

Sample Research Agreement

Dated _____ 20[●]

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

and

(2) [*Full legal name of the Enterprise Partner*]

and

(3) [Full name of the Scholar]

RESEARCH AGREEMENT RELATING TO THE IRISH RESEARCH COUNCIL ENTERPRISE PARTNERSHIP SCHEME POSTGRADUATE SCHOLARSHIP

This Agreement dated _____ 20[●] is between:

- (1) [●] (the “HEI”); [an academic institution incorporated or established under [statute or charter in Ireland],] whose [principal address or registered office] is at [●] and
- (2) [●] (the “Enterprise Partner”), [a company or insert relevant entity type incorporated in [●] with registration number [●],] whose principal place of business or registered office is at [●].and
- (3) [●] (the “Scholar”), the person awarded the Scholarship whose principal place of residence is at [●].

Background:

- A. The Irish Research Council (“the Council”) operates the Enterprise Partnership Scheme Postgraduate Scholarship (“the Programme”) to provide opportunities to suitably qualified individuals to link with an Enterprise Partner and pursue a postgraduate degree in any discipline while full-time students at an eligible HEI within Ireland.
- B. The HEI, the Scholar and the Enterprise Partner have by acceptance of this award, agreed to be bound by the Terms and Conditions of the Programme (“the Council Terms”).
- C. The Scholar and the Enterprise Partner both acknowledge that under the Council Terms the HEI is made responsible for the distribution of the Scholarship Fund in the manner specified therein and both agree to co-operate with the HEI and notwithstanding any other provision of this Agreement, to do all such acts and things as may reasonably be required of each of them in order to facilitate the discharge by the HEI of its obligations under the Council Terms in a timely manner and otherwise to ensure compliance with their own obligations under the Council Terms.
- D. The Scholar is a full-time student affiliated with the HEI.
- E. This agreement sets out the way in which the scholarship will be managed by the HEI, the Scholar and the Enterprise Partner and deals with, among other things, IP rights and confidentiality arising from the Programme.

The Parties agree as follows:

1. Interpretation

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

Supervisor

Shall mean the person or persons responsible for supporting and guiding the Scholar and ensuring the quality of the research produced under the Scholarship.

Background IP

Any Intellectual Property in the same or related fields to the research contemplated by this Agreement, developed, owned, licensed to or otherwise controlled by a Party prior to the Commencement Date or generated by that Party independently of the Project and, in each case, made available by that Party for use in connection with the Project in accordance with the process set out at Clause 7.3 below. A list of Background IP as at the date of this Agreement is set out in Schedule 2.

Commencement Date	The commencement date as set out in Schedule 1.
Completion Date	The completion date as set out in Schedule 1.
Confidential Information	<p>Any information relating to the business, affairs, technology, products or processes of a Disclosing Party that:</p> <ul style="list-style-type: none"> (i) in respect of information provided in documentary form or by way of a model or in other tangible form, at the time of provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence; (ii) in respect of information that is imparted orally, described by the Disclosing Party or its representatives to the Receiving Party as being confidential at the time of disclosure (<i>and confirmed in writing, marked confidential and sent to the receiving party within 28 days of the oral disclosure</i>); (iii) is a copy of any of the foregoing; or (iv) due to its character or nature, a reasonable person in a like position to the Receiving Party and under like circumstances would consider confidential.
Disclosing Party	The Party disclosing Confidential Information to the other Party in connection with the Project.
Enterprise Mentor	Shall mean the person or persons designated by the Enterprise Partner as being responsible for supporting and mentoring the Scholar relating to the Enterprise Partner's involvement in the Scholarship.
Enterprise Partner	Shall mean a business, a company, a registered charity, a social, cultural or not-for-profit organisation, or a semi-state commercial organisation.
Exercise Notice	Written notice from the Enterprise Partner to the HEI that it wishes to exercise the Option.
FOIA	The Freedom of Information Act, 2014, as amended, revised, modified or replaced from time to time.
Project Foreground IP	All Intellectual Property generated by the Parties in the performance of the Project.
HEI	Higher Education Institute – shall mean a recognised HEI entitled to award a Masters or a Doctor of Philosophy (PhD) degree and which is approved by the Council.
Intellectual Property (IP)	All intellectual property of any description including know-how, copyright, trade marks, database rights, design rights, patents, utility models, and applications for, and the right to apply for any of the foregoing items.
Council Terms	The Irish Research Council Enterprise Partnership Scheme Postgraduate Scholarship 2022 Terms and Conditions.

