● 200●

PARTIES:

(1) **INSTITUTE OF ART, DESIGN AND TECHNOLOGY**, a statutory body, located in Kill Avenue, Dún Laoghaire, Co Dublin (the "**Institute**"); and

(2) [*Name of company*] a company incorporated in [*name of state in which company incorporated*] (under company registration number [*number*] whose registered office is at [*address*]*)* (the "**Company**").

Each of the Institute and the Company may be hereinafter referred to as a "**party**" and collectively as "**parties**".

BACKGROUND:

The research project contemplated by this Agreement is of mutual interest and benefit to the Institute and to the Company, will further the instructional and research objectives of the Institute in a manner consistent with its status as an educational institution, and may result in benefits for both the Company and the Institute through inventions, improvements, and/or discoveries.

THE PARTIES AGREE as follows:

1. **Definitions and Interpretations**

1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"Background Intellectual Property"	means Intellectual Property (excluding Intellectual Property in and to Results), in the same or related fields to the research conducted in the course of the Project, owned, licensed to or otherwise controlled by one of the parties prior to the Effective Date and provided (whether before or after the Effective Date) by that party to the other for use in the Project;
"Confidential Information"	means all information obtained by one party from the other pursuant to this Agreement which is expressly marked as confidential or which is manifestly of a confidential nature or which is confirmed in writing to be confidential within 7 days of its disclosure;

"Effective Date"	means [*insert date of commencement of Project*];
"Fees"	means the amounts set out in Schedule 2 and payable in accordance with the provisions of clause 6;
"Field"	means ●;
"Funding"	means the funding for the Project received from the Funding Agency, such funding being provided on the basis of certain terms and conditions;
"Funding Agency"	means ●;
"Intellectual Property"	means patents, inventions, Know-how, trade secrets and other confidential information, rights in design (registered and unregistered), copyright (including, without limitation, rights in computer software), data, database rights and sui generis rights, rights affording equivalent protection to copyright, semiconductor topography rights, trade marks, service marks, logos, domain names, business names, trade names, brand names, certification marks, assumed names and other indicators or origin, rights in any drawings, designs, plans, specifications, manuals, computer software, assets, inventor's certificates and invention disclosures, writings and other works, whether copyright or not, bills of material, moral rights and all other industrial or intellectual property or other rights or forms of protection of a similar nature or having similar effect in any part of the world and rights in and in relation to them and, where appropriate, applications for any of them in any country or jurisdiction, rights in the nature of unfair competition rights, rights to sue for passing-off, the right to apply for any of them and all other information necessary for the technical exploration of any of the same and all registrations;

"Know-how"	means unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;
"Project"	means the research work or intellectual activity as described in Schedule 1;
"Project Management Team"	means one representative of each of the parties, appointed from time to time;
"Protective Applications"	means applications for patent, design, trade mark or other registration available for the protection of Intellectual Property;
"Publication"	means any written, oral or other public disclosure of Results, including the public use or sale of an invention based on the Results;
"Representative"	means the representative of a party appointed pursuant to the provisions of clause 4;
"Results"	means all information, Know-how, results, software, inventions, works, discoveries and creations, made or conceived or first reduced to practice or writing in the course of the Project;
"Royalties"	means the amounts set out in Schedule 2 and payable in accordance with the provisions of clause 6; and
"Term"	means the period of ● from the Effective Date.

1.2 In this Agreement the following interpretations shall apply:

(a) the headings in this Agreement are for ease of reference only and shall not affect the interpretation or meaning of this Agreement;

(b) words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular section or clause thereof;

(c) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, consolidated, modified, extended or replaced in whole or in part, by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;

(d) a reference to a party shall mean any of the individual parties to this Agreement, as appropriate, together with their respective permitted successors and assigns;

(e) nothing in this Agreement shall affect any statutory rights or provisions granted by mandatory statutory law or regulatory authority, which cannot be waived or limited by contract. In the event and to the extent only of any conflict or ambiguity between the terms of this Agreement and mandatory statutory law or regulatory authority, then, the latter shall prevail;

(f) a reference to "an" "the" or "a" shall refer to the particular matter or item in question;

(g) each party shall comply with any express obligation in this Agreement to comply with any document, statute, order, enactment, regulation or other similar instrument that is referenced in this Agreement; and

(h) no provisions of this Agreement shall be interpreted as requiring or permitting any act or omission by either party which is contrary to any mandatory statutory law or regulatory authority.

2. Scope of Project

2.1 The Institute and the Company shall commence the Project promptly on the Effective Date, shall carry on the Project for the Term, and shall use reasonable endeavours to perform the Project substantially in accordance with the terms and conditions of this Agreement.

2.2 If the Agreement is entered into after the Effective Date, it will apply retrospectively to work carried out in relation to the Project on or after the Effective Date.

2.3 The Institute does not undertake that the Project will lead to any particular outcome or Results and does not guarantee a successful outcome to the Project.

2.4 The Company and the Institute may at any time amend the Project (without breaching the terms and conditions of the Funding) by mutual written agreement.

2.5 The Company and the Institute shall at all times comply with the terms and conditions of the Funding.

3. **Duties of the Company**

The Company shall provide the Institute with all necessary information, equipment, facilities, materials, support and co-operation (including ensuring that employees and independent contractors of the Company co-operate fully with the Institute) that may be reasonably required to enable the Institute to carry out its obligations under this Agreement.

4. **Representatives**

Each party shall nominate in writing upon the execution of this Agreement the person who will act as its representative for the purposes of this Agreement ("**Representative**") and who will be responsible for providing any information which may be required by the other party to perform its obligations hereunder.

5. **Warranties and Representations**

5.1 Each of the parties represents and warrants to each other that:

(a) it has full right and authority to enter into this Agreement and perform its obligations under this Agreement under the laws of the Republic of Ireland and the internal rules of that party and that, whereever and whenever required, such party has or shall secure in a timely manner all necessary notifications, authorisations and approvals;

(b) there are no outstanding obligations or agreements to which it is party that are inconsistent or in conflict with the entering into or performance of this Agreement;

(c) it is the owner of, or is otherwise fully entitled to provide and licence, the Background Intellectual Property which it makes available to the other party pursuant to the provisions of this Agreement;

(d) except to the extent disclosed to the other party at the time of making the Background Intellectual Property available, that Background Intellectual Property is unencumbered; and

(e) it will not assign, encumber or dispose of the Background Intellectual Property during such time as it is necessary for the performance of the Project.

6. **Payment of Fees and Expenses**

6.1 Unless otherwise agreed and set out in Schedule 2, the Institute shall render itemised invoices to the Company in respect of the Fees and/or Royalties, monthly in arrears.

6.2 The Company shall reimburse the Institute for all reasonable travelling and subsistence expenses properly incurred in conducting the Project, when such costs are outside the Project's agreed travel and subsistence rules and when agreed by the parties in advance.

6.3 All charges (and/or any other applicable taxes) payable by the Company under this Agreement shall be due to be paid within 30 days of the date of invoice sent to the Company.

6.4 If the payment of any sum due under this Agreement by the Company shall not be paid by its due date, the Institute shall be entitled to charge interest at 3% above EURIBOR or at the then legal rate, whichever is lower, on the amount of the delayed payment for the period of delay.

6.5 Notwithstanding the provisions of clause 6.4 above, if any sum due under this Agreement is not paid within 30 days of the due date, the Institute may, at its option and without prejudice to any rights it may have under this Agreement or otherwise, terminate or suspend performance of this Agreement.

6.6 All charges payable under this Agreement are exclusive of value added tax, which shall be paid by the Company at the rate and in the manner for the time being prescribed by law.

6.7 For the avoidance of doubt, under no circumstances shall any payment made by the Company to the Institute in connection with this Agreement be funded (whether in whole or in part) by a European Union grant or other funding or by a grant or other funding from an Irish government body that is co-funded by the European Union.

7. Confidential Information

7.1 Each party shall treat as confidential the Confidential Information of the other (the "**Disclosing Party**") and shall not reproduce it or disclose it to third parties without the prior written consent of the Disclosing Party.

7.2 The obligation of confidentiality set out in clause 7.1 shall not apply to the recipient (the "**Receiving Party**") of Confidential Information which:

(a) is or becomes public knowledge other than by breach of this clause 7;

(b) is in the possession of the Receiving Party without restriction in relation to the disclosure before the date of receipt from the Disclosing Party;

(c) is independently developed by the Receiving Party without access to Confidential Information;

(d) is received by the Receiving Party from a third party that has received it without restriction and who is under no obligation restricting its disclosure;

(e) is required to be disclosed to the Receiving Party's professional advisers, provided that such disclosure is to the extent necessary only for such advisers, and on terms no less onerous than those set out in this clause 7;

(f) is required to be disclosed by law or final mandatory order of a court or other competent authority to which the Receiving Party is subject; or

(g) is released from the provisions of this clause 7 in accordance with the provisions of clause 8.

7.3 Each party shall ensure that its respective employees and agents who participate in the Project shall comply with the obligations of confidentiality set out in this clause 7 as though they were parties to this Agreement and each party shall ensure that where any of the aforementioned employees cease to be employed by that party, they shall continue to be bound by such obligations of confidentiality.

7.4 Each party agrees to use its Representative for sending, receiving and storing Confidential Information under this Agreement.

7.5 Each party shall (through its Representative), on request, deliver a copy of Confidential Information in tangible form to the other party within thirty (30) days of receipt of a written request. A party shall be entitled to make such request from the date of initial disclosure of such information to that party by the other party where such disclosure is in a form other than written form.

7.6 Upon termination or expiration of the Project and/or the Agreement (and except as required to benefit from any licenses granted under clause 9.6), each party agrees to use best efforts to locate and return or verify the destruction of all existing Confidential Information (including tangible products or materials) received from the other party pursuant to this Agreement, if requested to do so in writing by the Disclosing Party; provided, however, each party may retain a copy of each document containing Confidential Information of the other party for archival purposes.

8. Announcement and Publication

8.1 Each party agrees that it will not refer to the terms of this Agreement or use the other's name in any advertising, promotional materials, or publicity, without the prior approval of the other party. Neither party will use any trade name, trademark, trade device, service mark or symbol owned by the other party without first obtaining the prior written approval of such use from such other party. By entering into this Agreement, neither of the parties endorses any product or service provided by the other party. Neither party shall in any way imply that this Agreement is an endorsement of any such product or service by another party without obtaining the prior written permission of such other party.

8.2 The Company recognises that in accordance with its statutory functions it is Institute policy that the Results be published and agrees that authorised Institute personnel may make Publications (including, but not limited to):

(a) making presentations at seminars, symposia, national, or regional professional meetings; and

(b) publishing in journals, theses or dissertations, or otherwise of their own choosing, methods and Results in accordance with normal academic practice;

provided however that the Company shall have been furnished copies of any proposed Publication at least 30 days in advance of the making of the proposed Publication.

8.3 The Company shall have 30 days after receipt of said copies, to object to such proposed Publication if in the Company's reasonable opinion a delay of Publication is necessary in order to protect its commercial interests, or the commercial use to the Company or its licensees of information derived from the Project, including the need to file Protective Applications with respect to the information proposed to be included in the relevant Publication.

8.4 In the event that the Company makes such objection, the Institute shall refrain and shall ensure that its personnel shall refrain from making such Publication for a maximum of 60 days from the date of receipt of such objection in order for the Company to obtain appropriate Protective Applications.

8.5 A delay imposed on submission for Publication as a result of a requirement made by the Company shall not exceed 90 days from the date of receipt of the Results by the Company, although the Institute will not unreasonably refuse a request from the Company for additional delay in the event that Intellectual Property in the Results might otherwise be unreasonably jeopardised.

8.6 Nothing in this Agreement shall prevent:

(a) any registered student of the Institute from submitting for a degree of the Institute a thesis based on Results or Background Intellectual Property;

(b) the examination of such thesis by examiners appointed by the Institute; or

the deposit of such a thesis in a library of the Institute in accordance with the relevant procedures of the Institute. However, the Institute shall take all reasonable measures to protect the confidentiality of the Results if requested by the Company.

8.7 For the avoidance of doubt, a failure on the part of the Company to object to a Publication within any of the time limits set out in clauses 8.2 to 8.5 shall be deemed to be consent from the Company to such Publication.

8.8 For the avoidance of doubt, the Company shall not exercise its rights under this clause 8 to unreasonably delay a Publication.

9. Ownership of Intellectual Property

9.1 Neither party shall, in respect of the Intellectual Property (including, without limitation, Background Intellectual Property), products and/or services of the other, represent, either directly or indirectly, that such Intellectual Property, product and/or service of the other is owned or endorsed by the representing party, without the prior written consent of the other party.

9.2 This Agreement does not affect the ownership of any Background Intellectual Property or of the Intellectual Property in and to any other technology, design, work, invention, software, data, technique, Know-how, or materials that are not Results. No licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement.

9.3 The parties agree that subject to the provisions of clause 9.7, the Institute will have full right, title and interest in the Intellectual Property in and to the Results, and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting Protective Applications for any of the Results.

9.4 Where a third party such as a student or contractor is involved in the Project, the party engaging that student and/or contractor will ensure that such student and/or contractor assigns any Intellectual Property they may have in the Results in order to be able to give full effect to the provisions of this clause 9.

9.5 Each party hereby grants the other a royalty-free, non-exclusive licence to use its Background Intellectual Property for the purpose of carrying out the Project, but for no other purpose. Neither party may grant any sub-licence to use the other party's Background Intellectual Property.

9.6 Each of the parties will notify the other promptly after identifying any Result that it believes is patentable, and will supply the other with copies of that Result.

9.7 The Institute hereby grants to the Company a worldwide, [non-]exclusive, [royalty free,] perpetual, unencumbered licence to use the Intellectual Property in the Results for any purpose in the Field.

9.8 The Institute shall keep and instruct its officers, employees, representatives, students, post-doctoral fellows, and agents to keep signed, witnessed, and dated written records of all such Results and will furnish the Company promptly with complete information in respect thereof, and will do all reasonable things necessary to protect the interests of the Company therein.

9.9 Further to the provisions of clause 9.3, the Institute shall be responsible for arranging for the drafting of patent applications and for ensuring that sufficient information (but not excessive information) is incorporated into such patent applications. For the avoidance of doubt, any such patent application will be in the sole name of the Institute. The Institute shall submit all such patent applications to the Company for review and written approval at least 45 days prior to such patent applications being filed with any patent registry. The Company shall have the right to suggest modifications to the patent applications. If the Company objects to the filing of the patent application, in whole or in part, the Company will specify that portion of the submitted material it objects to and the reason for such objection. Upon objection by the Company, the Institute agrees to discuss the objection with the Company and to consider the deletion of any Confidential Information in such patent application to which the Company objects. Nothing in this clause will preclude an agreement between the parties for immediate filing of a prompt response to all patent application filing requests. However, any such agreement must be in writing and signed by the parties.

9.10 The parties acknowledge that in the event that a proprietary application software development package or any other proprietary software is licensed pursuant to the Project, a copyright work comprising part of the Results which is based on or which has utilized that software may also fall within the meaning of "adaptation" (as that term is defined in Section 43(2) of the Irish Copyright and Related Rights Act 2000) of such software development package. The Intellectual Property in and to such adaptation shall belong to the Institute.

