**Founders Memorandum of Understanding**

This non-legally binding Memorandum of Understanding (MoU) outlines the terms for the incorporation and formation of [ New Co. ] (“The Company”), a new spin-out company from Imperial College London. This MoU is intended to set out the intentions of the Parties regarding the structuring of The Company and some specific rights and obligations of the Parties with regards thereto.

**Parties**

**All inventors/generators of Intellectual Property (IP) are expected to receive founding equity in The Company**. [(*If this is not the case, list the inventor/generators of IP to be licenced to The Company that have chosen not to receive the benefit of founding equity below. This will need to be recorded in writing between the inventors/generators of IP waiving their equity and Imperial Enterprise via an Equity Waiver Letter which can be shared on request*)]

List of inventors/generators of IP waiving their eligibility to receive founding equity shares (as per the relevant signed equity waiver letter):

* [ NONE / LIST AS APPROPRIATE ]

List of Founding Inventors, meaning inventors of the founding IP to be licensed that are participating in The Company:

* [ LIST AS APPROPRIATE ] (together the “Founding Inventors”) and;

List of Non-Inventive Founders, meaning non-inventors who are participating in The Company:

* [ LIST AS APPROPRIATE ] (together the “Non-Inventive Founders”)

(altogether the “Founders”)

List of individuals adopting a management role within the Company:

* [ NONE / LIST AS APPROPRIATE ] (together the "Management")

List of inventors not participating in the company but receiving founding equity shares:

* [ NONE / LIST AS APPROPRIATE ] (together the "Non-Founding Inventors")

Imperial College Innovations Limited ("Imperial College")

List of inventors not participating in the company with shares to be held by Imperial College[[1]](#footnote-2):

* [ NONE / LIST AS APPROPRIATE, INDICATING % EQUITY TO BE HELD BY IMPERIAL COLLEGE FOR EACH INVENTOR ] (together the “Non-Founding and Non-Shareholding Inventors”)

The Founders and Imperial College [ and the Management ] are mutually supportive of the goal of forming a new spin-out company from Imperial College London to commercialise a [ SHORT DESCRIPTION OF TECHNOLOGY/PRODUCT ] being commercialised by the Founders [ and the Management ]. The Founders bring their sector networks and expertise, Imperial College London brings entrepreneurial support and guidance to Founders, an innovative ecosystem, exemplary research facilities and project funding (where applicable) and Imperial College bring the IP (developed by the Founding Inventors [ Non-Founding Inventors ] [ Non-Founding and Non-Shareholding Inventors ] [ and any inventors who have decided to waive their right to equity ] in the course of their employment and study at Imperial College London) and the company structure [ and the Management bring their networks and management experience ] to this venture.

The Founders have reviewed The Company spinout package of information provided by Imperial College and signed the Spinout Intent Letter.

**Background**

The Company is developing [ DESCRIPTION OF;

- TECHNOLOGY

- ITS APPLICATIONS

- GENERAL INTENT OF NEW CO

- EXPECTED SOURCES OF REVENUE IN SHORT TERM AND LONGER TERM ]

**Objectives to meet in order to initiate the procedure for company formation**

The Founders will take responsibility for all aspects of incorporation, fundraising, recruiting, managing and growing The Company with support from the Industry Partnerships and Commercialisation Spinout Project Manager leading the spinout opportunity and the broader entrepreneurial ecosystem support available at Imperial College London. The Founders have signed the Spinout Intent Letter (provided as part of the spinout support package).

The Founders agree that they will carry out the following activities prior to Imperial College licensing the IP into The Company :

1. Agree and sign this non-binding MoU
2. Prepare and update The Company business plan [ a template will be supplied, but you are free to use an alternative template as long as the same basic information is supplied ]
3. Continue to develop and update the financial plan (to be included in the business plan, or provided separately) to detail;
4. the funding needs of The Company and the finance required to get to a value inflection point (defined as a point in which investors will put more money in or the receipt of revenue sufficient for an extended period of solvency);
5. the first 2 years revenue projections
6. Evidence of (a) the continuous pursual of appropriate fundraising objectives to support the pre-revenue period of activity as detailed in The Company business plan as approved by Imperial College or (b) first customer engagement (a product/service order or compelling evidence of an expected order)