Know-How	Any unpatented technical information (including, without limitation, information relating to inventions; discoveries; concepts; methodologies; models; research, development and testing procedures; the results of experiments, tests and trials; manufacturing processes, techniques and specifications; quality control data, analyses, reports and submissions) that is not in the public domain.
Negotiation Period	90 days from and including the date of the Exercise Notice, being the period within which the parties must negotiate and conclude a licence.
Notice Party	A Party in respect of whom notice of termination is issued by the other Party pursuant to Clause 12.1 below.
Option	The option to negotiate a licence to HEI foreground IP granted by the HEI to the Enterprise Partner pursuant to Clause 7.8
Parties	The HEI, the Enterprise Partner and the Scholar, and “ Party ” shall mean any of them.
Personnel	The officers, directors, employees, contractors, researchers or registered students of a Party.
Project	The programme of work to be carried out by the Parties as described in the project plan in Schedule 1.
Publishing Party	Any Party intending to publish any results of the Project.
Receiving Party	The Party receiving Confidential Information from the other Party in connection with the Project.
Reviewing Party	The Party other than the Publishing Party.
Scholarship Fund	Shall mean the funding for the Scholarship.

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

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

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

2. Scope of the Project

- 2.1 *Project.* The Parties shall carry out the Project described in Schedule 1 with support from the Supervisor and Enterprise Mentor.

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

3. Review of Progress

- 3.1 The Parties shall agree a programme of work on a planned basis in order to complete the Research Project proposed by the Scholar and approved by the Council. The Parties agree to update the programme of work at an agreed frequency.
- 3.2 The Parties will hold review meetings on an agreed basis.

4. Responsibilities of the HEI

- 4.1 The HEI will support the Scholar to undertake further education for the purpose of attaining either a PhD or Research Master's award.

5. Responsibilities of the Scholar

- 5.1 The relationship between the HEI and the Scholar is purely for attainment of further educational qualifications. A relationship of employer and employee shall not subsist between the HEI and the Scholar; accordingly the HEI shall not have any liability to Scholar as an employee. The relationship between the HEI and the Scholar is governed by the terms of the HEI academic regulations in force for the time being and this Agreement. The awardee:
- 5.2 shall comply with the Council Terms;
- 5.3 shall follow the reasonable instructions issued by the Supervisor that are issued;
- 5.4 is responsible for submitting the annual joint progress reports on time to the Council. A copy of all reports must be submitted to the HEI.

6. Responsibilities of the Enterprise Partner

The Enterprise Partner shall

- 6.1 comply on a continuing basis with its obligations under the Council Terms;
- 6.2 support the Scholar to undertake either a PhD or Research Master's award in accordance with the Council Terms and, where feasible and appropriate, provide a placement period for the Scholar at its facility;
- 6.3 use all reasonable endeavours to enable the Scholar to meet the Scholar's obligations under this Agreement;
- 6.4 hold the HEI harmless and pay all costs that fall due to the Council as a result of the Enterprise Partner's actions in breach of this Agreement.

7. Intellectual Property

- 7.1 In this Agreement

- (a) a person shall be taken to participate in the generation of:
 - (i) an invention, only if he is considered the, or an, inventor of that invention under Irish patent law as it stands on the date on which the invention is made;
 - (ii) copyright, only if he is the, or an, author of the work in question for the purposes of Irish copyright law as it stands on the date on which the work is generated; and
 - (iii) know-how or information only if he makes a significant intellectual contribution to its generation for these purposes; the contribution of previously generated IP does not constitute a significant intellectual contribution;
- (b) the term 'generated' includes a reference to the expressions 'discovered', 'conceived', 'first reduced to practice', 'created', and 'developed', and terms cognate with the term 'generated' shall be understood accordingly.

Background IP

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

7.3 Register of IP

- (a) Schedule 2 sets out a list of Background IP that the Parties have agreed to make available for the Project as at the date of this Agreement, together with details of any restrictions or encumbrances on the use of that Background IP.
- (b) Any Party wishing to make available Background IP for use in the Project after the date of this Agreement shall provide the other Party with a written description of the Background IP together with details of any restrictions or encumbrances on the use of that Background IP.
- (c) The HEI shall maintain a register of Background IP contributed to the Project detailing the name of the contributing Party together with details of any restrictions or encumbrances on its use specified by the contributing Party.
- (d) No Party may withdraw or make any amendments to the terms and conditions of any Background IP without the prior written approval of the other Party (such approval shall not be unreasonably withheld or delayed).