10. Limitation of Liability and Indemnity

10.1 Save in respect of death or personal injury caused by the negligence of the Institute, and subject to the provisions of clause 10.2, the Institute'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 aggregate of all the sums actually paid by the Company to the Institute hereunder in any 12 month period immediately preceding the event leading to the loss or damage.

10.2 The Institute shall not be liable for any indirect, consequential or special loss or damage and/or for any of the following:

(a) loss of profits;

(b) loss of goodwill;

(c) loss of business;

(d) loss of anticipated savings; or

(e) loss arising from delay.

10.3 Save as expressly set out in this Agreement, all warranties, conditions, representations, statements terms and provisions, express or implied by statute, common law or otherwise, are hereby excluded by the Institute to the fullest extent permitted by law.

10.4 The Company undertakes to defend the Institute from and against any claim or action brought against the Institute in connection with any third party allegation of personal injury or property damage arising from the design, manufacture, use, licensing or sale of products which utilize or incorporate, directly or indirectly, the outcome of the Project including, without limitation, the Results ("**Product Claim**") and agrees to fully indemnify, keep indemnified and hold harmless the Institute from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any Product Claim.

10.5 The Company undertakes to defend the Institute from and against any claim or action brought against the Institute that the use of the Company Background Intellectual Property and/or the outcome of the Project including, without limitation, the Results in accordance with the terms of this Agreement infringes any Intellectual Property of a third party ("**IP Claim**") and agrees to fully indemnify, keep indemnified and hold harmless the Institute from and against all costs, claims, demands, liabilities, expenses, damages or losses (including all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any IP Claim.

11. Progress Meetings

The parties shall procure that their Representatives will meet at intervals to be agreed.

12. Termination

12.1 Notwithstanding anything else contained herein, this Agreement may be terminated:

(a) by either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or

(b) by either party forthwith on giving notice in writing to the other if the other party shall have a receiver, examiner or administrator appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

13. **Effects of termination**

13.1 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

13.2 On the termination of this Agreement by the Institute due to the material breach by the Company or by virtue of a receiver, examiner or administrator appointed to the Company, the Company shall be liable to pay to the Institute all Fees and/or Royalties payable to the Institute in respect of performance of the Project by the Institute to the Company insofar as not previously paid by it and the Institute shall have no further obligation to the Company hereunder.

13.3 Clauses 1, 6 (in respect of any future Royalties), 7, 8, 9, 10, 14, 22 and 25 shall survive expiry or termination of this Agreement, howsoever arising.

14. **Notices**

14.1 Any notice or communication which a party is required or authorised by this Agreement to serve on another party shall be sufficiently served if sent to the other party at the address specified below:

(a) by hand; or

(b) by registered post or recorded delivery; or

(c) by facsimile transmission confirmed by registered post or recorded delivery; or

(d) by electronic mail confirmed by a recorded delivery message.

14.2 Notices sent by registered post or recorded delivery shall be deemed to have been served three days following the date of posting. Notices sent by facsimile transmission shall be deemed to have been served on the date of transmission, if transmitted before 1600 hours on a working day, but otherwise on the next working day provided that confirmation by registered post or recorded delivery is sent the same day. Notices sent by electronic mail where such is an established means of communication between the parties shall be deemed to have been served on the day of transmission, if transmitted before 1600 hours on a working day but otherwise on the next working day. In all other cases notices and other communications will be deemed to have been served on the day they were actually received.

14.3 The parties hereby agree that:

(a) words in electronic form shall be deemed to be “writing” for the purposes of all applicable legislation where “writing” is required;

(b) electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the parties; and

(c) the parties shall agree the format of electronic communications between them.

15. Force majeure

Neither party shall be liable to the other if its performance of its obligations (except obligations to make payments) under this Agreement is prevented or hindered due to any circumstance outside its control.

16. Amendment

Any variation to the performance of the Project shall only take effect upon written agreement of the terms between the parties.

17. Further assurance

The parties hereto shall use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as may be reasonably required from time to time for the purpose of giving each party hereto the full benefit of the provisions of this Agreement.

18. Waiver of remedies

No delay or failure of either party in enforcing against the other party any term or condition of this Agreement and no partial exercise by either party of any right hereunder shall be deemed to be a waiver of any right of that party under this Agreement.

19. Entire agreement

19.1 The parties have read and understood this Agreement and agree that it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof and supersedes all proposals, representations, understanding and prior agreements whether oral or written and all other communications between them relating thereto.

19.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to it for breach of this Agreement shall be for breach of contract under the terms of this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

20. **No Agency**

No provision of this Agreement creates a partnership between the parties and 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 commitments on the other's behalf.

21. **Sub-contracts**

This Agreement is personal to the Company and it may not assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without the prior written consent of the Institute. The Institute shall be entitled to assign and/or sub-contract any of its rights and/or obligations under this Agreement.

22. **Dispute Resolution**

22.1 Both parties to this Agreement shall seek to resolve any dispute between them arising out of, or relating to, this Agreement, amicably.

22.2 All disputes between the parties arising out of or relating to this Agreement shall be referred, in the first instance, by either party, to the Project Management Team for resolution.

22.3 If any dispute cannot be resolved by the Project Management Team within a period of fourteen (14) days following referral, then, the dispute shall be referred to the Director/President of the Institute and a representative of the Company at CEO level, for resolution.

22.4 If the dispute cannot be resolved by the parties' nominees referred to in clause 22.3 above within a period of fourteen (14) days following referral, then it may be referred by either party to an expert (the "**Expert**") who shall be deemed to act as an expert and not as arbitrator.

22.5 The Expert shall be selected by mutual agreement of the parties or, failing agreement, within fourteen (14) days after a request by one party to the other, shall be chosen at the request of either party by the President for the time being of the Law Society of Ireland, who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.

22.6 Fourteen (14) days after the Expert has accepted the appointment the parties shall submit a written report on the dispute to the Expert and to each other and seven (7) days thereafter shall submit any written replies they wish to the Expert and to each other.

22.7 Both parties shall afford the Expert all necessary assistance that the Expert requires to consider the dispute, including, but not limited to, full access to the Project and any documentation or correspondence relating to the subject matter of the dispute.

22.8 The Expert shall be instructed to deliver his determination to the parties within fourteen (14) days after the submission of the written reports pursuant to clause 22.6, or after the expiration of such longer period as is required by the Expert in which to consider the parties' reports and documentation or correspondence provided, which date shall not be greater than a period of sixty (60) days after the submission of the written reports pursuant to clause 22.6.

22.9 The Expert shall have the same powers to require any party to produce any documents or information to him and the other party and each party shall, in any event, supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

22.10 The fees of the Expert shall be borne by the parties in the proportion as shall be determined by the Expert, having regard (amongst other things) to the conduct of the parties.

22.11 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

22.12 The parties, and the Expert, shall treat as Confidential Information all information obtained in relation to the reference to the Expert, the fact that a dispute has been referred to the Expert, its occurrence and the decision of the Expert arising therefrom.

22.13 All communications relating to the reference to the Expert shall take place in writing between the Representatives of either party, or other nominated representatives of the parties, and the Expert.

22.14 At any time prior to the decision of the Expert being communicated to the parties they may agree a settlement of the dispute and where applicable a revised timetable or difference referred to the Expert. In such event, the Expert shall be entitled to recover from the parties fees in respect of time already spent on the reference and all reasonable expenses incurred in relation to it which shall be borne by and between the parties in such proportion as the parties shall agree as part of their settlement.

23. Severability

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality, or such provision may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

24. Counterparts

This Agreement may be executed in separate counterparts by each party, but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

25. **Law**

Each party irrevocably agrees that this Agreement and all matters arising from it are governed by and construed in accordance with the laws of Ireland, whose courts shall have exclusive jurisdiction over all disputes arising in connection with this Agreement.

EXECUTED under hand in two originals the day and year first before written

SIGNED for and on behalf of

INSTITUTE OF ART, DESIGN AND
TECHNOLOGY

By:

Signature:

Title:

Witness:

SIGNED for and on behalf of

•

By:

Signature:

Title:

Witness:

SCHEDULE 1

PROJECT

SCHEDULE 2

COSTS, FEES AND ROYALTIES

TEMPLATE COLLABORATION AGREEMENT

XIT 2 - Institute owns IP in Results, non-exclusive licence to Company, option to buy exclusive licence, funding by Funding Agency.

THIS AGREEMENT is made on the ● day of ● 200●

PARTIES:

(1) **INSTITUTE OF ART, DESIGN AND TECHNOLOGY**, a statutory body, located in Kill Avenue, Dún Laoghaire, Co Dublin (the "**Institute**"); and

(2) [*Name of company*] a company incorporated in [*name of state in which company incorporated*] (under company registration number [*number*] whose registered office is at [*address*]*)* (the "**Company**").

Each of the Institute and the Company may be hereinafter referred to as a "**party**" and collectively as "**parties**".

BACKGROUND:

The research project contemplated by this Agreement is of mutual interest and benefit to the Institute and to the Company, will further the instructional and research objectives of the Institute in a manner consistent with its status as an educational institution, and may result in benefits for both the Company and the Institute through inventions, improvements, and/or discoveries.

THE PARTIES AGREE as follows:

26. **Definitions and Interpretations**

26.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"Background Intellectual Property"	means Intellectual Property (excluding Intellectual Property in and to Results), in the same or related fields to the research conducted in the course of the Project, owned, licensed to or otherwise controlled by one of the parties prior to the Effective Date and provided (whether before or after the Effective Date) by that party to the other for use in the Project;
"Confidential Information"	means all information obtained by one party from the other pursuant to this Agreement which is expressly marked as confidential or which is manifestly of a confidential nature or which is confirmed in writing to be confidential within 7 days of its disclosure;

"Effective Date"	means [*insert date of commencement of Project*];
"Fees"	means the amounts set out in Schedule 2 and payable in accordance with the provisions of clause 6;
"Field"	means ●;
"Funding"	means the funding for the Project received from the Funding Agency, such funding being provided on the basis of certain terms and conditions;
"Funding Agency"	means ●;
"Intellectual Property"	means patents, inventions, Know-how, trade secrets and other confidential information, rights in design (registered and unregistered), copyright (including, without limitation, rights in computer software), data, database rights and sui generis rights, rights affording equivalent protection to copyright, semiconductor topography rights, trade marks, service marks, logos, domain names, business names, trade names, brand names, certification marks, assumed names and other indicators or origin, rights in any drawings, designs, plans, specifications, manuals, computer software, assets, inventor's certificates and invention disclosures, writings and other works, whether copyright or not, bills of material, moral rights and all other industrial or intellectual property or other rights or forms of protection of a similar nature or having similar effect in any part of the world and rights in and in relation to them and, where appropriate, applications for any of them in any country or jurisdiction, rights in the nature of unfair competition rights, rights to sue for passing-off, the right to apply for any of them and all other information necessary for the technical exploration of any of the same and all registrations;

“Know-how”	means unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;
“Option”	means the option set out in clause 9.11;
“Option Period”	means the period commencing on ● and ending on ●;
“Project”	means the research work or intellectual activity as described in Schedule 1;
“Project Management Team”	means one representative of each of the parties, appointed from time to time;
“Protective Applications”	means applications for patent, design, trade mark or other registration available for the protection of Intellectual Property;
“Publication”	means any written, oral or other public disclosure of Results, including the public use or sale of an invention based on the Results;
“Representative”	means the representative of a party appointed pursuant to the provisions of clause 4;
“Results”	means all information, Know-how, results, software, inventions, works, discoveries and creations, made or conceived or first reduced to practice or writing in the course of the Project;
“Royalties”	means the amounts set out in Schedule 2 and payable in accordance with the provisions of clause 6; and
“Term”	means the period of ● from the Effective Date.

26.2 In this Agreement the following interpretations shall apply:

(a) the headings in this Agreement are for ease of reference only and shall not affect the interpretation or meaning of this Agreement;

(b) words such as “hereunder”, “hereto”, “hereof” and “herein” and other words commencing with “here” shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular section or clause thereof;

(c) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, consolidated, modified, extended or replaced in whole or in part, by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;

(d) a reference to a party shall mean any of the individual parties to this Agreement, as appropriate, together with their respective permitted successors and assigns;

(e) nothing in this Agreement shall affect any statutory rights or provisions granted by mandatory statutory law or regulatory authority, which cannot be waived or limited by contract. In the event and to the extent only of any conflict or ambiguity between the terms of this Agreement and mandatory statutory law or regulatory authority, then, the latter shall prevail;

(f) a reference to “an” “the” or “a” shall refer to the particular matter or item in question;

(g) each party shall comply with any express obligation in this Agreement to comply with any document, statute, order, enactment, regulation or other similar instrument that is referenced in this Agreement; and

(h) no provisions of this Agreement shall be interpreted as requiring or permitting any act or omission by either party which is contrary to any mandatory statutory law or regulatory authority.

27. **Scope of Project**

27.1 The Institute and the Company shall commence the Project promptly on the Effective Date, shall carry on the Project for the Term, and shall use reasonable endeavours to perform the Project substantially in accordance with the terms and conditions of this Agreement.

27.2 If the Agreement is entered into after the Effective Date, it will apply retrospectively to work carried out in relation to the Project on or after the Effective Date.

27.3 The Institute does not undertake that the Project will lead to any particular outcome or Results and does not guarantee a successful outcome to the Project.

27.4 The Company and the Institute may at any time amend the Project (without breaching the terms and conditions of the Funding) by mutual written agreement.

27.5 The Company and the Institute shall at all times comply with the terms and conditions of the Funding.

28. Duties of the Company

The Company shall provide the Institute with all necessary information, equipment, facilities, materials, support and co-operation (including ensuring that employees and independent contractors of the Company co-operate fully with the Institute) that may be reasonably required to enable the Institute to carry out its obligations under this Agreement.

29. Representatives

Each party shall nominate in writing upon the execution of this Agreement the person who will act as its representative for the purposes of this Agreement ("**Representative**") and who will be responsible for providing any information which may be required by the other party to perform its obligations hereunder.

30. Warranties and Representations

30.1 Each of the parties represents and warrants to each other that:

(a) it has full right and authority to enter into this Agreement and perform its obligations under this Agreement under the laws of the Republic of Ireland and the internal rules of that party and that, wherever and whenever required, such party has or shall secure in a timely manner all necessary notifications, authorisations and approvals;

(b) there are no outstanding obligations or agreements to which it is party that are inconsistent or in conflict with the entering into or performance of this Agreement;

(c) it is the owner of, or is otherwise fully entitled to provide and licence, the Background Intellectual Property which it makes available to the other party pursuant to the provisions of this Agreement;

(d) except to the extent disclosed to the other party at the time of making the Background Intellectual Property available, that Background Intellectual Property is unencumbered; and

(e) it will not assign, encumber or dispose of the Background Intellectual Property during such time as it is necessary for the performance of the Project.

31. Payment of Fees and Expenses

31.1 Unless otherwise agreed and set out in Schedule 2, the Institute shall render itemised invoices to the Company in respect of the Fees and/or Royalties, monthly in arrears.

