**Patent and Know-how License Agreement – Template**

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*Introductory remarks*

**The purpose of the license agreement template presented in this document is to facilitate the preparation of license agreements** between research organizations and parties interested in licensing a particular technology. The use of the templates is entirely voluntary, optional, and free of charge. In case of any doubt as to the use of the provisions suggested by the template, the parties are encouraged to seek professional assistance from advisor(s) duly informed about all particulars of the planned licensing cooperation and rights and interests that are to be protected by this Agreement.

**While the template was prepared in cooperation with legal experts in the field of licensing, they do not attempt to encompass all the important topics of licensing agreements and relations.** Irrespective of this template, licensing relations and the relevant contractual terms are to be negotiated and agreed upon on a case-by-case basis. The Licensor is encouraged to take sufficient time to analyze various commercial scenarios of commercialization of its technology as well as to dedicate the effort and time necessary for comprehensive negotiations of licensing terms (including by means of using non-binding or binding term-sheets setting out the key points of the future cooperation) with prospective licensees, the ultimate goal being the full mutual understanding of the meaning and consequence of each of the licensing terms and the associated risks.

*General remarks about patent and know-how licensing agreements*

**Patent and know-how licensing agreements are used for the purpose of licensing of patent registrations and/or patent applications (that is, the related inventions) and/ or know-how.** Licensing of further intellectual property rights (in addition to those designated by this form of the Agreement) will require tailor made interventions in the text of the agreement and/or entering into additional licensing agreements or similar instruments, in either case with the involvement and assistance of a professional legal advisor.

**As a first step, the Licensor should identify all the individual elements featuring the technology that is to be licensed to the Licensee**, including registered patents, patent applications, utility patents, utility patent application, trade secret or know-how (technical and/or commercial), software, trademark registrations or trademark applications, trade names etc. If the license is to encompass non-registrable intellectual property rights, especially trade secret and/or know-how, the Licensor should be careful not to make any disclosure of the relevant information without the proper non-disclosure arrangements in place. As soon as reasonably possible, preferably before starting the negotiations with the prospective licensees and prior to entering into this Agreement, the Licensor should make sure that it has and has gained (e.g., from its employees, assistants, partners etc.) the relevant right enabling the Licensor to enter into and perform this Agreement.

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*How to use the templates*

**The license agreement template contains placeholders for information that needs to be filled out on a case-by-case basis as well as informational cross-references.** The placeholders and cross-references are denoted by **[bold square brackets]**. Additionally, the template contains boxes which explain the importance and reasoning behind certain commercial and legal institutions as well as procedures related to the License Agreement. The boxes also reflect some considerations and alternatives (often in the form of pros and cons) that the Licensor is encouraged to consider. The boxes should not be part of the Agreement at any stage (either during the negotiations with potential licensees or at the execution stage) and the Licensor should remove them from the License Agreement as soon as the internal drafting of the Agreement has been completed.

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**Patent and Know-how License Agreement**

**[Name of the Company/Institution]**

Legal entity ID (OIB) no.: [●]

Registered Seat: [●]

incorporated under the laws of the Republic of Croatia and registered under no. [●] in the registry of the Commercial Court in **[city of the competent registration court]**

*(the “****Licensor****”)*

and

**[Name of the Company/Institution/Person]**

Company ID (OIB) no.: [●]

Registered Seat: [●]

incorporated under the laws of **[name of the country]** and registered under no. [●] in the **[name of the companies register]**

(the “***Licensee***”)

(Licensor and Licensee also jointly as “***Parties***” or individually as “***Party***”)

enter into this License Agreement (the *“****Agreement****”*).

**Preamble**

The Parties are mutually interested in the commercialization of a specific proprietary technology **[insert name/ brief description of the technology**], which has been developed and is wholly owned by the Licensor. The principal aim of this commercialization endeavor is to exploit this technology along with other related knowledge possessed by the Licensor for mutual benefit. The Parties wish to achieve this goal by the Licensor’s granting of a license to the Licensee, enabling practical application of this technology and developing the potential of its further development. In addition to the commercialization of such technology, the Licensee anticipates ongoing cooperation from the Licensor in advancing the technology and in addressing potential business challenges that may arise in the future.

Now, therefore, the Parties agree to be bound by the following terms:

# Definitions

Unless otherwise stipulated in this Agreement, the following terms, when capitalized, shall have the following meanings:

* 1. “**Patent**": Patent(s) registered in **[countries of registration**], registration numbers **[please specify]** and patent applications filed in **[countries of patent applications]**, patent application numbers **[please specify].**
	2. "**Exit Fee**”: The value of the Licensee’s shares transferred to a third party at the time of the Exit Event **[see Box 1]**.
	3. "**Exit Event**": Any acquisition by a third party of all or a portion of the shares of the Existing Partner of the Licensee; an Exit Event shall not be deemed to be an acquisition by a third party of all or a portion of the shares of the Existing Partners of the Licensee that is part of the Technology Utilization Plan or has been approved in writing by the Licensor and is intended to provide interim financing to the Licensee.
	4. **“Exit Value”**: the proceeds if an asset or business were to be sold. This estimated amount is considered to be most reliable if the proceeds are derived from an independent third party in an arm's length transaction where the sale is not rushed.