**Incorporation & Legal Advice**

It is strongly encouraged that the Founders engage with a law firm from the panel list on the incorporation of the company and for general legal advice on the spinout process. Doing so will help the process to move as quickly as possible and ensure the spinout formation completes lawfully. The template legal agreements provided by Imperial College have been iterated over years of feedback from multiple founders, company chairpersons, law firms and after an extensive review of Founders ChoiceTM completing in 2023 to remove remaining contentious issues. Crucially however, law firms on the panel list are experienced in dealing with universities and university-based spinouts and hence, experience has shown, do not have to be ‘brought up to speed’ with why universities have to have certain provisions and protections. The Company will be incorporated as a shell company with a recommended maximum of 100,000 ordinary shares allotted at a recommended par value of £0.00001 per ordinary share. Such founding equity shares will be issued to all Parties excluding Imperial College before the company “trades” (trading will increase the value of the shares) and the Founders [ and the Management ] will not carry out any of the activities listed below during this time:

1. take money from anyone and put it into The Company
2. alter the capital structure or founding documents in any way
3. create an option pool
4. buy or sell (i.e. trade in any way)
5. make irrevocable promises to anyone

All shareholders acquiring shares by way of Employment Related Securities (“ERS”) (“ERS Shareholders”) (please review the “Taxation” section for more information) will separately enter [Section 431 elections](https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fwww.hmrc.gov.uk%2Fgds%2Fersm%2Fattachments%2FS431_single_employee.doc&wdOrigin=BROWSELINK) as appropriate within 14 days of acquiring shares in The Company. No additional equity shares will be issued and The Company will not trade until the spinout process completes i.e. the IP Licence to The Company from Imperial College is fully executed and Imperial College becomes a shareholder of The Company by executing the Shareholders Agreement, and the Articles of Association are adopted by all shareholders. These safeguards will help ensure ERS Shareholders acquire their shares for at least the unrestricted market value. If the Founders are considering deviating from this strong recommendation, then they will ensure it has been communicated with Imperial College and that the Founders have taken appropriate legal advice.

In addition, there is a Research Tax Exemption that may protect eligible Imperial College London employees acquiring shares in The Company from personal tax liability arising due to the increase in value of shares attributable to the IP Licence. It is normally used for new companies that have not traded or had other investment made into them so that employees can pay the minimum amount for their shares. Please review the “Taxation” section for more information. The Company's lawyers will be able to advise The Company in general terms about the application of the tax exemption and the timing and manner of the founding equity allocations so as to mitigate any personal tax risk for any ERS Shareholders (please review the “Taxation” section for more information).

By adhering to the advice in this MoU, any ERS Shareholders (please review the “Taxation” section for more information) can be issued equity and Imperial College can license the IP into The Company in full compliance with HMRC guidelines.

At spinout formation, each of the Parties will be issued with the number of shares set out in the share cap table below (see section "Founding Equity Allocations" below) with a nominal value per share of £ 0.00001.

[ It is noted that The Company (insert Company Registration Number) was incorporated on DD/MM/YYYY with X ordinary share(s) of £x/share for an aggregate of £XX. ][[2]](#footnote-3)

**Initial company activity**

Once spinout formation completes it is expected that the activity of The Company will be:

[ MORE DETAILED DESCRIPTION OF ACTIVITES IN THE SHORT TERM

AND TARGETED MILESTONES (COMMERCIAL & FINANCIAL) OVER NEXT FEW YEARS

E.G

*Final prototype design By ????*

*Fund raising of £XXX By ????*

*Establish first sales By ????*

*Revenue of £XXXX By ????* ]

As revenue and profit build then The Company will look to establish a dedicated management team who will oversee further company development, but of course the increase in company outlay needs to be managed carefully to stay in step with available revenue.

**Directors & Management**

When The Company is formed the board will have a minimum of [ NUMBER ] directors and a maximum of [ NUMBER ]. There will be a minimum of [ six ] board meetings each year. The Parties will decide who the other starting Directors will be but they will not have a permanent right to appoint a Director. This is intended to avoid any potential future conflict between individuals negatively impacting The Company and allow The Company to continue to function. The initial board shall be; [ NAMES ]. For so long as Imperial College is holding equity, Imperial College will always have the right to appoint an Observer to the board and to receive Board packs (including minutes) for the purpose of monitoring and reporting whether an Observer is appointed or not. Each Party who is not a Director may also send a single non-voting observer to board meetings as long as their individual shareholdings are 5% or greater of the issued shares. Appointment of further directors shall require approval of the shareholders (as set out in the Articles of Association and/or Shareholders agreement). The quorum for the board will be more than 50% directors and resolutions are to be passed by simple majority.

**Founding Equity Allocations**

The Parties have agreed that the founding equity split for The Company will be 95% : 5% in favour of the Founders. Imperial College Innovations Limited (“Imperial College”) is a wholly owned subsidiary of Imperial College London and will hold all the Imperial College London shares. The share of the founding equity allocated to Imperial College will remain fixed at this percentage as The Company raises equity funding up to a cumulative total of £[ 5m, or 20m ] (the "Non-Dilution Protection").