31.2 The Company shall reimburse the Institute for all reasonable travelling and subsistence expenses properly incurred in conducting the Project, when such costs are outside the Project's agreed travel and subsistence rules and when agreed by the parties in advance.

31.3 All charges (and/or any other applicable taxes) payable by the Company under this Agreement shall be due to be paid within 30 days of the date of invoice sent to the Company.

31.4 If the payment of any sum due under this Agreement by the Company shall not be paid by its due date, the Institute shall be entitled to charge interest at 3% above EURIBOR or at the then legal rate, whichever is lower, on the amount of the delayed payment for the period of delay.

31.5 Notwithstanding the provisions of clause 6.4 above, if any sum due under this Agreement is not paid within 30 days of the due date, the Institute may, at its option and without prejudice to any rights it may have under this Agreement or otherwise, terminate or suspend performance of this Agreement.

31.6 All charges payable under this Agreement are exclusive of value added tax, which shall be paid by the Company at the rate and in the manner for the time being prescribed by law.

31.7 For the avoidance of doubt, under no circumstances shall any payment made by the Company to the Institute in connection with this Agreement be funded (whether in whole or in part) by a European Union grant or other funding or by a grant or other funding from an Irish government body that is co-funded by the European Union.

32. Confidential Information

32.1 Each party shall treat as confidential the Confidential Information of the other (the "**Disclosing Party**") and shall not reproduce it or disclose it to third parties without the prior written consent of the Disclosing Party.

32.2 The obligation of confidentiality set out in clause 7.1 shall not apply to the recipient (the "**Receiving Party**") of Confidential Information which:

(a) is or becomes public knowledge other than by breach of this clause 7;

(b) is in the possession of the Receiving Party without restriction in relation to the disclosure before the date of receipt from the Disclosing Party;

(c) is independently developed by the Receiving Party without access to Confidential Information;

(d) is received by the Receiving Party from a third party that has received it without restriction and who is under no obligation restricting its disclosure;

(e) is required to be disclosed to the Receiving Party's professional advisers, provided that such disclosure is to the extent necessary only for such advisers, and on terms no less onerous than those set out in this clause 7;

(f) is required to be disclosed by law or final mandatory order of a court or other competent authority to which the Receiving Party is subject; or

(g) is released from the provisions of this clause 7 in accordance with the provisions of clause 8.

32.3 Each party shall ensure that its respective employees and agents who participate in the Project shall comply with the obligations of confidentiality set out in this clause 7 as though they were parties to this Agreement and each party shall ensure that where any of the aforementioned employees cease to be employed by that party, they shall continue to be bound by such obligations of confidentiality.

32.4 Each party agrees to use its Representative for sending, receiving and storing Confidential Information under this Agreement.

32.5 Each party shall (through its Representative), on request, deliver a copy of Confidential Information in tangible form to the other party within thirty (30) days of receipt of a written request. A party shall be entitled to make such request from the date of initial disclosure of such information to that party by the other party where such disclosure is in a form other than written form.

32.6 Upon termination or expiration of the Project and/or the Agreement (and except as required to benefit from any licenses granted under clause 9.6), each party agrees to use best efforts to locate and return or verify the destruction of all existing Confidential Information (including tangible products or materials) received from the other party pursuant to this Agreement, if requested to do so in writing by the Disclosing Party; provided, however, each party may retain a copy of each document containing Confidential Information of the other party for archival purposes.

33. Announcement and Publication

33.1 Each party agrees that it will not refer to the terms of this Agreement or use the other's name in any advertising, promotional materials, or publicity, without the prior approval of the other party. Neither party will use any trade name, trademark, trade device, service mark or symbol owned by the other party without first obtaining the prior written approval of such use from such other party. By entering into this Agreement, neither of the parties endorses any product or service provided by the other party. Neither party shall in any way imply that this Agreement is an endorsement of any such product or service by another party without obtaining the prior written permission of such other party.

33.2 The Company recognises that in accordance with its statutory functions it is Institute policy that the Results be published and agrees that authorised Institute personnel may make Publications (including, but not limited to):

(a) making presentations at seminars, symposia, national, or regional professional meetings; and

(b) publishing in journals, theses or dissertations, or otherwise of their own choosing, methods and Results in accordance with normal academic practice;

provided however that the Company shall have been furnished copies of any proposed Publication at least 30 days in advance of the making of the proposed Publication.

33.3 The Company shall have 30 days after receipt of said copies, to object to such proposed Publication if in the Company's reasonable opinion a delay of Publication is necessary in order to protect its commercial interests, or the commercial use to the Company or its licensees of information derived from the Project, including the need to file Protective Applications with respect to the information proposed to be included in the relevant Publication.

33.4 In the event that the Company makes such objection, the Institute shall refrain and shall ensure that its personnel shall refrain from making such Publication for a maximum of 60 days from the date of receipt of such objection in order for the Company to obtain appropriate Protective Applications.

33.5 A delay imposed on submission for Publication as a result of a requirement made by the Company shall not exceed 90 days from the date of receipt of the Results by the Company, although the Institute will not unreasonably refuse a request from the Company for additional delay in the event that Intellectual Property in the Results might otherwise be unreasonably jeopardised.

33.6 Nothing in this Agreement shall prevent:

(a) any registered student of the Institute from submitting for a degree of the Institute a thesis based on Results or Background Intellectual Property;

(b) the examination of such thesis by examiners appointed by the Institute; or

the deposit of such a thesis in a library of the Institute in accordance with the relevant procedures of the Institute. However, the Institute shall take all reasonable measures to protect the confidentiality of the Results if requested by the Company.

33.7 For the avoidance of doubt, a failure on the part of the Company to object to a Publication within any of the time limits set out in clauses 8.2 to 8.5 shall be deemed to be consent from the Company to such Publication.

33.8 For the avoidance of doubt, the Company shall not exercise its rights under this clause 8 to unreasonably delay a Publication.

34. Ownership of Intellectual Property

34.1 Neither party shall, in respect of the Intellectual Property (including, without limitation, Background Intellectual Property), products and/or services of the other, represent, either directly or indirectly, that such Intellectual Property, product and/or service of the other is owned or endorsed by the representing party, without the prior written consent of the other party.

34.2 This Agreement does not affect the ownership of any Background Intellectual Property or of the Intellectual Property in and to any other technology, design, work, invention, software, data, technique, Know-how, or materials that are not Results. No licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement.

34.3 The parties agree that (until the exercise of the Option) subject to the provisions of clause 9.7, the Institute will have full right, title and interest in the Intellectual Property in and to the Results, and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting Protective Applications for any of the Results.

34.4 Where a third party such as a student or contractor is involved in the Project, the party engaging that student and/or contractor will ensure that such student and/or contractor assigns any Intellectual Property they may have in the Results in order to be able to give full effect to the provisions of this clause 9.

34.5 Each party hereby grants the other a royalty-free, non-exclusive licence to use its Background Intellectual Property for the purpose of carrying out the Project, but for no other purpose. Neither party may grant any sub-licence to use the other party's Background Intellectual Property.

34.6 Each of the parties will notify the other promptly after identifying any Result - that it believes is patentable, and will supply the other with copies of that Result.

34.7 The Institute hereby grants to the Company a worldwide, non-exclusive, [royalty free,] perpetual, unencumbered licence to use the Intellectual Property in the Results for any purpose in the Field

34.8 The Institute shall keep and instruct its officers, employees, representatives, students, post-doctoral fellows, and agents to keep signed, witnessed, and dated written records of all such Results and will furnish the Company promptly with complete information in respect thereof, and will do all reasonable things necessary to protect the interests of the Company therein.

34.9 Further to the provisions of clause 9.3, the Institute shall be responsible for arranging for the drafting of patent applications and for ensuring that sufficient information (but not excessive information) is incorporated into such patent applications. For the avoidance of doubt, any such patent application will be in the sole name of the Institute. The Institute shall submit all such patent applications to the Company for review and written approval at least 45 days prior to such patent applications being filed with any patent registry. The Company shall have the right to suggest modifications to the patent applications. If the Company objects to the filing of the patent application, in whole or in part, the Company will specify that portion of the submitted material it objects to and the reason for such objection. Upon objection by the Company, the Institute agrees to discuss the objection with the Company and to consider the deletion of any Confidential Information in such patent application to which the Company objects. Nothing in this clause will preclude an agreement between the parties for immediate filing of a prompt response to all patent application filing requests. However, any such agreement must be in writing and signed by the parties.

34.10 The parties acknowledge that in the event a proprietary application software development package or any other proprietary software is licensed pursuant to the Project, a copyright work comprising part of the Results which is based on or which has utilized that software may also fall within the meaning of "adaptation" (as that term is defined in Section 43(2) of the Irish Copyright and Related Rights Act 2000) of such software development package. The Intellectual Property in and to such adaptation shall belong to the Institute.

34.11 The Institute shall not assign, transfer, licence, lease, sub-licence or otherwise permit any third party to use or have access to the Results during the Option Period. The parties shall treat the Results as Confidential Information at all times during the Option Period.

34.12 The Institute and the Company will, if the Company gives the Institute written notice ("**Option Notice**") at any time during the Option Period, negotiate the terms on which the Institute will grant to the Company an exclusive licence to use the Intellectual Property in and to the Results (or any part thereof) ("**Exclusive Licence**").

34.13 Following the Institute's receipt of an Option Notice, the parties will negotiate in good faith, for a period of up to 90 days after the date of receipt of the Option Notice ("**Negotiation Period**") the terms of the grant of the Exclusive Licence (including, without limitation, the payment by the Company of any costs incurred by the Institute in connection with filing and prosecuting any Protective Applications in connection with the Results). If the parties are unable to agree the terms of the grant of the Exclusive Licence within the Negotiation Period, the Company's rights under clauses 9.12, 9.13 and 9.14 (but not the licence in clause 9.7) will lapse.

34.14 The Institute will not, during the Negotiation Period,

(a) negotiate with any third party with a view to granting a licence to use the Results; or

(b) grant a licence of any Result to any third party.

34.15 If the Institute grants the Exclusive Licence during the Option Period then licence at clause 9.7 shall be extinguished immediately.

34.16 If the Company does not exercise the Option during the Option Period then from the end of the Option Period, the Institute shall be free to licence the Results to third parties.

35. Limitation of Liability and Indemnity

35.1 Save in respect of death or personal injury caused by the negligence of the Institute, and subject to the provisions of clause 10.2, the Institute'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 aggregate of all the sums actually paid by the Company to the Institute hereunder in any 12 month period immediately preceding the event leading to the loss or damage.

35.2 The Institute shall not be liable for any indirect, consequential or special loss or damage and/or for any of the following:

(a) loss of profits;

(b) loss of goodwill;

(c) loss of business;

(d) loss of anticipated savings; or

(e) loss arising from delay.

35.3 Save as expressly set out in this Agreement, all warranties, conditions, representations, statements terms and provisions, express or implied by statute, common law or otherwise, are hereby excluded by the Institute to the fullest extent permitted by law.

35.4 The Company undertakes to defend the Institute from and against any claim or action brought against the Institute in connection with any third party allegation of personal injury or property damage arising from the design, manufacture, use, licensing or sale of products which utilize or incorporate, directly or indirectly, the outcome of the Project including, without limitation, the Results ("**Product Claim**") and agrees to fully indemnify, keep indemnified and hold harmless the Institute from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any Product Claim.

35.5 The Company undertakes to defend the Institute from and against any claim or action brought against the Institute that the use of the Company Background Intellectual Property and/or the outcome of the Project including, without limitation, the Results in accordance with the terms of this Agreement infringes any Intellectual Property of a third party ("**IP Claim**") and agrees to fully indemnify, keep indemnified and hold harmless the Institute from and against all costs, claims, demands, liabilities, expenses, damages or losses (including all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any IP Claim.

36. Progress Meetings

The parties shall procure that their Representatives will meet at intervals to be agreed.

37. Termination

37.1 Notwithstanding anything else contained herein, this Agreement may be terminated:

(a) by either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or

(b) by either party forthwith on giving notice in writing to the other if the other party shall have a receiver, examiner or administrator appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

38. Effects of termination

38.1 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

38.2 On the termination of this Agreement by the Institute due to the material breach by the Company or by virtue of a receiver, examiner or administrator appointed to the Company, the Company shall be liable to pay to the Institute all Fees and/or Royalties payable to the Institute in respect of performance of the Project by the Institute to the Company insofar as not previously paid by it and the Institute shall have no further obligation to the Company hereunder.

38.3 Clauses 1, 6 (in respect of any future Royalties), 7, 8, 9, 10, 14, 22 and 25 shall survive expiry or termination of this Agreement, howsoever arising.

39. Notices

39.1 Any notice or communication which a party is required or authorised by this Agreement to serve on another party shall be sufficiently served if sent to the other party at the address specified below:

(a) by hand; or

(b) by registered post or recorded delivery; or

(c) by facsimile transmission confirmed by registered post or recorded delivery; or

(d) by electronic mail confirmed by a recorded delivery message.

39.2 Notices sent by registered post or recorded delivery shall be deemed to have been served three days following the date of posting. Notices sent by facsimile transmission shall be deemed to have been served on the date of transmission, if transmitted before 1600 hours on a working day, but otherwise on the next working day provided that confirmation by registered post or recorded delivery is sent the same day. Notices sent by electronic mail where such is an established means of communication between the parties shall be deemed to have been served on the day of transmission, if transmitted before 1600 hours on a working day but otherwise on the next working day. In all other cases notices and other communications will be deemed to have been served on the day they were actually received.

39.3 The parties hereby agree that:

(a) words in electronic form shall be deemed to be “writing” for the purposes of all applicable legislation where “writing” is required;

(b) electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the parties; and

(c) the parties shall agree the format of electronic communications between them.

40. Force majeure

Neither party shall be liable to the other if its performance of its obligations (except obligations to make payments) under this Agreement is prevented or hindered due to any circumstance outside its control.

41. Amendment

Any variation to the performance of the Project shall only take effect upon written agreement of the terms between the parties.

42. **Further assurance**

The parties hereto shall use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as may be reasonably required from time to time for the purpose of giving each party hereto the full benefit of the provisions of this Agreement.

43. **Waiver of remedies**

No delay or failure of either party in enforcing against the other party any term or condition of this Agreement and no partial exercise by either party of any right hereunder shall be deemed to be a waiver of any right of that party under this Agreement.

44. **Entire agreement**

44.1 The parties have read and understood this Agreement and agree that it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof and supersedes all proposals, representations, understanding and prior agreements whether oral or written and all other communications between them relating thereto.

44.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to it for breach of this Agreement shall be for breach of contract under the terms of this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

45. **No Agency**

No provision of this Agreement creates a partnership between the parties and 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 commitments on the other's behalf.

46. **Sub-contracts**

This Agreement is personal to the Company and it may not assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without the prior written consent of the Institute. The Institute shall be entitled to assign and/or sub-contract any of its rights and/or obligations under this Agreement.

47. **Dispute Resolution**

47.1 Both parties to this Agreement shall seek to resolve any dispute between them arising out of, or relating to, this Agreement, amicably.