**Box 1. Exit fee**

**The Exit fee serves as a mechanism allowing the Licensor to partake in potential future success, while not restricting the Licensee.** It can be implemented in scenarios where an exit is anticipated, or there is a possibility of it occurring. However, this concept may not be applicable in situations where a company has a long-term license, and the probability of an exit is extremely low.

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* 1. “**Know-how**”: Long-term developed and acquired knowledge and skills of the Licensor (including those developed and acquired for the Licensor’s benefit), resulting from research, testing and experience, and relating to the design of specific technological aspects that lead to the improvement of the system and other related knowledge enabling the construction of the technology prototype and its subsequent use in practice (irrespective of whether it meets the requirements of protection as a trade secret or not).
	2. “**Licensed Area of Use**”:
1. The use of technology in the field of specific applications, in particular **[specify],**
2. Use of the technology in current and complementary applications of competing technologies **[specify],**
3. Improving the properties of **[specify based on the technology].**
	1. “**Licensed Product**”: Equipment for **[specify]** using the technology and related consumables offered in various forms.
	2. “**Technology Utilization Plan**”: A description of the steps that the Licensee will take to make the most effective use of the technology, which is set out in more detail in Annex **[insert Annex number, if applicable]** of the Agreement **(see Box 12)**.
	3. “**Legal Action**”: The commencement or continuation of any proceeding before any court, administrative authority, or similar body in any jurisdiction with respect to the threatened Know-how or Industrial Property Rights, including related pre-suit (preliminary) proceedings.
	4. “**Industrial Property Rights**”: Rights arising from the Patent, namely the individual registrations and applications making part of the same.
	5. “**Related Person**”: A natural or legal person who, on the date of this Agreement or at any time during the term of this Agreement, directly or indirectly controls, is controlled by, is under common control with, or is directly controlled by, any of the Parties.
	6. “**Technology**”: A device and process for **[specify].**
	7. “**Territory**”: The territories specified in Annex **[insert Annex number, if applicable]** to this Agreement **[see Box 2]**.

**Box 2. Importance of Territory Determination**

**The territory of the License should primarily be limited to the countries in which the patent registration was granted and/or applications were filed.** For example, a European patent application may be licensed in whole or in part for all or part of the territories of the designated contracting states of the European Patent Convention.

**Combinations of extensions of license to other territories are possible**, e.g., where the production under the patented technology is carried out in the country of patent protection and the corresponding product is sold in other countries. Please keep in mind that an obligation imposed on a licensee to pay remuneration (royalties) even if the (otherwise patented) procedure is only used outside the territory of the patent, may be seen as restriction going beyond the scope of the patent. You should seek specific advice for such territorial delimitation always where there is a concern or risk of the License being too broad or too limited.

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* 1. "**Revenues**": All gross income and funds directly received by the Licensee from the sale, licensing, or other methods of commercial exploitation of the patent or know-how, including but not limited to sales of sub-licenses, subscriptions, maintenance, support, updates, upgrades, and enhancements.
	2. "**Existing Partners**": The partners of the Licensee who were partners (members, shareholders or similar) at the date of this Agreement, in any case with an entry in the respective registry of stocks, shares or other interests in the Licensee, or (where applicable) in the official records of the Licensee (e.g., book of shares).
	3. “**Technology Enhancement**": Any development or improvement to the Technology.

# Initial Provisions

* 1. The subject matter of this Agreement is the Licensor’s grant to the Licensee of the authorization to exploit the Industrial Property Rights and the Know-how within the scope of Article 3 of this Agreement (hereinafter referred to as the "**License**") and the obligation of the Licensee to pay for this exploitation the remuneration set out in Article 4 of the Agreement.
	2. Except for the Licensor's authorization under Section 3.6 and within the material scope set forth in Section 3.3, the License is granted as **[insert limit e.g., exclusive, non-exclusive, or otherwise; see Box 3]** with respect to the Industrial Property Rights. With respect to Know-how, the License is granted on a **[insert limit, e.g., exclusive, non-exclusive, or otherwise; see Box 3].**

**Box 3. Exclusive vs. non-exclusive license**

**Choosing between an exclusive or non-exclusive license will often depend on the specific characteristics of the intellectual property**, the Licensor's goals for that property, the market environment, and potential partners' capabilities and interests.

***Exclusive License***

**An exclusive license means that only the licensee, and no one else, is able to use the licensed property**. It grants the licensee the sole right to use, produce, and sell the item being licensed. Do not forget to consider exceptions for research, education, and other non-commercial use, **please see Box 7.**

**Pros** for the Licensors:

*1) Higher Value:* Exclusive licenses can often command higher fees due to their nature, potentially leading to more revenue for the academic institution.

*2) Defined Partnerships:* Working with a single licensee simplifies the management of the license agreement and allows the institution to build a closer relationship with one industry partner.

*3) Accountability:* With exclusive licenses, there is typically a higher level of expectation for the licensee to actively exploit the licensed property, often tied to performance clauses in the license agreement.