The Founders waive any right to benefit from any returns Imperial College London receives in respect of the equity held by Imperial College, as they are receiving founding equity in their own right, as per the Rewards to Inventors Scheme.

In relation to the shares held by each Founder, the Founders [ will / will not ] put in place vesting provisions at formation. [ The terms of the vesting are… ]

The Parties agree that a share option plan will be put in place to incentivise future management, directors and staff of The Company and any options granted will vest against agreed milestones over a three-year period. The Founders will determine the size of the option pool. The board will determine the detailed rules of the option scheme subject to the limitations stated below.

The percentage of the fully diluted share capital allocated to the option pool will be allocated from the 95% founding shares allocated to the Founders. i.e. the 5% of the founding shares allocated to Imperial College will remain at this level based on the actual number of shares in issue at that time, until the Non-Dilution Protection threshold is exceeded. The mechanism by which Imperial College remains at the agreed equity level is through the issue of top-up shares in events where new shares are issued to existing or new shareholders, such as upon investment or when options are exercised and converted to shares. Imperial College will not be issued top-up shares if options are unallocated (i.e. simply set aside) or allocated (i.e. set aside for a particular existing or prospective shareholder).

Based on this the Parties have agreed that the founding equity split will be as per the table below.

[ INSERT CAP TABLE – *using the separate Excel sheet named ‘Cap Table – option and investment non-dilute example’. In addition, please refer to Appendix 4 for example scenarios related to how shareholder equity position changes with respect to investment and if Options are vested (for illustrative purposes only). N.B.*  *where Imperial College is holding dilutable shares, it will be diluted using the same mechanism as for the Founders. ]*

None of the founding shareholders shall be entitled to transfer or otherwise dispose of any of their shares for two years from the completion date except in the case of an acquisition. After that period Imperial College may at any time gift its shares back to The Company should it determine the potential for reputational harm against it.

All shares will be issued at a nominal price and prior to injection of any investment or contracts being put in place. The Founders shall be issued with “Ordinary Shares” and Imperial College shall be issued with “T Ordinary Shares” which shall have identical rights to Ordinary Shares save that they will benefit from the Non-Dilution Protection described above.

A dividend policy will be put in place to benefit the shareholders *pro-rata*, further details on the terms are in Appendix 1 (Rights attaching to shares).

Further information pertaining to rights associated with shares is contained in Appendix 2 (Proposed Covenants), Appendix 3 (Conditions of issue and transfer of shares).

**Funding and Investment**

Founders will ensure that The Company has the required funding to undertake the activities described earlier. The Founders will determine the terms of any equity investment subject to the Non-Dilution Protection described above.

In practice a clause will be added to the Articles of The Company (based on standard anti-dilute clauses in the British Venture Capital Association template documents).  The result being that The Company issues Imperial College with additional shares at each funding event and approval/issue of options to keep the Imperial College shareholding at the agreed minimum equity threshold.  This Non-Dilution Protection will fall away once the cumulative investment hurdle of £[ 5m, or 20m ] in The Company has been exceeded. After this point any shares issued for this future investment will dilute equity holdings of all existing shareholders (including Founders and Imperial College) *pari passu*.

In all investment rounds the percentage shareholdings of the Founders’ equity will be diluted (reduced) proportionally to their shareholdings. Note that of course the actual number of shares each shareholder holds will not reduce.

[ At formation, or shortly after if terms are already agreed, it is expected that [ INVESTOR ] will invest £[ XXX ] on the following terms. [ SUMMARY OF INVESTMENT TERMS ]]

Documentation pertaining to equity investment will be shared with Imperial College. All investments must comply with the money laundering regulations and rules of the Financial Conduct Authority. The proceeds from investment must be used for The Company’s working capital requirements to be approved by the board.

**Licence agreement**

When all the Parties are confident that the proposed business is viable, has a clear business plan, is confident that it can attract financing or generate revenues rapidly, and the IP is released for licencing after the completion of due diligence conducted by Imperial College London, the existing IP will be exclusively licensed to The Company via a royalty bearing licence agreement. The commercial terms of the licence will be provided by Imperial College to the Founders in accordance with the Imperial College London IP Policy and associated guidance. The licence provides the correct legal title to IP required by The Company, in return The Company will pay the licence holder (Imperial College) a fee for the IP which is subsequently shared with the inventors of the IP to be licenced to The Company and Imperial College London (minus any patent costs) as per the College Rewards to Inventors Scheme. Note that the IP will always be licenced and never assigned to The Company at spinout formation.