47.2 All disputes between the parties arising out of or relating to this Agreement shall be referred, in the first instance, by either party, to the Project Management Team for resolution.

47.3 If any dispute cannot be resolved by the Project Management Team within a period of fourteen (14) days following referral, then, the dispute shall be referred to the Director/President of the Institute and a representative of the Company at CEO level, for resolution.

47.4 If the dispute cannot be resolved by the parties' nominees referred to in clause 22.3 above within a period of fourteen (14) days following referral, then it may be referred by either party to an expert (the "**Expert**") who shall be deemed to act as an expert and not as arbitrator.

47.5 The Expert shall be selected by mutual agreement of the parties or, failing agreement, within fourteen (14) days after a request by one party to the other, shall be chosen at the request of either party by the President for the time being of the Law Society of Ireland, who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.

47.6 Fourteen (14) days after the Expert has accepted the appointment the parties shall submit a written report on the dispute to the Expert and to each other and seven (7) days thereafter shall submit any written replies they wish to the Expert and to each other.

47.7 Both parties shall afford the Expert all necessary assistance that the Expert requires to consider the dispute, including, but not limited to, full access to the Project and any documentation or correspondence relating to the subject matter of the dispute.

47.8 The Expert shall be instructed to deliver his determination to the parties within fourteen (14) days after the submission of the written reports pursuant to clause 22.6, or after the expiration of such longer period as is required by the Expert in which to consider the parties' reports and documentation or correspondence provided, which date shall not be greater than a period of sixty (60) days after the submission of the written reports pursuant to clause 22.6.

47.9 The Expert shall have the same powers to require any party to produce any documents or information to him and the other party and each party shall, in any event, supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

47.10 The fees of the Expert shall be borne by the parties in the proportion as shall be determined by the Expert, having regard (amongst other things) to the conduct of the parties.

47.11 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

47.12 The parties, and the Expert, shall treat as Confidential Information all information obtained in relation to the reference to the Expert, the fact that a dispute has been referred to the Expert, its occurrence and the decision of the Expert arising therefrom.

47.13 All communications relating to the reference to the Expert shall take place in writing between the Representatives of either party, or other nominated representatives of the parties, and the Expert.

47.14 At any time prior to the decision of the Expert being communicated to the parties they may agree a settlement of the dispute and where applicable a revised timetable or difference referred to the Expert. In such event, the Expert shall be entitled to recover from the parties fees in respect of time already spent on the reference and all reasonable expenses incurred in relation to it which shall be borne by and between the parties in such proportion as the parties shall agree as part of their settlement.

48. **Severability**

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality, or such provision may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

49. **Counterparts**

This Agreement may be executed in separate counterparts by each party, but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

50. **Law**

Each party irrevocably agrees that this Agreement and all matters arising from it are governed by and construed in accordance with the laws of Ireland, whose courts shall have exclusive jurisdiction over all disputes arising in connection with this Agreement.

EXECUTED under hand in two originals the day and year first before written

SIGNED for and on behalf of

INSTITUTE OF ART, DESIGN AND TECHNOLOGY
By:
Signature:
Title:
Witness:
SIGNED for and on behalf of

[ ]
By:
Signature:
Title:

Witness:

SCHEDULE 1

PROJECT

SCHEDULE 2

COSTS, FEES AND ROYALTIES

TEMPLATE COLLABORATION AGREEMENT

IADT 3 - Institute owns IP in Results, non-exclusive licence to Company, option to negotiate an assignment of all IP, funding by Funding Agency.

THIS AGREEMENT is made on the ● day of ● 200●

PARTIES:

(1) **INSTITUTE OF ART, DESIGN AND TECHNOLOGY**, a statutory body, located in Kill Avenue, Dún Laoghaire, Co Dublin (the "**Institute**"); and

(2) [*Name of company*] a company incorporated in [*name of state in which company incorporated*] (under company registration number [*number*] whose registered office is at [*address*]*)* (the "**Company**").

Each of the Institute and the Company may be hereinafter referred to as a "**party**" and collectively as "**parties**".

BACKGROUND:

The research project contemplated by this Agreement is of mutual interest and benefit to the Institute and to the Company, will further the instructional and research objectives of the Institute in a manner consistent with its status as an educational institution, and may result in benefits for both the Company and the Institute through inventions, improvements, and/or discoveries.

THE PARTIES AGREE as follows:

51. **Definitions and Interpretations**

51.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"**Assignment**"	is defined in clause 9.13.
"Background Intellectual Property"	means Intellectual Property (excluding Intellectual Property in and to Results), in the same or related fields to the research conducted in the course of the Project, owned, licensed to or otherwise controlled by one of the parties prior to the Effective Date and provided (whether before or after the Effective Date) by that party to the other for use in the Project;
"Confidential Information"	means all information obtained by one party from the other pursuant to this Agreement which is expressly marked as confidential or which is manifestly of a confidential nature or which is confirmed in writing to be confidential within 7 days of its disclosure;

"Effective Date"	means [*insert date of commencement of Project*];
"Fees"	means the amounts set out in Schedule 2 and payable in accordance with the provisions of clause 6;
"Field"	means ●;
"Funding"	means the funding for the Project received from the Funding Agency, such funding being provided on the basis of certain terms and conditions;
"Funding Agency"	means ●;
"Intellectual Property"	means patents, inventions, Know-how, trade secrets and other confidential information, rights in design (registered and unregistered), copyright (including, without limitation, rights in computer software), data, database rights and sui generis rights, rights affording equivalent protection to copyright, semiconductor topography rights, trade marks, service marks, logos, domain names, business names, trade names, brand names, certification marks, assumed names and other indicators or origin, rights in any drawings, designs, plans, specifications, manuals, computer software, assets, inventor's certificates and invention disclosures, writings and other works, whether copyright or not, bills of material, moral rights and all other industrial or intellectual property or other rights or forms of protection of a similar nature or having similar effect in any part of the world and rights in and in relation to them and, where appropriate, applications for any of them in any country or jurisdiction, rights in the nature of unfair competition rights, rights to sue for passing-off, the right to apply for any of them and all other information necessary for the technical exploration of any of the same and all registrations;

"Know-how"	means unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;
"Option"	means the option set out in clause 9.13;
"Option Period"	means the period commencing on ● and ending on ●;
"Project"	means the research work or intellectual activity as described in Schedule 1;
"Project Management Team"	means one representative of each of the parties, appointed from time to time;
"Protective Applications"	means applications for patent, design, trade mark or other registration available for the protection of Intellectual Property;
"Publication"	means any written, oral or other public disclosure of Results, including the public use or sale of an invention based on the Results;
"Representative"	means the representative of a party appointed pursuant to the provisions of clause 4;
"Results"	means all information, Know-how, results, software, inventions, works, discoveries and creations, made or conceived or first reduced to practice or writing in the course of the Project;
"Royalties"	means the amounts set out in Schedule 2 and payable in accordance with the provisions of clause 6; and
"Term"	means the period of • from the Effective Date.

51.2 In this Agreement the following interpretations shall apply:

(a) the headings in this Agreement are for ease of reference only and shall not affect the interpretation or meaning of this Agreement;

(b) words such as “hereunder”, “hereto”, “hereof” and “herein” and other words commencing with “here” shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular section or clause thereof;

(c) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, consolidated, modified, extended or replaced in whole or in part, by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;

(d) a reference to a party shall mean any of the individual parties to this Agreement, as appropriate, together with their respective permitted successors and assigns;

(e) nothing in this Agreement shall affect any statutory rights or provisions granted by mandatory statutory law or regulatory authority, which cannot be waived or limited by contract. In the event and to the extent only of any conflict or ambiguity between the terms of this Agreement and mandatory statutory law or regulatory authority, then, the latter shall prevail;

(f) a reference to “an” “the” or “a” shall refer to the particular matter or item in question;

(g) each party shall comply with any express obligation in this Agreement to comply with any document, statute, order, enactment, regulation or other similar instrument that is referenced in this Agreement; and

(h) no provisions of this Agreement shall be interpreted as requiring or permitting any act or omission by either party which is contrary to any mandatory statutory law or regulatory authority.

52. Scope of Project

52.1 The Institute and the Company shall commence the Project promptly on the Effective Date, shall carry on the Project for the Term, and shall use reasonable endeavours to perform the Project substantially in accordance with the terms and conditions of this Agreement.

52.2 If the Agreement is entered into after the Effective Date, it will apply retrospectively to work carried out in relation to the Project on or after the Effective Date.

52.3 The Institute does not undertake that the Project will lead to any particular outcome or Results and does not guarantee a successful outcome to the Project.

52.4 The Company and the Institute may at any time amend the Project (without breaching the terms and conditions of the Funding) by mutual written agreement.

52.5 The Company and the Institute shall at all times comply with the terms and conditions of the Funding.

53. Duties of the Company

The Company shall provide the Institute with all necessary information, equipment, facilities, materials, support and co-operation (including ensuring that employees and independent contractors of the Company co-operate fully with the Institute) that may be reasonably required to enable the Institute to carry out its obligations under this Agreement.

54. Representatives

Each party shall nominate in writing upon the execution of this Agreement the person who will act as its representative for the purposes of this Agreement ("**Representative**") and who will be responsible for providing any information which may be required by the other party to perform its obligations hereunder.

55. Warranties and Representations

55.1 Each of the parties represents and warrants to each other that:

(a) it has full right and authority to enter into this Agreement and perform its obligations under this Agreement under the laws of the Republic of Ireland and the internal rules of that party and that, whereever and whenever required, such party has or shall secure in a timely manner all necessary notifications, authorisations and approvals;

(b) there are no outstanding obligations or agreements to which it is party that are inconsistent or in conflict with the entering into or performance of this Agreement;

(c) it is the owner of, or is otherwise fully entitled to provide and licence, the Background Intellectual Property which it makes available to the other party pursuant to the provisions of this Agreement;

(d) except to the extent disclosed to the other party at the time of making the Background Intellectual Property available, that Background Intellectual Property is unencumbered; and

(e) it will not assign, encumber or dispose of the Background Intellectual Property during such time as it is necessary for the performance of the Project.

56. Payment of Fees and Expenses

56.1 Unless otherwise agreed and set out in Schedule 3, the Institute shall render itemised invoices to the Company in respect of the Fees and/or Royalties, monthly in arrears.

56.2 The Company shall reimburse the Institute for all reasonable travelling and subsistence expenses properly incurred in conducting the Project, when such costs are outside the Project's agreed travel and subsistence rules and when agreed by the parties in advance.

56.3 All charges (and/or any other applicable taxes) payable by the Company under this Agreement shall be due to be paid within 30 days of the date of invoice sent to the Company.

56.4 If the payment of any sum due under this Agreement by the Company shall not be paid by its due date, the Institute shall be entitled to charge interest at 3% above EURIBOR or at the then legal rate, whichever is lower, on the amount of the delayed payment for the period of delay.

56.5 Notwithstanding the provisions of clause 6.4 above, if any sum due under this Agreement is not paid within 30 days of the due date, the Institute may, at its option and without prejudice to any rights it may have under this Agreement or otherwise, terminate or suspend performance of this Agreement.

56.6 All charges payable under this Agreement are exclusive of value added tax, which shall be paid by the Company at the rate and in the manner for the time being prescribed by law.

56.7 For the avoidance of doubt, under no circumstances shall any payment made by the Company to the Institute in connection with this Agreement be funded (whether in whole or in part) by a European Union grant or other funding or by a grant or other funding from an Irish government body that is co-funded by the European Union.

57. Confidential Information

57.1 Each party shall treat as confidential the Confidential Information of the other (the "**Disclosing Party**") and shall not reproduce it or disclose it to third parties without the prior written consent of the Disclosing Party.

57.2 The obligation of confidentiality set out in clause 7.1 shall not apply to the recipient (the "**Receiving Party**") of Confidential Information which:

(a) is or becomes public knowledge other than by breach of this clause 7;

(b) is in the possession of the Receiving Party without restriction in relation to the disclosure before the date of receipt from the Disclosing Party;

(c) is independently developed by the Receiving Party without access to Confidential Information;

(d) is received by the Receiving Party from a third party that has received it without restriction and who is under no obligation restricting its disclosure;

(e) is required to be disclosed to the Receiving Party's professional advisers, provided that such disclosure is to the extent necessary only for such advisers, and on terms no less onerous than those set out in this clause 7;

(f) is required to be disclosed by law or final mandatory order of a court or other competent authority to which the Receiving Party is subject; or

(g) is released from the provisions of this clause 7 in accordance with the provisions of clause 8.

57.3 Each party shall ensure that its respective employees and agents who participate in the Project shall comply with the obligations of confidentiality set out in this clause 7 as though they were parties to this Agreement and each party shall ensure that where any of the aforementioned employees cease to be employed by that party, they shall continue to be bound by such obligations of confidentiality.

57.4 Each party agrees to use its Representative for sending, receiving and storing Confidential Information under this Agreement.

57.5 Each party shall (through its Representative), on request, deliver a copy of Confidential Information in tangible form to the other party within thirty (30) days of receipt of a written request. A party shall be entitled to make such request from the date of initial disclosure of such information to that party by the other party where such disclosure is in a form other than written form.

57.6 Upon termination or expiration of the Project and/or the Agreement (and except as required to benefit from any licenses granted under clause 9.7), each party agrees to use best efforts to locate and return or verify the destruction of all existing Confidential Information (including tangible products or materials) received from the other party pursuant to this Agreement, if requested to do so in writing by the Disclosing Party; provided, however, each party may retain a copy of each document containing Confidential Information of the other party for archival purposes.

58. Announcement and Publication

58.1 Each party agrees that it will not refer to the terms of this Agreement or use the other's name in any advertising, promotional materials, or publicity, without the prior approval of the other party. Neither party will use any trade name, trademark, trade device, service mark or symbol owned by the other party without first obtaining the prior written approval of such use from such other party. By entering into this Agreement, neither of the parties endorses any product or service provided by the other party. Neither party shall in any way imply that this Agreement is an endorsement of any such product or service by another party without obtaining the prior written permission of such other party.

58.2 The Company recognises that in accordance with its statutory functions it is Institute policy that the Results be published and agrees that authorised Institute personnel may make Publications (including, but not limited to):

(a) making presentations at seminars, symposia, national, or regional professional meetings; and

(b) publishing in journals, theses or dissertations, or otherwise of their own choosing, methods and Results in accordance with normal academic practice;

provided however that the Company shall have been furnished copies of any proposed Publication at least 30 days in advance of the making of the proposed Publication.

58.3 The Company shall have 30 days after receipt of said copies, to object to such proposed Publication if in the Company's reasonable opinion a delay of Publication is necessary in order to protect its commercial interests, or the commercial use to the Company or its licensees of information derived from the Project, including the need to file Protective Applications with respect to the information proposed to be included in the relevant Publication.

58.4 In the event that the Company makes such objection, the Institute shall refrain and shall ensure that its personnel shall refrain from making such Publication for a maximum of 60 days from the date of receipt of such objection in order for the Company to obtain appropriate Protective Applications.