Use of Background in the Project

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

Notification of Results

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

Project Foreground IP

7.6 All right and title to, and any interest in, any and all Project Foreground IP shall be vested and remain vested in the HEI. To the extent that any Project Foreground IP is capable of prospective assignment, the Enterprise Partner and the Scholar now assigns that Project Foreground IP to the HEI; and to the extent that any Project Foreground IP cannot be prospectively assigned, shall assign such Project Foreground IP as and when that Project Foreground IP is created, at the request of the HEI. At the request and expense of the HEI, the Enterprise Partner shall execute such documents as may be necessary to transfer title to the HEI and apply for patents or other protections for such Project Foreground IP.

7.7 The HEI grants to the Enterprise Partner a first Option to negotiate a licence to commercially

exploit any Project Foreground IP. If the Enterprise Partner wishes to exercise an Option, it shall give an Exercise Notice to the HEI prior to the completion of the Project. Upon receipt of an Exercise Notice, the Parties acting reasonably shall promptly enter into negotiations in good faith with a view to the conclusion of a licence agreement in respect of the HEI Foreground IP during the Negotiation Period. If the Enterprise Partner does not exercise its Option during the term of the Project or the Parties are unable to agree the terms of a licence agreement within the Negotiation Period that Option shall lapse.

7.7.1 Where HEI staff other than the Scholar have contributed to the creation of Project Foreground IP in the course of the project the HEI grants to the Enterprise Partner, where it is free to do so, a first Option under the terms as described in clause 7.7.

7.8 Any such licence shall be on fair and reasonable commercial terms and subject to separate agreement.

Research rights

7.9 Notwithstanding the grant of any exclusive licence to Project Foreground IP, the HEI shall have a non-exclusive, irrevocable, perpetual, royalty free right to utilise the Foreground IP for internal teaching and research, but for no other purpose. The rights of the HEI under this Clause 7.9 are subject to the confidentiality restrictions in Clause 8 and the rules on publication in Clause 9.

IP protection

7.10 The HEI shall consult with the Enterprise Partner in respect of the IP protection strategy and associated costs for the Project Foreground IP, including application for patents or other protections. The HEI shall be responsible for the costs of such IP protection until the Project Foreground IP is licensed to the Enterprise Partner, and any such licence shall include terms that relate to ongoing IP costs and the reimbursement of [a contribution to] the previous direct costs of this IP protection.

Step-in rights

7.11 If the HEI chooses not to file, prosecute or maintain any IP protection for the Foreground IP, the HEI shall give the Enterprise Partner notice within a reasonable period prior to the potential loss of rights, and if the Enterprise Partner so requests, the HEI shall (at the cost and expense of the Enterprise Partner) prepare, file, prosecute and maintain such IP protection as the Enterprise Party sees fit.

State Aid

7.12 The grant of any assignment of, or licence to, IP pursuant to Clause 7.8 is subject to compliance with EU state aid rules and the Parties shall use all reasonable endeavours to ensure that the terms of any such assignment or licence do not give rise to unlawful state aid.

8. Confidentiality

Confidentiality obligations

8.1 Each receiving party undertakes:

- (a) to maintain as secret and confidential all Confidential Information obtained directly or indirectly from the Disclosing Party in the course of or in anticipation of this Agreement and to respect the Disclosing Party's rights therein;
- (b) to use such Confidential Information only for the purposes of this Agreement;

- (c) to disclose such Confidential Information only to those of its Personnel to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement; and
- (d) to ensure that all those to whom disclosure of or access to such Confidential Information has been given comply with the provisions of this Agreement, and the Receiving Party shall be liable to the Disclosing Party for any breach of this Agreement by any of the foregoing.

Exceptions to obligations

- 8.2 The provisions of Clause 8.1 shall not apply to Confidential Information which the Receiving Party can demonstrate by reasonable, written evidence:
- (a) was, prior to its receipt by the Receiving Party from the Disclosing Party, in the possession of the Receiving Party and at its free disposal; or
 - (b) is subsequently disclosed to the Receiving Party without any obligations of confidence by a third party who has not derived it directly or indirectly from the Disclosing Party; or
 - (c) is independently developed by the Receiving Party by individuals who have not had any direct or indirect access to the Disclosing Party's Confidential Information; or
 - (d) is or becomes generally available to the public through no act or default of the Receiving Party or its Personnel.