**Service consultancy / non-executive director appointment agreements, Imperial College London's Conflict of Interest policy and Register of External Interests and Annual Declaration policy for Imperial College London Staff Members**

If the Founders [ or the Management ] will not be employed by The Company, then Service / consultancy agreements and / or non-executive director letters will be put in place between the Founders, [ the Management ] and The Company which may include customary provisions for non-disclosure, non-competition, confidentiality, assignment of IP rights and termination. The nature of the agreement put in place between The Company and each Founder will depend on the nature of the Founder’s role within The Company. Typical examples are included within the table below:

|  |  |  |
| --- | --- | --- |
| **Potential role** | **Duty** | **Contractual status** |
| Non-director level staff member | Longer term position under direction of The Company with a job description and subject to Company processes | Employed by The Company |
| Executive director | Member of a Company's board of directors who is actively involved in the day–to–day management of the company | Employed by The Company  |
| Non-executive director | Member of the board who is not involved in the day–to–day management of The Company: focuses on providing objective assistance to help the executive director make the bigger decisions | Not employed by The Company, can be engaged on a Consultancy agreement and receive a service fee |
| Consultant | Independent person to fulfil periodic or temporary requirements of The Company: ad hoc advice or one off fixed term project, not supervised by Company management | Consultancy agreement, and receive a service fee |

Regardless of the type of contract put in place with The Company, it should specify the nature of the engagement and clarify ownership for IP generated under said contract. It is important to have this clarity on IP ownership for various reasons:

1. When new IP is developed, the contract will separate out whether it was created as part of the Founder’s employment with the College or whether it was done in their capacity of providing services to The Company. This has a clear impact on whether a future license from College to The Company is required, or whether the IP is owned by The Company;
2. It is in the best interests of The Company. If one of the Founders develops some IP without a contract in place and then leaves The Company, that will leave The Company in an extremely disadvantaged position with respect to its freedom to operate;
3. Investors and acquirers require clarity on IP ownership to ensure that The Company has clear freedom to operate with regards to IP.

The College’s preferred route for external consultancy work for Imperial College London Staff Members is through [Imperial Consultants (ICON)](https://www.imperial.ac.uk/admin-services/enterprise/about/meet-the-enterprise-team/imperial-consultants/) to enable any contractual risks and liabilities to be managed appropriately.  If the work is not through ICON, The Company must sign the College’s [Waiver for Private Work](https://www.imperial.ac.uk/media/imperial-college/administration-and-support-services/hr/public/policies/roi/Waiver-for-Private-Work.pdf); this is a requirement of the [EI Policy](https://www.imperial.ac.uk/human-resources/procedures/external-interests/declaration-of-interests/). The Waiver must be appended to the consultancy agreement and the Waiver referred to within the agreement itself, specifically stating:

*Before the Commencement Date, the Consultant must:*

*(a) arrange for the authorised Company signatory[[3]](#footnote-4) to sign the Waiver for Private Work set out in Schedule [#]and deliver such Waiver for Private Work to their Head of Department at Imperial College London; and*

*(b) have obtained approval from their Head of Department at Imperial College London.*

It is advisable to seek legal advice before signing personal consultancy agreements with The Company if they are not arranged by ICON.  The same [EI Policy](https://www.imperial.ac.uk/human-resources/procedures/external-interests/declaration-of-interests/) applies to College staff accepting Directorships with The Company and Directors should also agree a consultancy agreement if they intend to work with The Company.

In addition, for Parties that are Imperial College London Staff Members, attention is drawn to the College's Register of External Interests and Annual Declaration policy that can be found on the College webpages (direct link is: https://www.imperial.ac.uk/human-resources/procedures/external-interests/).

Imperial College London Staff Members wishing to participate in a spinout (including those individuals not party to this MoU ([NAME 1, NAME 2, etc / None]) must first seek approval from their Head of Department (HoD), ensuring any impact on their capacity to perform their current academic and teaching duties is assessed. As per the [Guidance for HoDs and line managers for reviewing and/or approving requests for External Interests](https://www.imperial.ac.uk/media/imperial-college/administration-and-support-services/hr/public/policies/roi/Guidance-for-HoDs-and-line-managers-for-reviewing-requests-for-External-Interests.pdf), requests should be considered alongside an individual’s role at College and the responsibilities assigned to that role; both from a capacity point of view and also the nature of the external interest, to determine how it will impact on the delivery and relativity of the individual’s duties and serve their and College interests, and ensure it does not create an unmanageable conflict of interest (see [Conflict of Interest Policy](https://www.imperial.ac.uk/media/imperial-college/administration-and-support-services/secretariat/public/about-the-secretariat/what-we-do/conflict-of-interests/Updated-Conflict-of-Interest-Policy-1.pdf)).