58.5 A delay imposed on submission for Publication as a result of a requirement made by the Company shall not exceed 90 days from the date of receipt of the Results by the Company, although the Institute will not unreasonably refuse a request from the Company for additional delay in the event that Intellectual Property in the Results might otherwise be unreasonably jeopardised.

58.6 Nothing in this Agreement shall prevent:

(a) any registered student of the Institute from submitting for a degree of the Institute a thesis based on Results or Background Intellectual Property;

(b) the examination of such thesis by examiners appointed by the Institute; or

the deposit of such a thesis in a library of the Institute in accordance with the relevant procedures of the Institute. However, the Institute shall take all reasonable measures to protect the confidentiality of the Results if requested by the Company.

58.7 For the avoidance of doubt, a failure on the part of the Company to object to a Publication within any of the time limits set out in clauses 8.2 to 8.5 shall be deemed to be consent from the Company to such Publication.

58.8 For the avoidance of doubt, the Company shall not exercise its rights under this clause 8 to unreasonably delay a Publication.

59. Ownership of Intellectual Property

59.1 Neither party shall, in respect of the Intellectual Property (including, without limitation, Background Intellectual Property), products and/or services of the other, represent, either directly or indirectly, that such Intellectual Property, product and/or service of the other is owned or endorsed by the representing party, without the prior written consent of the other party.

59.2 This Agreement does not affect the ownership of any Background Intellectual Property or of the Intellectual Property in and to any other technology, design, work, invention, software, data, technique, Know-how, or materials that are not Results. No licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement.

59.3 The parties agree that (until Assignment (if any)) subject to the provisions of clause 9.7, the Institute will have full right, title and interest in the Intellectual Property in and to the Results, and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting Protective Applications for any of the Results.

59.4 Where a third party such as a student or contractor is involved in the Project, the party engaging that student and/or contractor will ensure that such student and/or contractor assigns any Intellectual Property they may have in the Results in order to be able to give full effect to the provisions of this clause 9.

59.5 Each party hereby grants the other a royalty-free, non-exclusive licence to use its Background Intellectual Property for the purpose of carrying out the Project, but for no other purpose. Neither party may grant any sub-licence to use the other party's Background Intellectual Property.

59.6 Each of the parties will notify the other promptly after identifying any Result that it believes is patentable, and will supply the other with copies of that Result.

59.7 The Institute hereby grants to the Company a worldwide, non-exclusive, [royalty free,] perpetual, unencumbered licence to use the Intellectual Property in the Results for any purpose in the Field.

59.8 The Institute shall keep and instruct its officers, employees, representatives, students, post-doctoral fellows, and agents to keep signed, witnessed, and dated written records of all such Results and will furnish the Company promptly with complete information in respect thereof, and will do all reasonable things necessary to protect the interests of the Company therein.

59.9 Subject to the provisions of clause 9.3, prior to Assignment (or after the end of the Option Period if there is no Assignment), the Institute shall be responsible for arranging for the drafting of patent applications and for ensuring that sufficient information (but not excessive information) is incorporated into such patent applications. For the avoidance of doubt, any such patent application will be in the sole name of the Institute. The Institute shall submit all such patent applications to the Company for review and written approval at least 45 days prior to such patent applications being filed with any patent registry. The Company shall have the right to suggest modifications to the patent applications. If the Company objects to the filing of the patent application, in whole or in part, the Company will specify that portion of the submitted material it objects to and the reason for such objection. Upon objection by the Company, the Institute agrees to discuss the objection with the Company and to consider the deletion of any Confidential Information in such patent application to which the Company objects. Nothing in this clause will preclude an agreement between the parties for immediate filing of a prompt response to all patent application filing requests. However, any such agreement must be in writing and signed by the parties.

59.10 After Assignment, the Company shall be fully responsible for the drafting of patent applications and for all related costs, expenses and obligations. In the event that the Institute has commenced a patent application prior to Assignment, the Company shall reimburse all of the Institute's costs and expenses incurred in relation to such patent application prior to Assignment and shall take over such application from the date of Assignment. For the avoidance of doubt, any such patent application (after Assignment) will be in the sole name of the Company and the Institute agrees that, after Assignment, it shall use all reasonable endeavours to promptly transfer into the sole name of the Company any such patent application or resulting patent.

59.11 The parties acknowledge that in the event that a proprietary application software development package or any other proprietary software is licensed pursuant to the Project, a copyright work comprising part of the Results which is based on or which has utilized that software may also fall within the meaning of "adaptation" (as that term is defined in Section 43(2) of the Irish Copyright and Related Rights Act 2000) of such software development package. The Intellectual Property in and to such adaptation shall belong to the Institute prior to Assignment and to the Company after Assignment.

59.12 The Institute shall not assign, transfer, licence, lease, sub-licence or otherwise permit any third party to use or have access to the Results during the Option Period. The parties shall treat the Results as Confidential Information at all times during the Option Period.

59.13 The Institute and the Company will, if the Company gives the Institute written notice ("**Option Notice**") at any time during the Option Period, negotiate the terms on which the Institute will assign to the Company the Intellectual Property in and to some or all of the Results ("**Assignment**").

59.14 Following the Institute's receipt of an Option Notice, the parties will negotiate in good faith, for a period of up to 90 days after the date of receipt of the Option Notice ("**Negotiation Period**") the terms of the Assignment (including, without limitation, the payment by the Company of any costs incurred by the Institute in connection with filing and prosecuting any Protective Applications in connection with the Results). If the parties are unable to agree the terms of the Assignment within the Negotiation Period, the Company's rights under clauses 9.13, 9.14 and 9.15 (but not the licence in clause 9.7) will lapse.

59.15 The Institute will not, during the Negotiation Period,

(a) negotiate with any third party with a view to granting a licence to use the Results or assigning the Intellectual Property in and to the Results; or

(b) grant a licence of any Result or assign the Intellectual Property in and to any Result to any third party.

59.16 Without prejudice to the provisions of this clause 9, the Institute and each employee and student of the Institute will have the irrevocable, royalty-free right to use the Results for the purposes of academic teaching and academic research, including research projects that are sponsored by any third party. The rights in this clause 9.16 are subject to the provisions of clause 8.

59.17 The licence at clause 9.7 shall be extinguished immediately upon Assignment.

59.18 If the Company does not exercise the Option during the Option Period then from the end of the Option Period, the Institute shall be free to licence or assign the Results to third parties.

60. Limitation of Liability and Indemnity

60.1 Save in respect of death or personal injury caused by the negligence of the Institute, and subject to the provisions of clause 10.2, the Institute'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 aggregate of all the sums actually paid by the Company to the Institute hereunder in any 12 month period immediately preceding the event leading to the loss or damage.

60.2 The Institute shall not be liable for any indirect, consequential or special loss or damage and/or for any of the following:

(a) loss of profits;

(b) loss of goodwill;

(c) loss of business;

(d) loss of anticipated savings; or

(e) loss arising from delay.

60.3 Save as expressly set out in this Agreement, all warranties, conditions, representations, statements terms and provisions, express or implied by statute, common law or otherwise, are hereby excluded by the Institute to the fullest extent permitted by law.

60.4 The Company undertakes to defend the Institute from and against any claim or action brought against the Institute in connection with any third party allegation of personal injury or property damage arising from the design, manufacture, use, licensing or sale of products which utilize or incorporate, directly or indirectly, the outcome of the Project including, without limitation, the Results ("**Product Claim**") and agrees to fully indemnify, keep indemnified and hold harmless the Institute from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any Product Claim.

60.5 The Company undertakes to defend the Institute from and against any claim or action brought against the Institute that the use of the Company Background Intellectual Property and/or the outcome of the Project including, without limitation, the Results in accordance with the terms of this Agreement infringes any Intellectual Property of a third party ("**IP Claim**") and agrees to fully indemnify, keep indemnified and hold harmless the Institute from and against all costs, claims, demands, liabilities, expenses, damages or losses (including all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any IP Claim.

61. Progress Meetings

The parties shall procure that their Representatives will meet at intervals to be agreed.

62. Termination

62.1 Notwithstanding anything else contained herein, this Agreement may be terminated:

(a) by either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or

(b) by either party forthwith on giving notice in writing to the other if the other party shall have a receiver, examiner or administrator appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

63. **Effects of termination**

63.1 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

63.2 On the termination of this Agreement by the Institute due to the material breach by the Company or by virtue of a receiver, examiner or administrator appointed to the Company, the Company shall be liable to pay to the Institute all Fees and/or Royalties payable to the Institute in respect of performance of the Project by the Institute to the Company insofar as not previously paid by it and the Institute shall have no further obligation to the Company hereunder.

63.3 Clauses 1, 6 (in respect of any future Royalties), 7, 8, 9, 10, 14, 22 and 25 shall survive expiry or termination of this Agreement, howsoever arising.

64. **Notices**

64.1 Any notice or communication which a party is required or authorised by this Agreement to serve on another party shall be sufficiently served if sent to the other party at the address specified below:

(a) by hand; or

(b) by registered post or recorded delivery; or

(c) by facsimile transmission confirmed by registered post or recorded delivery; or

(d) by electronic mail confirmed by a recorded delivery message.

64.2 Notices sent by registered post or recorded delivery shall be deemed to have been served three days following the date of posting. Notices sent by facsimile transmission shall be deemed to have been served on the date of transmission, if transmitted before 1600 hours on a working day, but otherwise on the next working day provided that confirmation by registered post or recorded delivery is sent the same day. Notices sent by electronic mail where such is an established means of communication between the parties shall be deemed to have been served on the day of transmission, if transmitted before 1600 hours on a working day but otherwise on the next working day. In all other cases notices and other communications will be deemed to have been served on the day they were actually received.

64.3 The parties hereby agree that:

(a) words in electronic form shall be deemed to be “writing” for the purposes of all applicable legislation where “writing” is required;

(b) electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the parties; and

(c) the parties shall agree the format of electronic communications between them.

65. **Force majeure**

Neither party shall be liable to the other if its performance of its obligations (except obligations to make payments) under this Agreement is prevented or hindered due to any circumstance outside its control.

66. **Amendment**

Any variation to the performance of the Project shall only take effect upon written agreement of the terms between the parties.

67. **Further assurance**

The parties hereto shall use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as may be reasonably required from time to time for the purpose of giving each party hereto the full benefit of the provisions of this Agreement.

68. **Waiver of remedies**

No delay or failure of either party in enforcing against the other party any term or condition of this Agreement and no partial exercise by either party of any right hereunder shall be deemed to be a waiver of any right of that party under this Agreement.

69. **Entire agreement**

69.1 The parties have read and understood this Agreement and agree that it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof and supersedes all proposals, representations, understanding and prior agreements whether oral or written and all other communications between them relating thereto.

69.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to it for breach of this Agreement shall be for breach of contract under the terms of this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

70. **No Agency**

No provision of this Agreement creates a partnership between the parties and 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 commitments on the other's behalf.

71. **Sub-contracts**

This Agreement is personal to the Company and it may not assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without the prior written consent of the Institute. The Institute shall be entitled to assign and/or sub-contract any of its rights and/or obligations under this Agreement.

72. **Dispute Resolution**

72.1 Both parties to this Agreement shall seek to resolve any dispute between them arising out of, or relating to, this Agreement, amicably.

72.2 All disputes between the parties arising out of or relating to this Agreement shall be referred, in the first instance, by either party, to the Project Management Team for resolution.

72.3 If any dispute cannot be resolved by the Project Management Team within a period of fourteen (14) days following referral, then, the dispute shall be referred to the Director/President of the Institute and a representative of the Company at CEO level, for resolution.

72.4 If the dispute cannot be resolved by the parties' nominees referred to in clause 22.3 above within a period of fourteen (14) days following referral, then it may be referred by either party to an expert (the "**Expert**") who shall be deemed to act as an expert and not as arbitrator.

72.5 The Expert shall be selected by mutual agreement of the parties or, failing agreement, within fourteen (14) days after a request by one party to the other, shall be chosen at the request of either party by the President for the time being of the Law Society of Ireland, who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.

72.6 Fourteen (14) days after the Expert has accepted the appointment the parties shall submit a written report on the dispute to the Expert and to each other and seven (7) days thereafter shall submit any written replies they wish to the Expert and to each other.

72.7 Both parties shall afford the Expert all necessary assistance that the Expert requires to consider the dispute, including, but not limited to, full access to the Project and any documentation or correspondence relating to the subject matter of the dispute.

72.8 The Expert shall be instructed to deliver his determination to the parties within fourteen (14) days after the submission of the written reports pursuant to clause 22.6, or after the expiration of such longer period as is required by the Expert in which to consider the parties' reports and documentation or correspondence provided, which date shall not be greater than a period of sixty (60) days after the submission of the written reports pursuant to clause 22.6.

72.9 The Expert shall have the same powers to require any party to produce any documents or information to him and the other party and each party shall, in any event, supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

72.10 The fees of the Expert shall be borne by the parties in the proportion as shall be determined by the Expert, having regard (amongst other things) to the conduct of the parties.

72.11 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

72.12 The parties, and the Expert, shall treat as Confidential Information all information obtained in relation to the reference to the Expert, the fact that a dispute has been referred to the Expert, its occurrence and the decision of the Expert arising therefrom.

72.13 All communications relating to the reference to the Expert shall take place in writing between the Representatives of either party, or other nominated representatives of the parties, and the Expert.

72.14 At any time prior to the decision of the Expert being communicated to the parties they may agree a settlement of the dispute and where applicable a revised timetable or difference referred to the Expert. In such event, the Expert shall be entitled to recover from the parties fees in respect of time already spent on the reference and all reasonable expenses incurred in relation to it which shall be borne by and between the parties in such proportion as the parties shall agree as part of their settlement.

73. Severability

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality, or such provision may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

74. Counterparts

This Agreement may be executed in separate counterparts by each party, but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

75. Law

Each party irrevocably agrees that this Agreement and all matters arising from it are governed by and construed in accordance with the laws of Ireland, whose courts shall have exclusive jurisdiction over all disputes arising in connection with this Agreement.

EXECUTED under hand in two originals the day and year first before written

SIGNED for and on behalf of

INSTITUTE OF ART, DESIGN AND TECHNOLOGY

By:

Signature:

Title:

Witness:

SIGNED for and on behalf of

●

By:

Signature:

Title:

Witness:

SCHEDULE 1

PROJECT

SCHEDULE 2

Costs, Fees and Royalties

TEMPLATE COLLABORATION AGREEMENT

IADT 4 - Company owns IP in Results, licence to Institute to use the Results for academic purposes, funding by Funding Agency.

THIS AGREEMENT is made on the ● day of ● 200●

PARTIES:

(1) **INSTITUTE OF ART, DESIGN AND TECHNOLOGY**, a statutory body, located in Kill Avenue, Dún Laoghaire, Co Dublin (the "**Institute**"); and

(2) [*Name of company*] a company incorporated in [*name of state in which company incorporated*] (under company registration number [*number*] whose registered office is at [*address*]*)* (the "**Company**").

Each of the Institute and the Company may be hereinafter referred to as a "**party**" and collectively as "**parties**".