Disclosure in accordance with legal obligations

- 8.3 To the extent that the Receiving Party is required to disclose any of the Disclosing Party's Confidential Information by order of a court or other public body that has jurisdiction over it or under other statutory or regulatory obligations it may do so, provided that, before making such a disclosure the Receiving Party shall, unless it is prohibited from so doing by law:
- (a) inform the Disclosing Party of the proposed disclosure as soon as possible, in any event, no later than five (5) business days after becoming aware of the proposed disclosure; and
 - (b) cooperate with the Disclosing Party's reasonable, lawful efforts to resist, limit or delay such disclosure (at the cost and expense of the Disclosing Party).

Disclosure of any Confidential Information pursuant to any such order or requirement shall not be deemed to render it non-confidential and the Receiving Party's obligations with respect to such Confidential Information shall not be changed or lessened by virtue of any such disclosure, unless such disclosure results in one or more of the exceptions listed in Clause 8.2 above applying to that Confidential Information.

- 8.4 The Enterprise Partner acknowledges and agrees that the HEI is subject to FOIA and the codes of practice issued under FOIA as may be amended, updated or replaced from time to time. The Enterprise Partner agrees that all requests under FOIA relating to this Agreement and any other relevant records will be processed by the HEI under the terms of FOIA. The HEI and the Enterprise Partner shall communicate and cooperate in relation to the processing of any requests under FOIA.
- 8.5 Each Party shall give notice to each of the other Parties of any unauthorised use, disclosure, theft or other loss of that other Party's Confidential Information as soon as is practicable after becoming aware of it.
- 8.6 The obligations of confidentiality and non-use set out in this Clause 8 shall survive termination of this Agreement for any reason for a period of five years from the date of termination.

9. Publications

- 9.1 The Parties recognise the Council policy relating to the placement of research publications in open access repositories as set out in the Council Terms. The Parties agree that the HEI and its

authorised personnel, and the Scholar, shall be entitled to make oral, written or other public disclosures of the results of the Project and the Foreground IP, including but not limited to:

- a. making presentations at seminars, symposia, professional meetings; and
- b. publishing in journals, or otherwise of their own choosing, methods and results in accordance with normal academic practice;

provided that the publication has been approved by the Supervisor and the Enterprise Partner, in accordance with Clauses 9.2, 9.3 and 9.4 below.

- 9.2 The Publishing Party shall submit its proposed publication in writing to the Reviewing Party at least 30 days before submitting it for publication.
- 9.3 If the Reviewing Party believes that delay is needed in order to seek patent or similar protection for any of the Reviewing Party's Background IP or any Foreground IP, the Reviewing Party may by giving written notice to the Publishing Party require the Publishing Party to delay the proposed publication for a maximum of 90 days or other such time as both Parties may agree, or until any affected IP is protected, whichever is the sooner.
- 9.4 All Foreground IP shall be treated as Confidential Information belonging to the Enterprise Partner. The Reviewing Party may, by giving written notice to the Publishing Party, require the removal of any of the Reviewing Party's Confidential Information from the publication.
- 9.5 If the Publishing Party does not receive a written objection from the Reviewing Party within 30 days of submission of notification of publication, then permission to publish shall be deemed to have been given.
- 9.6 The Scholar must receive written approval from the Supervisor and the Enterprise Partner to proceed with the publication.
- 9.7 Notwithstanding the foregoing provisions of this Clause 9, nothing in this Agreement shall preclude the Scholar from including results of the Project and the Foreground Intellectual Property in any thesis or other dissertation for a doctoral or other degree (a "thesis") or from following procedures for examination and for admission to postgraduate degree status provided that:-
 - (a) a draft of the thesis is submitted to the Enterprise Partner at least 30 days before the date of submission for examination; and
 - (b) where it is reasonably determined that the thesis should be embargoed, the Parties agree that the Scholar is responsible for the embargo of the thesis.