Formal approval should be sought via [ICIS (Imperial College Information Systems)](https://www.imperial.ac.uk/admin-services/ict/self-service/admin-systems/icis/) in line with [College’s External Interests Policy](https://www.imperial.ac.uk/human-resources/procedures/external-interests/) (EI Policy). The [Waiver for Private Work](https://www.imperial.ac.uk/media/imperial-college/administration-and-support-services/hr/public/policies/roi/Waiver-for-Private-Work.pdf) should accompany this in instances where service agreements have been arranged externally to ICON. Only once HoD approval has been provided, the Imperial College London Staff Member is able to sign the commercial agreement at the appropriate time alongside the other documentation to be signed at spinout formation. Whilst HoD approval is not guaranteed until formally signed off via [ICIS](https://www.imperial.ac.uk/admin-services/ict/self-service/admin-systems/icis/), Imperial College London Staff Members should obtain email confirmation of approval from their HoD and promptly share this with Imperial College.

In general, Imperial College London Staff Members are strongly advised to notify their HoD as soon as the possibility of participating in an External Interest such as a startup arises, keeping the HoD updated on formation timelines. Following these recommendations will help enable the HoD to formally sign off on the External Interest via [ICIS](https://www.imperial.ac.uk/admin-services/ict/self-service/admin-systems/icis/) without potential delay as they will have been kept up to date with proceedings throughout.

The Founders who are Imperial College London Staff Members confirm they have discussed the opportunity with their HoD, approval in principle has been provided and confirmation of such has been provided to Enterprise. Furthermore, if not already, the Founders who are Imperial College London Staff Members will formalise the approval with their HoD via [ICIS](https://www.imperial.ac.uk/admin-services/ict/self-service/admin-systems/icis/).

**Taxation**

Where shares are acquired by reason of a person’s employment, the shares are deemed to be Employment Related Securities (“ERS”) for tax purposes and will fall under rules which can charge employment income tax (often via PAYE, with National Insurance Contribution (“NIC”) and, if applicable, Apprenticeship Levy (“AL”) additionally due) on the occurrence of certain events.

Part 7 of the Income Tax (Earning and Pensions) Act (“ITEPA”) provides rules for the taxation of ERS. In the context of a typical spinout company, these rules act to ensure that where:

* A researcher is employed by a Research Institution (“RI”) and acquires shares in a spinout company; and
* The RI puts value into the spinout company by transferring IP,

then a charge to Income Tax and NIC could arise when:

* Shares are acquired for less than market value; or
* There are post-acquisition benefits that increase the value of shares.

The Research Tax Exemption (“RTE”) acts to prevent such income tax charges arising where they would arise because of the transfer of IP by the RI to The Company. The RTE is available where all the following are satisfied:

1. An agreement is made for the transfer of IP from one or more RIs to a company (the spinout).
2. A person acquires shares (or an interest in shares) in the spinout before the IP is transferred or within 183 days of the transfer.
3. The right to acquire shares (or interest in shares) is available by reason of employment by the RI or the spinout.
4. The person is involved in research in relation to the IP that has been transferred.

Where the RTE is available, an income tax charge will not arise to ERS Shareholders because of the following:

* The value of the shares in the spinout when they are acquired to the extent it is attributable to the transfer of the IP; and
* Where shares are acquired after any IP transfer, the value of the IP will not be reflected in considering whether they have acquired shares at an undervalue.

Further, where the RTE is available, ERS Shareholders are each deemed to have entered a Section 431 (“s431”) election at the time the shares are acquired. This means that any restrictions on the shares will be ignored for tax purposes and the shares unrestricted market value (“UMV”) (ignoring the value attributable to IP and the effect of restrictions) will be taxed at the date of acquisition. There will be no further income tax or NICs when the restrictions are lifted or the shares sold and the ERS Shareholders should be able to claim capital gains tax treatment on any subsequent disposal of their shares.

Therefore, the grant of the exclusive IP licence to The Company is being structured so that it falls within the RTE for income tax purposes.

**Where the RTE is available**, if The Company has other sources of value (apart from the value conferred by the exclusive IP licence) when the ERS Shareholders acquire their shares (where the shares are deemed as ERS by virtue of the shareholder’s employment status), then this value will be taken into account for income tax purposes. If the ERS Shareholders acquire their shares for less than UMV but they enter into a valid s431 election on acquisition, the ERS Shareholders would be subject to an income tax charge under PAYE, with NIC and AL applying to the difference between the price paid and the UMV at acquisition, to the extent the shares are Readily Convertible Assets.