BACKGROUND:

The research project contemplated by this Agreement is of mutual interest and benefit to the Institute and to the Company, will further the instructional and research objectives of the Institute in a manner consistent with its status as an educational institution, and may result in benefits for both the Company and the Institute through inventions, improvements, and/or discoveries.

THE PARTIES AGREE as follows:

76. **Definitions and Interpretations**

76.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"Background Intellectual Property"	means Intellectual Property (excluding Intellectual Property in and to Results), in the same or related fields to the research conducted in the course of the Project, owned, licensed to or otherwise controlled by one of the parties prior to the Effective Date and provided (whether before or after the Effective Date) by that party to the other for use in the Project;
"Confidential Information"	means all information obtained by one party from the other pursuant to this Agreement which is expressly marked as confidential or which is manifestly of a confidential nature or which is confirmed in writing to be confidential within 7 days of its disclosure;

"Effective Date"	means [*insert date of commencement of Project*];
"Fees"	means the amounts set out in Schedule 2 and payable in accordance with the provisions of clause 6;
"Funding"	means the funding for the Project received from the Funding Agency, such funding being provided on the basis of certain terms and conditions;
"Funding Agency"	means ●;
"Intellectual Property"	means patents, inventions, Know-how, trade secrets and other confidential information, rights in design (registered and unregistered), copyright (including, without limitation, rights in computer software), data, database rights and sui generis rights, rights affording equivalent protection to copyright, semiconductor topography rights, trade marks, service marks, logos, domain names, business names, trade names, brand names, certification marks, assumed names and other indicators or origin, rights in any drawings, designs, plans, specifications, manuals, computer software, assets, inventor's certificates and invention disclosures, writings and other works, whether copyright or not, bills of material, moral rights and all other industrial or intellectual property or other rights or forms of protection of a similar nature or having similar effect in any part of the world and rights in and in relation to them and, where appropriate, applications for any of them in any country or jurisdiction, rights in the nature of unfair competition rights, rights to sue for passing-off, the right to apply for any of them and all other information necessary for the technical exploration of any of the same and all registrations;

"Know-how"	means unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;
"Project"	means the research work or intellectual activity as described in Schedule 1;
"Project Management Team"	means one representative of each of the parties, appointed from time to time;
"Protective Applications"	means applications for patent, design, trade mark or other registration available for the protection of Intellectual Property;
"Publication"	means any written, oral or other public disclosure of Results, including the public use or sale of an invention based on the Results;
"Representative"	means the representative of a party appointed pursuant to the provisions of clause 4;
"Results"	means all information, Know-how, results, software, inventions, works, discoveries and creations, made or conceived or first reduced to practice or writing in the course of the Project;
"Royalties"	means the amounts set out in Schedule 2 and payable in accordance with the provisions of clause 6; and
"Term"	means the period of ● from the Effective Date.

76.2 In this Agreement the following interpretations shall apply:

(a) the headings in this Agreement are for ease of reference only and shall not affect the interpretation or meaning of this Agreement;

(b) words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular section or clause thereof;

(c) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, consolidated, modified, extended or replaced in whole or in part, by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;

(d) a reference to a party shall mean any of the individual parties to this Agreement, as appropriate, together with their respective permitted successors and assigns;

(e) nothing in this Agreement shall affect any statutory rights or provisions granted by mandatory statutory law or regulatory authority, which cannot be waived or limited by contract. In the event and to the extent only of any conflict or ambiguity between the terms of this Agreement and mandatory statutory law or regulatory authority, then, the latter shall prevail;

(f) a reference to “an” “the” or “a” shall refer to the particular matter or item in question;

(g) each party shall comply with any express obligation in this Agreement to comply with any document, statute, order, enactment, regulation or other similar instrument that is referenced in this Agreement; and

(h) no provisions of this Agreement shall be interpreted as requiring or permitting any act or omission by either party which is contrary to any mandatory statutory law or regulatory authority.

77. Scope of Project

77.1 The Institute and the Company shall commence the Project promptly on the Effective Date, shall carry on the Project for the Term, and shall use reasonable endeavours to perform the Project substantially in accordance with the terms and conditions of this Agreement.

77.2 If the Agreement is entered into after the Effective Date, it will apply retrospectively to work carried out in relation to the Project on or after the Effective Date.

77.3 The Institute does not undertake that the Project will lead to any particular outcome or Results and does not guarantee a successful outcome to the Project.

77.4 The Company and the Institute may at any time amend the Project (without breaching the terms and conditions of the Funding) by mutual written agreement.

77.5 The Company and the Institute shall at all times comply with the terms and conditions of the Funding.

78. **Duties of the Company**

The Company shall provide the Institute with all necessary information, equipment, facilities, materials, support and co-operation (including ensuring that employees and independent contractors of the Company co-operate fully with the Institute) that may be reasonably required to enable the Institute to carry out its obligations under this Agreement.

79. **Representatives**

Each party shall nominate in writing upon the execution of this Agreement the person who will act as its representative for the purposes of this Agreement ("**Representative**") and who will be responsible for providing any information which may be required by the other party to perform its obligations hereunder.

80. **Warranties and Representations**

80.1 Each of the parties represents and warrants to each other that:

(a) it has full right and authority to enter into this Agreement and perform its obligations under this Agreement under the laws of the Republic of Ireland and the internal rules of that party and that, whereever and whenever required, such party has or shall secure in a timely manner all necessary notifications, authorisations and approvals;

(b) there are no outstanding obligations or agreements to which it is party that are inconsistent or in conflict with the entering into or performance of this Agreement;

(c) it is the owner of, or is otherwise fully entitled to provide and licence, the Background Intellectual Property which it makes available to the other party pursuant to the provisions of this Agreement;

(d) except to the extent disclosed to the other party at the time of making the Background Intellectual Property available, that Background Intellectual Property is unencumbered; and

(e) it will not assign, encumber or dispose of the Background Intellectual Property during such time as it is necessary for the performance of the Project.

81. **Payment of Fees and Expenses**

81.1 Unless otherwise agreed and set out in Schedule 2, the Institute shall render itemised invoices to the Company in respect of the Fees and/or Royalties, monthly in arrears.

81.2 The Company shall reimburse the Institute for all reasonable travelling and subsistence expenses properly incurred in conducting the Project, when such costs are outside the Project's agreed travel and subsistence rules and when agreed by the parties in advance.

81.3 All charges (and/or any other applicable taxes) payable by the Company under this Agreement shall be due to be paid within 30 days of the date of invoice sent to the Company.

81.4 If the payment of any sum due under this Agreement by the Company shall not be paid by its due date, the Institute shall be entitled to charge interest at 3% above EURIBOR or at the then legal rate, whichever is lower, on the amount of the delayed payment for the period of delay.

81.5 Notwithstanding the provisions of clause 6.4 above, if any sum due under this Agreement is not paid within 30 days of the due date, the Institute may, at its option and without prejudice to any rights it may have under this Agreement or otherwise, terminate or suspend performance of this Agreement.

81.6 All charges payable under this Agreement are exclusive of value added tax, which shall be paid by the Company at the rate and in the manner for the time being prescribed by law.

81.7 For the avoidance of doubt, under no circumstances shall any payment made by the Company to the Institute in connection with this Agreement be funded (whether in whole or in part) by a European Union grant or other funding or by a grant or other funding from an Irish government body that is co-funded by the European Union.

82. Confidential Information

82.1 Each party shall treat as confidential the Confidential Information of the other (the "**Disclosing Party**") and shall not reproduce it or disclose it to third parties without the prior written consent of the Disclosing Party.

82.2 The obligation of confidentiality set out in clause 7.1 shall not apply to the recipient (the "**Receiving Party**") of Confidential Information which:

(a) is or becomes public knowledge other than by breach of this clause 7;

(b) is in the possession of the Receiving Party without restriction in relation to the disclosure before the date of receipt from the Disclosing Party;

(c) is independently developed by the Receiving Party without access to Confidential Information;

(d) is received by the Receiving Party from a third party that has received it without restriction and who is under no obligation restricting its disclosure;

(e) is required to be disclosed to the Receiving Party's professional advisers, provided that such disclosure is to the extent necessary only for such advisers, and on terms no less onerous than those set out in this clause 7;

(f) is required to be disclosed by law or final mandatory order of a court or other competent authority to which the Receiving Party is subject; or

(g) is released from the provisions of this clause 7 in accordance with the provisions of clause 8.

82.3 Each party shall ensure that its respective employees and agents who participate in the Project shall comply with the obligations of confidentiality set out in this clause 7 as though they were parties to this Agreement and each party shall ensure that where any of the aforementioned employees cease to be employed by that party, they shall continue to be bound by such obligations of confidentiality.

82.4 Each party agrees to use its Representative for sending, receiving and storing Confidential Information under this Agreement.

82.5 Each party shall (through its Representative), on request, deliver a copy of Confidential Information in tangible form to the other party within thirty (30) days of receipt of a written request. A party shall be entitled to make such request from the date of initial disclosure of such information to that party by the other party where such disclosure is in a form other than written form.

82.6 Upon termination or expiration of the Project and/or the Agreement (and except as required to benefit from any licenses granted under clause 9.6), each party agrees to use best efforts to locate and return or verify the destruction of all existing Confidential Information (including tangible products or materials) received from the other party pursuant to this Agreement, if requested to do so in writing by the Disclosing Party; provided, however, each party may retain a copy of each document containing Confidential Information of the other party for archival purposes.

83. Announcement and Publication

83.1 Each party agrees that it will not refer to the terms of this Agreement or use the other's name in any advertising, promotional materials, or publicity, without the prior approval of the other party. Neither party will use any trade name, trademark, trade device, service mark or symbol owned by the other party without first obtaining the prior written approval of such use from such other party. By entering into this Agreement, neither of the parties endorses any product or service provided by the other party. Neither party shall in any way imply that this Agreement is an endorsement of any such product or service by another party without obtaining the prior written permission of such other party.

83.2 The Company recognises that in accordance with its statutory functions it is Institute policy that the Results be published and agrees that authorised Institute personnel may make Publications (including, but not limited to):

(a) making presentations at seminars, symposia, national, or regional professional meetings; and

(b) publishing in journals, theses or dissertations, or otherwise of their own choosing, methods and Results in accordance with normal academic practice;

provided however that the Company shall have been furnished copies of any proposed Publication at least 30 days in advance of the making of the proposed Publication.

83.3 The Company shall have 30 days after receipt of said copies, to object to such proposed Publication if in the Company's reasonable opinion a delay of Publication is necessary in order to protect its commercial interests, or the commercial use to the Company or its licensees of information derived from the Project, including the need to file Protective Applications with respect to the information proposed to be included in the relevant Publication.

83.4 In the event that the Company makes such objection, the Institute shall refrain and shall ensure that its personnel shall refrain from making such Publication for a maximum of 60 days from the date of receipt of such objection in order for the Company to obtain appropriate Protective Applications.

83.5 A delay imposed on submission for Publication as a result of a requirement made by the Company shall not exceed 90 days from the date of receipt of the Results by the Company, although the Institute will not unreasonably refuse a request from the Company for additional delay in the event that Intellectual Property in the Results might otherwise be unreasonably jeopardised.

83.6 Nothing in this Agreement shall prevent:

(a) any registered student of the Institute from submitting for a degree of the Institute a thesis based on Results or Background Intellectual Property;

(b) the examination of such thesis by examiners appointed by the Institute; or

the deposit of such a thesis in a library of the Institute in accordance with the relevant procedures of the Institute. However, the Institute shall take all reasonable measures to protect the confidentiality of the Results if requested by the Company.

83.7 For the avoidance of doubt, a failure on the part of the Company to object to a Publication within any of the time limits set out in clauses 8.2 to 8.5 shall be deemed to be consent from the Company to such Publication.

83.8 For the avoidance of doubt, the Company shall not exercise its rights under this clause 8 to unreasonably delay a Publication.

84. Ownership of Intellectual Property

84.1 Neither party shall, in respect of the Intellectual Property (including, without limitation, Background Intellectual Property), products and/or services of the other, represent, either directly or indirectly, that such Intellectual Property, product and/or service of the other is owned or endorsed by the representing party, without the prior written consent of the other party.

84.2 This Agreement does not affect the ownership of any Background Intellectual Property or of the Intellectual Property in and to any other technology, design, work, invention, software, data, technique, Know-how, or materials that are not Results. No licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement.

84.3 The parties agree that subject to the provisions of clause 9.7, the Company will have full right, title and interest in the Intellectual Property in and to the Results, and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting Protective Applications for any of the Results.

84.4 Where a third party such as a student or contractor is involved in the Project, the party engaging that student and/or contractor will ensure that such student and/or contractor assigns any Intellectual Property they may have in the Results in order to be able to give full effect to the provisions of this clause 9.

84.5 Each party hereby grants the other a royalty-free, non-exclusive licence to use its Background Intellectual Property for the purpose of carrying out the Project, but for no other purpose. Neither party may grant any sub-licence to use the other party's Background Intellectual Property.

84.6 Each of the parties will notify the other promptly after identifying any Result that it believes is patentable, and will supply the other with copies of that Result.

84.7 The Company hereby grants to the Institute a worldwide, non-exclusive, royalty free, perpetual, unencumbered licence to use the Intellectual Property in the Results for the purposes of academic teaching and academic research, including use in research projects that involve third parties. The Institute shall have the royalty free right to sub-licence the Results to third parties upon the same terms as the licence set out in this clause 9.7.

84.8 The Institute shall keep and instruct its officers, employees, representatives, students, post-doctoral fellows, and agents to keep signed, witnessed, and dated written records of all such Results and will furnish the Company promptly with complete information in respect thereof, and will do all reasonable things necessary to protect the interests of the Company therein.

84.9 Further to the provisions of clause 9.3, the Company shall be responsible for arranging for the drafting of patent applications and for ensuring that sufficient information (but not excessive information) is incorporated into such patent applications. The Company shall submit all such patent applications to the Institute for review and written approval at least 45 days prior to such patent applications being filed with any patent registry. The Institute shall have the right to suggest modifications to the patent applications. If the Institute objects to the filing of the patent application, in whole or in part, the Institute will specify that portion of the submitted material it objects to and the reason for such objection. Upon objection by the Institute, the Company agrees to discuss the objection with the Institute and to consider the deletion of any Confidential Information in such patent application to which the Institute objects. Nothing in this clause will preclude an agreement between the parties for immediate filing of a prompt response to all patent application filing requests. However, any such agreement must be in writing and signed by the parties. For the avoidance of doubt, the Institute will not be responsible for any costs or expenses in connection with or arising out of any such patent application.

84.10 The parties acknowledge that in the event a proprietary application software development package or any other proprietary software is licensed pursuant to the Project, a copyright work comprising part of the Results which is based on or which has utilized that software may also fall within the meaning of "adaptation" (as that term is defined in Section 43(2) of the Irish Copyright and Related Rights Act 2000) of such software development package. The Intellectual Property in and to such adaptation shall belong to the Company.

85. Limitation of Liability and Indemnity

85.1 Save in respect of death or personal injury caused by the negligence of the Institute, and subject to the provisions of clause 10.2, the Institute'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 aggregate of all the sums actually paid by the Company to the Institute hereunder in any 12 month period immediately preceding the event leading to the loss or damage.