10. Warranties and Undertakings

- 10.1 *No implied warranties, etc.* Each Party acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
- 10.2 *No warranty or representation is provided by the HEI that the Scholar will obtain any qualification. The award of any such qualification shall be subject to satisfactory progression and solely at the HEI's discretion in accordance with the HEI's academic regulations for the time being and from time to time.*
- 10.3 *Only the Scholar has rights of appeal where such academic regulations are applied.*
- 10.4 *Entitlement to enter the contract.* Each Party warrants to the other that it has full power and authority under its constitution and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement.
- 10.5 *No other warranties.* Neither Party warrants or undertakes that any result or outcome, whether stated in this Agreement or not, shall be achieved, be achievable or be attained at all or by a given Completion Date or any other date, nor does either Party give any warranty that the content

or use of any results, IP, reports, information or other materials provided in connection with this Agreement will not constitute or result in any infringement of third-party rights.

11. Liability and Insurance

- 11.1 The HEI shall have no liability to the Enterprise Partner other than for breach of its obligations in accordance with Clause 8 (Confidentiality). Notwithstanding the foregoing, the HEI's total liability in contract, tort or otherwise arising out of or in connection with or in relation to this Agreement and the Research Project, excluding breaches of Clause 8 (Confidentiality), shall be limited to an amount in euro equal to the amount of the Scholarship Fund paid by the HEI to the Enterprise Partner during the preceding 12-month period.

12. Termination

- 12.1 This Agreement shall continue until the earlier of
- (a) cessation of the Project in accordance with Clause 9 of the Council Terms;
 - (b) following all appeals, the Scholar has received written confirmation that he has failed to meet the progression requirements as set out in the HEI academic regulation;
 - (c) the Enterprise Partner becomes insolvent;
 - (d) agreement in writing between the HEI and the Enterprise Partner that this Agreement should terminate.
- 12.2 *Survival of obligations.* On termination or expiration of this Agreement for any reason, all rights and duties of the Parties with regard to each other will cease except for rights and remedies which may have accrued prior to termination or expiration and any rights and/or obligations which expressly or by implication are intended to commence, survive or continue in effect on or after termination or expiration. Without prejudice to the generality of this clause, the termination or expiration of this Agreement will not affect Clauses 6, 7, 8,9, 11 and, to the extent applicable, 13 which shall survive the expiration and/or termination of this Agreement.

13. General

- 13.1 **Amendments.** This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.
- 13.2 **Assignment.** Neither Party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party.
- 13.3 **Notices.** All notices given by either Party to the other pursuant to this Agreement shall be in writing and may be delivered by pre-paid post, registered courier or by hand to:

	Enterprise Partner Contact:	HEI Contact:
Name	[●]	[●]
Title	[●]	[●]
Address	[●]	[●]

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

- (a) if sent by hand, when delivered;
 - (b) if sent by post or courier, one business day after posting.
- 13.4 **Severability.** If the whole or any part of a provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect the legality, validity

or enforceability under the law of that jurisdiction of the remainder of the provision in question or any other provision of this Agreement and the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

- 13.5 **Counterparts and Signatures.** This Agreement may be executed in counterparts all of which taken together shall constitute one single agreement between the Parties. Transmission of an executed counterpart of this Agreement by fax or e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 13.6 **Announcements.** Neither Party shall make any press or other public announcement concerning any aspect of this Agreement, or make any use of the name of the other Party in connection with or in consequence of this Agreement, without the prior written consent of the other Party.
- 13.7 **Law and jurisdiction.** This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of Ireland and each Party agrees to submit to the exclusive jurisdiction of the courts of Ireland.

Agreed by the Parties through their authorised signatories:

SIGNED For and on behalf of the HEI
[Insert full legal name of the HEI]

SIGNED For and on behalf of
[Insert full legal name of the Enterprise Partner]

Signed

Signed

Name

Name

Title

Title

Date

Date

SIGNED by the Scholar

Agreed and acknowledged by the Supervisor

Signed

Signed

Name

Name

Title

Title

Date

Date

Schedule 1

Project Plan

Commencement Date	
Completion Date	
Scope of Project	<i>Insert the project plan as agreed for funding under the Irish Research Council Enterprise Partnership Scheme Postgraduate Scholarship 2022 Terms and Conditions</i>

Schedule 2

Register of Background IP

HEI Background IP

Describe Background	List any relevant restrictions and encumbrances associated with the Background
[•]	[•]
[•]	[•]

Enterprise Partner Background IP

Describe Background	List any relevant restrictions and encumbrances associated with the Background
[•]	[•]
[•]	[•]

This section must be completed.