**Where the RTE is not available**, no employment income tax or NIC charges should arise at the time the shares are acquired for tax purposes provided that the ERS Shareholders pay UMV to acquire their shares. If the ERS Shareholders acquire their shares for less than UMV, an employment income tax charge arises on the difference between the UMV and the total consideration paid by them. A tax valuation exercise will need to be completed to confirm the value of the shares before and after the transfer of the IP (see next paragraph), even if no other source of value is added to The Company other than the IP transfer.

Therefore, if any of the Imperial-employed ERS Shareholders has or will potentially acquire shares for less than the UMV (e.g. due to the participation of The Company in the activities listed in the Incorporation section prior to acquisition of their shares or IP is transferred to The Company and the RTE is not available to them), The Company will obtain a professional third-party valuation of The Company, which will confirm the UMV of such shares and the valuation will promptly be shared with Imperial College in full before the spinout process completes for the purposes of calculating liabilities (if any) under the indemnities on income tax and national insurance described below. The accountant valuation statement should provide:

1. an independent statement confirming the value of The Company’s shares (ideally this would be par value);
2. a list of the papers and process carried out to give the valuation. Imperial College does not need to see the working e.g., a balance sheet.

An estimate of the potential tax liabilities for the ERS Shareholders can be made by considering the total “best estimate” value in The Company, multiplied by their equity percentage, multiplied by 40%. Examples of value (apart from the value conferred by the exclusive IP licence) are: capital or grant funds received, the value of commercial contracts signed, and significant physical assets.

By entering into the corporate documents, the Imperial-employed ERS Shareholders agree to indemnify Imperial College and Imperial College London on demand for any income tax and national insurance assessed upon it through the PAYE system to the extent to which recovery of these amounts from them is permitted by law.

Separately, by entering into the corporate documents the ERS Shareholders acquiring shares each agree to enter into a s431 election with The Company and/or Imperial College London, as appropriate within 14 days of acquiring their shares in The Company, and promptly share these with Imperial College. For best practice, even when the RTE applies this is still required for a ‘belt and braces’ approach. Further guidance and downloadable forms for employee/employer to elect for s431 can be found on the HMRC website: <https://www.gov.uk/hmrc-internal-manuals/employment-related-securities/ersm30450>.

Please note that these comments on taxation are based on current law and HMRC practice, which may change from time to time. The Founders [ and Non-Founding Inventors ] [ and the Management ] are aware that Imperial College and Imperial College London are not advising them personally on the tax and national insurance consequences of their acquisition or holding of shares in The Company. If they are in any doubt as to their tax and national insurance position, they should obtain independent tax advice.

**Warranties**

The Company and Founders [ and Non-Founding Inventors ] [ and the Management ] will be required to give some guarantees (known as 'Warranties') to Imperial College and in due course to any future investors. This is normal practice as new shareholders and investors will not know the details of the IP and The Company's operations so use Warranties as a way of ensuring there is full disclosure of all the facts as known at the time. As it is an important point it is normal that there is a financial penalty against the individuals giving the Warranties if there has been any breach of the Warranties by acts such as dishonesty, concealment of facts or misrepresentation. The usual penalties are 1 to 2 years' salary of the individual however at this stage given the Parties are all working together on forming The Company Imperial College propose starting at a lower amount of £10,000 per individual. The liability for The Company itself is £50,000.

The warranties listed below are not the only such warranties that will be required of the Founders [ and Non-Founding Inventors ] [ and the Management ], but are indicative of some of the typical warranties required to start a business [ Warranties for the [ Non-Founding Inventors ] [ and the Management ] are limited where indicated. ]:

1. That, other than the IP Rights licensed pursuant to the IP Licence there are no IP Rights within any of the Founders' [ and Non-Founding Inventors’ ] ownership or control that The Company might reasonably require to exploit the technology or execute the business plan. [ Non-Founding Inventors are excluded with respect to the business plan. ]

2. As far as the Founders [ and Non-Founding Inventors ] are aware there is no research work being carried out at Imperial College London the results of which:

2.1 might reasonably be required by The Company to exploit the technology or execute the business plan; or

2.2 could be used to develop technology competitive to the technology.

3. As far as the Founders [ and Non-Founding Inventors ] [ and the Management ] are aware there are no IP Rights owned or controlled by a third party that would be, or are likely to be, infringed in the course of The Company's execution of its business plan and/or exploitation of the technology. [ Non-Founding Inventors are excluded with respect to the business plan. ]

4. As far as the Founders [ and Non-Founding Inventors ] [ and the Management ] are aware no third party is infringing or is likely to infringe the IP Rights in respect of the technology.