85.2 The Institute shall not be liable for any indirect, consequential or special loss or damage and/or for any of the following:

(a) loss of profits;

(b) loss of goodwill;

(c) loss of business;

(d) loss of anticipated savings; or

(e) loss arising from delay.

85.3 Save as expressly set out in this Agreement, all warranties, conditions, representations, statements terms and provisions, express or implied by statute, common law or otherwise, are hereby excluded by the Institute to the fullest extent permitted by law.

85.4 The Company undertakes to defend the Institute from and against any claim or action brought against the Institute in connection with any third party allegation of personal injury or property damage arising from the design, manufacture, use, licensing or sale of products which utilize or incorporate, directly or indirectly, the outcome of the Project including, without limitation, the Results ("**Product Claim**") and agrees to fully indemnify, keep indemnified and hold harmless the Institute from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any Product Claim.

85.5 The Company undertakes to defend the Institute from and against any claim or action brought against the Institute that the use of the Company Background Intellectual Property and/or the outcome of the Project including, without limitation, the Results in accordance with the terms of this Agreement infringes any Intellectual Property of a third party ("**IP Claim**") and agrees to fully indemnify, keep indemnified and hold harmless the Institute from and against all costs, claims, demands, liabilities, expenses, damages or losses (including all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any IP Claim.

86. Progress Meetings

The parties shall procure that their Representatives will meet at intervals to be agreed.

87. Termination

87.1 Notwithstanding anything else contained herein, this Agreement may be terminated:

(a) by either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or

(b) by either party forthwith on giving notice in writing to the other if the other party shall have a receiver, examiner or administrator appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

88. **Effects of termination**

88.1 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

88.2 On the termination of this Agreement by the Institute due to the material breach by the Company or by virtue of a receiver, examiner or administrator appointed to the Company, the Company shall be liable to pay to the Institute all Fees and/or Royalties payable to the Institute in respect of performance of the Project by the Institute to the Company insofar as not previously paid by it and the Institute shall have no further obligation to the Company hereunder.

88.3 Clauses 7, 8, 9, 10, 14, 22 and 25 shall survive expiry or termination of this Agreement, howsoever arising.

89. **Notices**

89.1 Any notice or communication which a party is required or authorised by this Agreement to serve on another party shall be sufficiently served if sent to the other party at the address specified below:

(a) by hand; or

(b) by registered post or recorded delivery; or

(c) by facsimile transmission confirmed by registered post or recorded delivery; or

(d) by electronic mail confirmed by a recorded delivery message.

89.2 Notices sent by registered post or recorded delivery shall be deemed to have been served three days following the date of posting. Notices sent by facsimile transmission shall be deemed to have been served on the date of transmission, if transmitted before 1600 hours on a working day, but otherwise on the next working day provided that confirmation by registered post or recorded delivery is sent the same day. Notices sent by electronic mail where such is an established means of communication between the parties shall be deemed to have been served on the day of transmission, if transmitted before 1600 hours on a working day but otherwise on the next working day. In all other cases notices and other communications will be deemed to have been served on the day they were actually received.

89.3 The parties hereby agree that:

(a) words in electronic form shall be deemed to be “writing” for the purposes of all applicable legislation where “writing” is required;

(b) electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the parties; and

(c) the parties shall agree the format of electronic communications between them.

90. **Force majeure**

Neither party shall be liable to the other if its performance of its obligations (except obligations to make payments) under this Agreement is prevented or hindered due to any circumstance outside its control.

91. **Amendment**

Any variation to the performance of the Project shall only take effect upon written agreement of the terms between the parties.

92. **Further assurance**

The parties hereto shall use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as may be reasonably required from time to time for the purpose of giving each party hereto the full benefit of the provisions of this Agreement.

93. **Waiver of remedies**

No delay or failure of either party in enforcing against the other party any term or condition of this Agreement and no partial exercise by either party of any right hereunder shall be deemed to be a waiver of any right of that party under this Agreement.

94. **Entire agreement**

94.1 The parties have read and understood this Agreement and agree that it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof and supersedes all proposals, representations, understanding and prior agreements whether oral or written and all other communications between them relating thereto.

94.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to it for breach of this Agreement shall be for breach of contract under the terms of this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

95. **No Agency**

No provision of this Agreement creates a partnership between the parties and 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 commitments on the other's behalf.

96. **Sub-contracts**

This Agreement is personal to the Company and it may not assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without the prior written consent of the Institute. The Institute shall be entitled to assign and/or sub-contract any of its rights and/or obligations under this Agreement.

97. **Dispute Resolution**

97.1 Both parties to this Agreement shall seek to resolve any dispute between them arising out of, or relating to, this Agreement, amicably.

97.2 All disputes between the parties arising out of or relating to this Agreement shall be referred, in the first instance, by either party, to the Project Management Team for resolution.

97.3 If any dispute cannot be resolved by the Project Management Team within a period of fourteen (14) days following referral, then, the dispute shall be referred to the Director/President of the Institute and a representative of the Company at CEO level, for resolution.

97.4 If the dispute cannot be resolved by the parties' nominees referred to in clause 22.3 above within a period of fourteen (14) days following referral, then it may be referred by either party to an expert (the "**Expert**") who shall be deemed to act as an expert and not as arbitrator.

97.5 The Expert shall be selected by mutual agreement of the parties or, failing agreement, within fourteen (14) days after a request by one party to the other, shall be chosen at the request of either party by the President for the time being of the Law Society of Ireland, who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.

97.6 Fourteen (14) days after the Expert has accepted the appointment the parties shall submit a written report on the dispute to the Expert and to each other and seven (7) days thereafter shall submit any written replies they wish to the Expert and to each other.

97.7 Both parties shall afford the Expert all necessary assistance that the Expert requires to consider the dispute, including, but not limited to, full access to the Project and any documentation or correspondence relating to the subject matter of the dispute.

97.8 The Expert shall be instructed to deliver his determination to the parties within fourteen (14) days after the submission of the written reports pursuant to clause 22.6, or after the expiration of such longer period as is required by the Expert in which to consider the parties' reports and documentation or correspondence provided, which date shall not be greater than a period of sixty (60) days after the submission of the written reports pursuant to clause 22.6.

97.9 The Expert shall have the same powers to require any party to produce any documents or information to him and the other party and each party shall, in any event, supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

97.10 The fees of the Expert shall be borne by the parties in the proportion as shall be determined by the Expert, having regard (amongst other things) to the conduct of the parties.

97.11 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

97.12 The parties, and the Expert, shall treat as Confidential Information all information obtained in relation to the reference to the Expert, the fact that a dispute has been referred to the Expert, its occurrence and the decision of the Expert arising therefrom.

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97.14 At any time prior to the decision of the Expert being communicated to the parties they may agree a settlement of the dispute and where applicable a revised timetable or difference referred to the Expert. In such event, the Expert shall be entitled to recover from the parties fees in respect of time already spent on the reference and all reasonable expenses incurred in relation to it which shall be borne by and between the parties in such proportion as the parties shall agree as part of their settlement.

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In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality, or such provision may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

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This Agreement may be executed in separate counterparts by each party, but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

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Each party irrevocably agrees that this Agreement and all matters arising from it are governed by and construed in accordance with the laws of Ireland, whose courts shall have exclusive jurisdiction over all disputes arising in connection with this Agreement.

EXECUTED under hand in two originals the day and year first before written

SIGNED for and on behalf of

INSTITUTE OF ART, DESIGN AND TECHNOLOGY

By:

Signature:

Title:

Witness:

SIGNED for and on behalf of

●

By:

Signature:

Title:

Witness:

SCHEDULE 1

PROJECT

SCHEDULE 2

COSTS, FEES AND ROYALTIES

TEMPLATE COLLABORATION AGREEMENT

IADT 5 - Company owns IP in Results, no licence to Institute to use the Results, funding by Funding Agency.

THIS AGREEMENT is made on the ● day of ● 200●

PARTIES:

(1) **INSTITUTE OF ART, DESIGN AND TECHNOLOGY**, a statutory body, located in Kill Avenue, Dún Laoghaire, Co Dublin (the "**Institute**"); and

(2) [*Name of company*] a company incorporated in [*name of state in which company incorporated*] (under company registration number [*number*] whose registered office is at [*address*]*)* (the "**Company**").

Each of the Institute and the Company may be hereinafter referred to as a "**party**" and collectively as "**parties**".

BACKGROUND:

The research project contemplated by this Agreement is of mutual interest and benefit to the Institute and to the Company, will further the instructional and research objectives of the Institute in a manner consistent with its status as an educational institution, and may result in benefits for both the Company and the Institute through inventions, improvements, and/or discoveries.

THE PARTIES AGREE as follows:

101. **Definitions and Interpretations**

101.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"Background Intellectual Property"	means Intellectual Property (excluding Intellectual Property in and to Results), in the same or related fields to the research conducted in the course of the Project, owned, licensed to or otherwise controlled by one of the parties prior to the Effective Date and provided (whether before or after the Effective Date) by that party to the other for use in the Project;
"Confidential Information"	means all information obtained by one party from the other pursuant to this Agreement which is expressly marked as confidential or which is manifestly of a confidential nature or which is confirmed in writing to be confidential within 7 days of its disclosure;

"Effective Date"	means [*insert date of commencement of Project*];
"Fees"	means the amounts set out in Schedule 2 and payable in accordance with the provisions of clause 6;
"Funding"	means the funding for the Project received from the Funding Agency, such funding being provided on the basis of certain terms and conditions;
"Funding Agency"	means ●;
"Intellectual Property"	means patents, inventions, Know-how, trade secrets and other confidential information, rights in design (registered and unregistered), copyright (including, without limitation, rights in computer software), data, database rights and sui generis rights, rights affording equivalent protection to copyright, semiconductor topography rights, trade marks, service marks, logos, domain names, business names, trade names, brand names, certification marks, assumed names and other indicators or origin, rights in any drawings, designs, plans, specifications, manuals, computer software, assets, inventor's certificates and invention disclosures, writings and other works, whether copyright or not, bills of material, moral rights and all other industrial or intellectual property or other rights or forms of protection of a similar nature or having similar effect in any part of the world and rights in and in relation to them and, where appropriate, applications for any of them in any country or jurisdiction, rights in the nature of unfair competition rights, rights to sue for passing-off, the right to apply for any of them and all other information necessary for the technical exploration of any of the same and all registrations;

"Know-how"	means unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;
"Project"	means the research work or intellectual activity as described in Schedule 1;
"Project Management Team"	means one representative of each of the parties, appointed from time to time;
"Protective Applications"	means applications for patent, design, trade mark or other registration available for the protection of Intellectual Property;
"Publication"	means any written, oral or other public disclosure of Results, including the public use or sale of an invention based on the Results;
"Representative"	means the representative of a party appointed pursuant to the provisions of clause 4;
"Results"	means all information, Know-how, results, software, inventions, works, discoveries and creations, made or conceived or first reduced to practice or writing in the course of the Project;
"Royalties"	means the amounts set out in Schedule 2 and payable in accordance with the provisions of clause 6; and
"Term"	means the period of ● from the Effective Date.

101.2 In this Agreement the following interpretations shall apply:

(a) the headings in this Agreement are for ease of reference only and shall not affect the interpretation or meaning of this Agreement;

(b) words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular section or clause thereof;

(c) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, consolidated, modified, extended or replaced in whole or in part, by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;

(d) a reference to a party shall mean any of the individual parties to this Agreement, as appropriate, together with their respective permitted successors and assigns;

(e) nothing in this Agreement shall affect any statutory rights or provisions granted by mandatory statutory law or regulatory authority, which cannot be waived or limited by contract. In the event and to the extent only of any conflict or ambiguity between the terms of this Agreement and mandatory statutory law or regulatory authority, then, the latter shall prevail;

(f) a reference to "an" "the" or "a" shall refer to the particular matter or item in question;

(g) each party shall comply with any express obligation in this Agreement to comply with any document, statute, order, enactment, regulation or other similar instrument that is referenced in this Agreement; and

(h) no provisions of this Agreement shall be interpreted as requiring or permitting any act or omission by either party which is contrary to any mandatory statutory law or regulatory authority.

102. **Scope of Project**

102.1 The Institute and the Company shall commence the Project promptly on the Effective Date, shall carry on the Project for the Term, and shall use reasonable endeavours to perform the Project substantially in accordance with the terms and conditions of this Agreement.

102.2 If the Agreement is entered into after the Effective Date, it will apply retrospectively to work carried out in relation to the Project on or after the Effective Date.

102.3 The Institute does not undertake that the Project will lead to any particular outcome or Results and does not guarantee a successful outcome to the Project.

102.4 The Company and the Institute may at any time amend the Project (without breaching the terms and conditions of the Funding) by mutual written agreement.

102.5 The Company and the Institute shall at all times comply with the terms and conditions of the Funding.

103. **Duties of the Company**

The Company shall provide the Institute with all necessary information, equipment, facilities, materials, support and co-operation (including ensuring that employees and independent contractors of the Company co-operate fully with the Institute) that may be reasonably required to enable the Institute to carry out its obligations under this Agreement.

104. **Representatives**

Each party shall nominate in writing upon the execution of this Agreement the person who will act as its representative for the purposes of this Agreement ("**Representative**") and who will be responsible for providing any information which may be required by the other party to perform its obligations hereunder.

105. **Warranties and Representations**

105.1 Each of the parties represents and warrants to each other that:

(a) it has full right and authority to enter into this Agreement and perform its obligations under this Agreement under the laws of the Republic of Ireland and the internal rules of that party and that, whereever and whenever required, such party has or shall secure in a timely manner all necessary notifications, authorisations and approvals;

(b) there are no outstanding obligations or agreements to which it is party that are inconsistent or in conflict with the entering into or performance of this Agreement;

(c) it is the owner of, or is otherwise fully entitled to provide and licence, the Background Intellectual Property which it makes available to the other party pursuant to the provisions of this Agreement;

(d) except to the extent disclosed to the other party at the time of making the Background Intellectual Property available, that Background Intellectual Property is unencumbered; and

(e) it will not assign, encumber or dispose of the Background Intellectual Property during such time as it is necessary for the performance of the Project.

106. **Payment of Fees and Expenses**

106.1 Unless otherwise agreed and set out in Schedule 2, the Institute shall render itemised invoices to the Company in respect of the Fees and/or Royalties, monthly in arrears.

106.2 The Company shall reimburse the Institute for all reasonable travelling and subsistence expenses properly incurred in conducting the Project, when such costs are outside the Project's agreed travel and subsistence rules and when agreed by the parties in advance.

106.3 All charges (and/or any other applicable taxes) payable by the Company under this Agreement shall be due to be paid within 30 days of the date of invoice sent to the Company.

106.4 If the payment of any sum due under this Agreement by the Company shall not be paid by its due date, the Institute shall be entitled to charge interest at 3% above EURIBOR or at the then legal rate, whichever is lower, on the amount of the delayed payment for the period of delay.

106.5 Notwithstanding the provisions of clause 6.4 above, if any sum due under this Agreement is not paid within 30 days of the due date, the Institute may, at its option and without prejudice to any rights it may have under this Agreement or otherwise, terminate or suspend performance of this Agreement.

106.6 All charges payable under this Agreement are exclusive of value added tax, which shall be paid by the Company at the rate and in the manner for the time being prescribed by law.

106.7 For the avoidance of doubt, under no circumstances shall any payment made by the Company to the Institute in connection with this Agreement be funded (whether in whole or in part) by a European Union grant or other funding or by a grant or other funding from an Irish government body that is co-funded by the European Union.

107. **Confidential Information**

107.1 Each party shall treat as confidential the Confidential Information of the other (the "**Disclosing Party**") and shall not reproduce it or disclose it to third parties without the prior written consent of the Disclosing Party.

107.2 The obligation of confidentiality set out in clause 7.1 shall not apply to the recipient (the "**Receiving Party**") of Confidential Information which:

(a) is or becomes public knowledge other than by breach of this clause 7;

(b) is in the possession of the Receiving Party without restriction in relation to the disclosure before the date of receipt from the Disclosing Party;

(c) is independently developed by the Receiving Party without access to Confidential Information;

(d) is received by the Receiving Party from a third party that has received it without restriction and who is under no obligation restricting its disclosure;

(e) is required to be disclosed to the Receiving Party's professional advisers, provided that such disclosure is to the extent necessary only for such advisers, and on terms no less onerous than those set out in this clause 7;

(f) is required to be disclosed by law or final mandatory order of a court or other competent authority to which the Receiving Party is subject; or

(g) is released from the provisions of this clause 7 in accordance with the provisions of clause 8.

107.3 Each party shall ensure that its respective employees and agents who participate in the Project shall comply with the obligations of confidentiality set out in this clause 7 as though they were parties to this Agreement and each party shall ensure that where any of the aforementioned employees cease to be employed by that party, they shall continue to be bound by such obligations of confidentiality.

107.4 Each party agrees to use its Representative for sending, receiving and storing Confidential Information under this Agreement.

107.5 Each party shall (through its Representative), on request, deliver a copy of Confidential Information in tangible form to the other party within thirty (30) days of receipt of a written request. A party shall be entitled to make such request from the date of initial disclosure of such information to that party by the other party where such disclosure is in a form other than written form.

107.6 Upon termination or expiration of the Project and/or the Agreement (and except as required to benefit from any licenses granted under clause 9.6), each party agrees to use best efforts to locate and return or verify the destruction of all existing Confidential Information (including tangible products or materials) received from the other party pursuant to this Agreement, if requested to do so in writing by the Disclosing Party; provided, however, each party may retain a copy of each document containing Confidential Information of the other party for archival purposes.

108. **Announcement and Publication**

108.1 Each party agrees that it will not refer to the terms of this Agreement or use the other's name in any advertising, promotional materials, or publicity, without the prior approval of the other party. Neither party will use any trade name, trademark, trade device, service mark or symbol owned by the other party without first obtaining the prior written approval of such use from such other party. By entering into this Agreement, neither of the parties endorses any product or service provided by the other party. Neither party shall in any way imply that this Agreement is an endorsement of any such product or service by another party without obtaining the prior written permission of such other party.

108.2 The Company recognises that in accordance with its statutory functions it is Institute policy that the Results be published and agrees that authorised Institute personnel may make Publications (including, but not limited to):

(a) making presentations at seminars, symposia, national, or regional professional meetings; and

(b) publishing in journals, theses or dissertations, or otherwise of their own choosing, methods and Results in accordance with normal academic practice;

provided however that the Company shall have been furnished copies of any proposed Publication at least 30 days in advance of the making of the proposed Publication.

108.3 The Company shall have 30 days after receipt of said copies, to object to such proposed Publication if in the Company's reasonable opinion a delay of Publication is necessary in order to protect its commercial interests, or the commercial use to the Company or its licensees of information derived from the Project, including the need to file Protective Applications with respect to the information proposed to be included in the relevant Publication.

108.4 In the event that the Company makes such objection, the Institute shall refrain and shall ensure that its personnel shall refrain from making such Publication for a maximum of 60 days from the date of receipt of such objection in order for the Company to obtain appropriate Protective Applications.

108.5 A delay imposed on submission for Publication as a result of a requirement made by the Company shall not exceed 90 days from the date of receipt of the Results by the Company, although the Institute will not unreasonably refuse a request from the Company for additional delay in the event that Intellectual Property in the Results might otherwise be unreasonably jeopardised.

108.6 Nothing in this Agreement shall prevent:

(a) any registered student of the Institute from submitting for a degree of the Institute a thesis based on Results or Background Intellectual Property;

(b) the examination of such thesis by examiners appointed by the Institute; or

the deposit of such a thesis in a library of the Institute in accordance with the relevant procedures of the Institute. However, the Institute shall take all reasonable measures to protect the confidentiality of the Results if requested by the Company.

108.7 For the avoidance of doubt, a failure on the part of the Company to object to a Publication within any of the time limits set out in clauses 8.2 to 8.5 shall be deemed to be consent from the Company to such Publication.

108.8 For the avoidance of doubt, the Company shall not exercise its rights under this clause 8 to unreasonably delay a Publication.

109. **Ownership of Intellectual Property**

109.1 Neither party shall, in respect of the Intellectual Property (including, without limitation, Background Intellectual Property), products and/or services of the other, represent, either directly or indirectly, that such Intellectual Property, product and/or service of the other is owned or endorsed by the representing party, without the prior written consent of the other party.

109.2 This Agreement does not affect the ownership of any Background Intellectual Property or of the Intellectual Property in and to any other technology, design, work, invention, software, data, technique, Know-how, or materials that are not Results. No licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement.

109.3 The parties agree that the Company will have full right, title and interest in the Intellectual Property in and to the Results, and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting Protective Applications for any of the Results. For the avoidance of doubt, the Institute will not be responsible for any costs or expenses in connection with or arising out of any such patent application and shall have no obligations to the Company in relation to the making of such application.

109.4 Where a third party such as a student or contractor is involved in the Project, the party engaging that student and/or contractor will ensure that such student and/or contractor assigns any Intellectual Property they may have in the Results in order to be able to give full effect to the provisions of this clause 9.

109.5 Each party hereby grants the other a royalty-free, non-exclusive licence to use its Background Intellectual Property for the purpose of carrying out the Project, but for no other purpose. Neither party may grant any sub-licence to use the other party's Background Intellectual Property.

109.6 Each of the parties will notify the other promptly after identifying any Result that it believes is patentable, and will supply the other with copies of that Result.

109.7 The Institute shall keep and instruct its officers, employees, representatives, students, post-doctoral fellows, and agents to keep signed, witnessed, and dated written records of all such Results and will furnish the Company promptly with complete information in respect thereof, and will do all reasonable things necessary to protect the interests of the Company therein.

109.8 The parties acknowledge that in the event a proprietary application software development package or any other proprietary software is licensed pursuant to the Project, a copyright work comprising part of the Results which is based on or which has utilized that software may also fall within the meaning of "adaptation" (as that term is defined in Section 43(2) of the Irish Copyright and Related Rights Act 2000) of such software development package. The Intellectual Property in and to such adaptation shall belong to the Company.

110. **Limitation of Liability and Indemnity**

110.1 Save in respect of death or personal injury caused by the negligence of the Institute, and subject to the provisions of clause 10.2, the Institute'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 aggregate of all the sums actually paid by the Company to the Institute hereunder in any 12 month period immediately preceding the event leading to the loss or damage.

110.2 The Institute shall not be liable for any indirect, consequential or special loss or damage and/or for any of the following:

(a) loss of profits;

(b) loss of goodwill;

(c) loss of business;

(d) loss of anticipated savings; or

(e) loss arising from delay.

110.3 Save as expressly set out in this Agreement, all warranties, conditions, representations, statements terms and provisions, express or implied by statute, common law or otherwise, are hereby excluded by the Institute to the fullest extent permitted by law.

110.4 The Company undertakes to defend the Institute from and against any claim or action brought against the Institute in connection with any third party allegation of personal injury or property damage arising from the design, manufacture, use, licensing or sale of products which utilize or incorporate, directly or indirectly, the outcome of the Project including, without limitation, the Results ("**Product Claim**") and agrees to fully indemnify, keep indemnified and hold harmless the Institute from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any Product Claim.

110.5 The Company undertakes to defend the Institute from and against any claim or action brought against the Institute that the use of the Company Background Intellectual Property and/or the outcome of the Project including, without limitation, the Results in accordance with the terms of this Agreement infringes any Intellectual Property of a third party ("**IP Claim**") and agrees to fully indemnify, keep indemnified and hold harmless the Institute from and against all costs, claims, demands, liabilities, expenses, damages or losses (including all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any IP Claim.

111. Progress Meetings

The parties shall procure that their Representatives will meet at intervals to be agreed.

112. Termination

112.1 Notwithstanding anything else contained herein, this Agreement may be terminated:

(a) by either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or

(b) by either party forthwith on giving notice in writing to the other if the other party shall have a receiver, examiner or administrator appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

113. Effects of termination

113.1 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

113.2 On the termination of this Agreement by the Institute due to the material breach by the Company or by virtue of a receiver, examiner or administrator appointed to the Company, the Company shall be liable to pay to the Institute all Fees and/or Royalties payable to the Institute in respect of performance of the Project by the Institute to the Company insofar as not previously paid by it and the Institute shall have no further obligation to the Company hereunder.

113.3 Clauses 7, 8, 9, 10, 14, 22 and 25 shall survive expiry or termination of this Agreement, howsoever arising.

114. **Notices**

114.1 Any notice or communication which a party is required or authorised by this Agreement to serve on another party shall be sufficiently served if sent to the other party at the address specified below:

(a) by hand; or

(b) by registered post or recorded delivery; or

(c) by facsimile transmission confirmed by registered post or recorded delivery; or

(d) by electronic mail confirmed by a recorded delivery message.

114.2 Notices sent by registered post or recorded delivery shall be deemed to have been served three days following the date of posting. Notices sent by facsimile transmission shall be deemed to have been served on the date of transmission, if transmitted before 1600 hours on a working day, but otherwise on the next working day provided that confirmation by registered post or recorded delivery is sent the same day. Notices sent by electronic mail where such is an established means of communication between the parties shall be deemed to have been served on the day of transmission, if transmitted before 1600 hours on a working day but otherwise on the next working day. In all other cases notices and other communications will be deemed to have been served on the day they were actually received.

114.3 The parties hereby agree that:

(a) words in electronic form shall be deemed to be “writing” for the purposes of all applicable legislation where “writing” is required;

(b) electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the parties; and

(c) the parties shall agree the format of electronic communications between them.

115. **Force majeure**

Neither party shall be liable to the other if its performance of its obligations (except obligations to make payments) under this Agreement is prevented or hindered due to any circumstance outside its control.

116. **Amendment**

Any variation to the performance of the Project shall only take effect upon written agreement of the terms between the parties.

117. **Further assurance**

The parties hereto shall use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as may be reasonably required from time to time for the purpose of giving each party hereto the full benefit of the provisions of this Agreement.

118. **Waiver of remedies**

No delay or failure of either party in enforcing against the other party any term or condition of this Agreement and no partial exercise by either party of any right hereunder shall be deemed to be a waiver of any right of that party under this Agreement.

119. **Entire agreement**

119.1 The parties have read and understood this Agreement and agree that it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof and supersedes all proposals, representations, understanding and prior agreements whether oral or written and all other communications between them relating thereto.

119.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to it for breach of this Agreement shall be for breach of contract under the terms of this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

120. **No Agency**

No provision of this Agreement creates a partnership between the parties and 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 commitments on the other's behalf.

121. **Sub-contracts**

This Agreement is personal to the Company and it may not assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without the prior written consent of the Institute. The Institute shall be entitled to assign and/or sub-contract any of its rights and/or obligations under this Agreement.

122. **Dispute Resolution**

122.1 Both parties to this Agreement shall seek to resolve any dispute between them arising out of, or relating to, this Agreement, amicably.

122.2 All disputes between the parties arising out of or relating to this Agreement shall be referred, in the first instance, by either party, to the Project Management Team for resolution.

122.3 If any dispute cannot be resolved by the Project Management Team within a period of fourteen (14) days following referral, then, the dispute shall be referred to the Director/President of the Institute and a representative of the Company at CEO level, for resolution.

122.4 If the dispute cannot be resolved by the parties' nominees referred to in clause 22.3 above within a period of fourteen (14) days following referral, then it may be referred by either party to an expert (the "**Expert**") who shall be deemed to act as an expert and not as arbitrator.

122.5 The Expert shall be selected by mutual agreement of the parties or, failing agreement, within fourteen (14) days after a request by one party to the other, shall be chosen at the request of either party by the President for the time being of the Law Society of Ireland, who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.

122.6 Fourteen (14) days after the Expert has accepted the appointment the parties shall submit a written report on the dispute to the Expert and to each other and seven (7) days thereafter shall submit any written replies they wish to the Expert and to each other.

122.7 Both parties shall afford the Expert all necessary assistance that the Expert requires to consider the dispute, including, but not limited to, full access to the Project and any documentation or correspondence relating to the subject matter of the dispute.

122.8 The Expert shall be instructed to deliver his determination to the parties within fourteen (14) days after the submission of the written reports pursuant to clause 22.6, or after the expiration of such longer period as is required by the Expert in which to consider the parties' reports and documentation or correspondence provided, which date shall not be greater than a period of sixty (60) days after the submission of the written reports pursuant to clause 22.6.

122.9 The Expert shall have the same powers to require any party to produce any documents or information to him and the other party and each party shall, in any event, supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

122.10 The fees of the Expert shall be borne by the parties in the proportion as shall be determined by the Expert, having regard (amongst other things) to the conduct of the parties.

122.11 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

122.12 The parties, and the Expert, shall treat as Confidential Information all information obtained in relation to the reference to the Expert, the fact that a dispute has been referred to the Expert, its occurrence and the decision of the Expert arising therefrom.

122.13 All communications relating to the reference to the Expert shall take place in writing between the Representatives of either party, or other nominated representatives of the parties, and the Expert.

122.14 At any time prior to the decision of the Expert being communicated to the parties they may agree a settlement of the dispute and where applicable a revised timetable or difference referred to the Expert. In such event, the Expert shall be entitled to recover from the parties fees in respect of time already spent on the reference and all reasonable expenses incurred in relation to it which shall be borne by and between the parties in such proportion as the parties shall agree as part of their settlement.

123. **Severability**

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality, or such provision may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

124. **Counterparts**

This Agreement may be executed in separate counterparts by each party, but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

125. **Law**

Each party irrevocably agrees that this Agreement and all matters arising from it are governed by and construed in accordance with the laws of Ireland, whose courts shall have exclusive jurisdiction over all disputes arising in connection with this Agreement.

EXECUTED under hand in two originals the day and year first before written

SIGNED for and on behalf of

INSTITUTE OF ART, DESIGN AND TECHNOLOGY
By:
Signature:
Title:
Witness:

SIGNED for and on behalf of

●
By:

Signature:
Title:
Witness:

SCHEDULE 1

PROJECT

SCHEDULE 2

COSTS, FEES AND ROYALTIES