5. That the business plan represents the genuine intent of the Founders [ and the Management ] with respect to the development of the technology and the business of The Company, and is based on sound and reasonable assumptions in relation to technical development, financial projections and the legal and regulatory framework under which The Company proposes to operate pursuant to such business plan.

**Restrictive Covenants**

The Founders will be asked to give restrictive covenants intended to 'restrict' the Founders' ability to set up in competition to The Company. As with the Warranties these are also normal practice and designed to protect The Company and any future investors. However, Founders that will remain Imperial College London employees would normally expect their ‘academic freedom’ to conduct non-commercial academic research in the same field as the business to be maintained.

**Legal representation**

Each Party is responsible for securing its own tax planning advice and for securing personal legal advice in relation to this MoU and subsequent documentation that will be required to complete the formal set-up of The Company.

Imperial College advise that The Company retain legal representation at an early stage with respect to the documentation and structuring of The Company. The terms herein reflect the outline commercial terms, but the Parties may agree to structure The Company in a different manner e.g. for tax efficiency. The Company is strongly advised to seek its own advice in this regard and Imperial College can provide names of suitable advisors should The Company require them. As further described in paragraph "Incorporation" Imperial College STRONGLY advise using a lawyer from a panel of independent law firms who is experienced in dealing with universities and university based spinouts.

**Shareholder rights and control of The Company**

Shareholder consent will be required for certain key decisions affecting the value of The Company, its Shares and the corporate governance of The Company, these are summarised in Appendix 2. In addition, the shareholders will have rights to acquire and sell shares as outlined in Appendix 3. The Company will have an obligation to supply normal financial and operational information about The Company to Imperial College.

**Confidentiality**

This MoU is written on the basis that its contents and existence are confidential and will not (except with the agreement in writing of the Parties) be revealed by any of the Parties to any third party, other than the Parties’ legal representatives or other advisors (who must also keep this MoU confidential), or be the subject of any announcement.

**Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of England and the Parties submit to the exclusive jurisdiction of the Courts of England.

**Nature of this Agreement**

This MoU is subject to contract and, apart from the Confidentiality, Governing Law and this clause, is not intended to be legally binding, nor does it represent a complete summary of the contractual or commercial aims of the Parties, but expresses their desires and understandings subject to obtaining legal and other professional advice and executive approval. If executive approval is given, this MoU may form the basis of negotiation of a detailed agreement, but no party is legally obligated to any other party unless and until such an agreement is signed by all Parties.

Signed by

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

Imperial College Innovations Limited

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

[ NAME ]

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

[ NAME ]

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

[ NAME ]

**Appendix 1 - Rights attaching to Shares**

1. Subject to the cash flow, working capital and investment requirements of The Company, if in respect of the relevant accounting period The Company has profits available for distribution (within the meaning of section 830 of the Companies Act 2006), The Company shall procure that in respect of the accounting period of The Company commencing on the second anniversary of the startup formation (i.e. when the IP License and corporate documentation has been executed by The Parties), and each subsequent accounting period of The Company, at least 30 per cent of such profits are distributed by way of cash dividends by The Company to all shareholders pro rata to the number of shares held regardless of their class. In deciding whether in respect of any accounting period The Company had profits available for distribution, the Board shall be entitled to request, or at the request of a Shareholder shall procure, that the auditors from time to time of The Company shall certify whether such profits are available or not and the amount thereof (if any). In giving such certificate the auditors shall act as experts and not arbitrators and their determination shall be final and binding on the Parties hereto.

**Appendix 2 - Covenants**

1. Shareholder consents.

The prior written approval of holders of 75% of the shares will be required to:

(1) Amend the Articles of Association or modify any shareholder rights

(2) Make any material change to the business plan and/or the nature of the business of The Company

(3) Enter into of any transaction or agreement that is not in the ordinary course of business and/or on an arm's-length basis

(4) Issue any shares or obligations that may be convertible into shares or any share options

(5) Making any loan in excess of £10,000

(6) Giving any guarantee, obligation or indemnity other than in the normal course of business

(7) Acquiring any type of asset in or from another company or participating in a partnership or joint venture

(8) Disposing, assigning, licensing or leasing to any third party of any of the assets of The Company or the granting of any rights over such assets

(9) Winding-up The Company or the making of any application to the court to meet with creditors or making any insolvency arrangement

(10) Declaring and/or making a payment of a dividend

(11) Appointing any adviser to sell or negotiate to sell, any shares in The Company or enter into an IPO

(12) Enter into any lease, license or the purchase of any property not in accordance with the business plan

(13) Selling The Company or a controlling interest in The Company

(14) Any capital expenditure greater than £25,000 outside the approved Budget

(15) Making any payment to any Director, Founder, consultant to or employee of The Company of more than £75,000 during any 12 month period

(16) Creating any debenture, guarantee, mortgage or charge over the whole or any part of The Company's property, assets or undertaking

(17) Incurring any borrowing, loans, advances or credit (with the exception of standard credit terms in the ordinary course of business)

(18) Commencing or settling any litigation or arbitration by The Company

(19) Appointing or removing of directors to or from the board of subsidiary or Associated Companies of The Company

2. Board consent

(1) Approving the annual Budget of The Company

(2) Making any change to or departing from the business plan and/or Budget

(3) Adopting or varying any Employee Share Scheme

(4) Disposing or assigning to any third party or granting any rights over any capital assets of The Company with a book or market value in excess of £20,000

(5) Appointing and removing The Company auditors

(6) Making any change in the accounting policies of The Company

(7) Altering The Company's banking arrangements

(8) Any appointment of an employee or consultant or variation of terms where emoluments exceed £75,000 or more than 3 months' notice required

(9) Conducting any dealings between The Company and any of its directors, Shareholders or directors of any subsidiary of The Company

(10) Entering into or amending any material supply or distribution agreement

(11) Entering into or amending any material long-term contract, transaction or arrangement which cannot be terminated by six months' notice or less

**Appendix 3 - Conditions of issue and transfer of shares**

1. Existing shareholders will have the right to participate in any new issue of shares of any class pro rata to their holding of shares.

2. All Shareholders will have co-sale rights such that if any founding shareholder or employee has an opportunity to sell any of his shares, the other shareholders must be given the opportunity to sell a pro rata proportion of the number of shares being sold by the founding shareholder or employee on the same terms and at the same price.

3. All Shareholders will have rights such that if any shareholder has an opportunity to sell any or all of its shares, the effect of which would result in a change of control of The Company, the other shareholders must be given the opportunity to sell all of their shares on the same terms and at the same price.

4. If holders of at least 75% of all shares in issue agree to sell their shares, there will be drag along rights so that all remaining shareholders and option holders will be required to sell on the same terms, provided that the dragged shareholders will not be required to provide to the purchaser any representations or warranties except as to title or to agree to any other terms.

**Appendix 4 - Example scenarios related to how shareholder equity position changes with respect to investment and if Options are vested (for illustrative purposes only)**

The Cap Table below shows 3 events (founding equity, example investment and some options vesting) and how each event results in a change in the equity position of the respective shareholders. As can be seen in Event 1, 11,111 options have been created and set aside (but remain unallocated or exercised); as they have not been exercised and issued, Imperial College does not receive top-up shares and so its % holding of issued shares stays at the agreed 10%. In Event 2, an investment below the non-dilute threshold occurs which results in new shares being issued to the investor; because there is an issue of shares to the investor, Imperial College receives top-up shares (3,086) so its % holding of issued shares remains at the agreed 10%. In Event 3, 6,000 of the unallocated options are issued to Imperial inventors A-C, thus increasing their equity on both an issued shares and diluted holding basis. As such, Imperial College is issued top-up shares (667) so its % holding of issued shares remains at the agreed 10%. Imperial College are only issued top-up shares when new shares are issued to existing or new shareholders, such as upon investment or when options are exercised and converted to shares. Imperial College will not be issued top-up shares if options are unallocated (i.e. simply set aside) or allocated (i.e. set aside for a particular existing or prospective shareholder).



1. The Founders control the distribution of the bulk of the equity, and they should seek to negotiate an appropriate distribution with any Non-Founding Inventors; if the Founders cannot reach an agreement with Non-Founding Inventors then Imperial College London will appoint an arbitrator to decide an appropriate (dilutable) share for Non-Founding Inventors; this share will be held by Imperial College (for so long as Imperial College holds its own shares in the spinout) to avoid having company shareholders with whom the Founders have not reached an agreement; any proceeds from sale or dividend will be distributed by College direct to the Non-Founding Inventors. The arbitrator will be given guidance that 5% should be notionally allocated to all inventors and that the appropriate share for Non-Founding Inventors would be a fraction of 5% according to their inventive contribution. So for example a Non-Founding Inventor who contributed 50% of one of two patents forming the founding IP would receive 1.25% to be held by College. [↑](#footnote-ref-2)
2. To be completed if The Company is already incorporated. If a par value of £0.00001 was not used it is recommended that the shares are subdivided into ordinary shares of £0.00001/share, provided the company remains a shell and has not traded. [↑](#footnote-ref-3)
3. It is recommended that this is not the Consultant unless the Consultant is the only authorised signatory for The Company [↑](#footnote-ref-4)