**Cons** for the Licensor:

*1) Limited Potential:* If the sole licensee is not successful in commercializing the licensed property, the institution has missed out on other potential partnerships. This is linked to the third role of universities and maximum spread of knowledge to society (thus many universities strategically prefer non-exclusive licenses).

*2) Dependence:* If the licensee fails or underperforms, it could significantly impact the revenue generation from the licensed property. Thus it is important to introduce minimal fees (Section 4.7).

*3) Reduced Market Penetration:* With only one entity driving the commercialization, the licensed property may not reach all possible markets and impact to society is limited.

A concept similar to that of exclusive license, with the distinction that the Licensor would keep the right to use the licensed property (that is, commercialize it individually but not in cooperation with any person other than the Licensee) would be the **sole license**. If the concept of the sole license is opted for, the Licensor needs to make sure in the License Agreement that it exceptionally retains the right of exploitation of the subject matter of the License. The Licensor should keep in mind that in the alternative: exclusive vs sole license, the prospective licensees are usually more in favor of exclusive licenses, especially where the Licensing Agreement (as this one, see Section 3.6) provides for the License back for non-commercial use.

***Non-exclusive License***

**A Non-Exclusive License grants to the licensee the right to use the property but means that the licensor remains free to exploit the same intellectual property** and to allow any number of other licensees to also exploit the same intellectual property.

**Pros** for Licensors:

*1) Multiple Revenue Streams: By* licensing the property to multiple entities, the institution can gain multiple revenue streams.

2) Diversification: Different licensees might utilize the licensed property in different markets or applications, potentially maximizing the utility of the institution's intellectual property.

3) Risk Distribution: Failure or underperformance by one licensee doesn't have as much impact on overall revenues, as there are other licensees that continue to provide income.

**Cons** for Licensors**:**

*1) Lower Fees*: Non-exclusive licenses usually have lower fees than exclusive licenses, as the value proposition for the licensee is not as high.

*2) Management Complexity*: Managing multiple license agreements can be more administratively complex and time-consuming.

*3) Potential Conflict:* There could be a higher risk of conflict among licensees, which might cause reputational risk or additional administrative burden to the institution.

***<PLEASE DELETE UPON COMPLETION>***

* 1. The Licensee agrees to use the subject matter of the License in accordance with this Agreement and the Technology Utilization Plan **[see Box 12].**
	2. The Licensee is entitled to sub-license or otherwise dispose of the subject matter of the License granted under this Agreement only after entering a written agreement with the Licensor (or being given the Licensor’s explicit written approval) in this respect, even in the case of transfer of the Licensee’s business as going concern, plant, or any part thereof **[see Box 4]**.
	3. The Licensee is obligated to take reasonable case for and maintain the integrity and reputation of the Licensor. As such, the Licensee must not grant sub-licenses to parties of questionable credibility or repute, which could potentially harm the Licensor's standing.

**Box 4. Sub-licensing**

**Obtaining the Licensor’s approval for all sub-licensing agreements is strongly recommended.** There are two primary reasons for this suggestion. The first is to ensure proper tracking of where the technology is utilized, which helps manage the actual users and safeguard the Licensor's brand. The second is tied to compensation and the potential for fee dilution; the terms for sub-licenses are often decided in advance. However, it’s important to ensure that sub-license approvals are conducted efficiently and swiftly.

**Parties are encouraged to pay special attention to situations where the Licensee’s preferred business model involves sub-licensing.** In these instances, we propose that sub-licensing is pre-approved based on a set of predefined conditions. Where uncertainties persist, please consult professional legal advice.

***<PLEASE DELETE UPON COMPLETION>***

* 1. The Licensor shall provide the Licensee with the relevant documents, materials and/or information, which is necessary for the exploitation by the Licensee under this Agreement and in accordance with terms, particularly the purpose of the License granted under the same.
	2. The Licensor undertakes to maintain the Industrial Property Rights (including the continuation of the patent application proceedings pending at the time of execution of this Agreement, if any) and Know-how only in the cases and to the extent particularly set forth in this Agreement.
	3. The Licensor gives no warranty, assurance, or representation to or for the benefit of the Licensee in respect of the registrability, successful registration (particularly in respect of the patent applications that are the subject matter of the license granted herein) or survival of any of the Industrial Property Rights, unless otherwise specifically stated in this Agreement. In case that any application or right making part of the Industrial Property Rights becomes rejected, refused, cancelled, invalidated, or otherwise terminated (whether in entirety or in part), such rejection, refusal, cancellation, invalidation, or termination will not have any automatic effect on this Agreement. Instead, the Parties will negotiate in good faith the continuation or termination of their cooperation in such circumstances.

# Subject of the Agreement

* 1. **Term**: The License is time-limited and is granted for the term of this Agreement as defined in Section 11.1 **[see Box 5]**.

**Box 5. Importance of Term**

**The duration of the License Agreement in respect of a granted patent, cannot extend to a period after the expiry of the maximum statutory duration of such right**, namely 20 years as of the date of patent application. The Licensor should keep this in mind in addition to other reasons and arguments relevant for the duration of the License, when proposing or agreeing upon the same.

***<PLEASE DELETE UPON COMPLETION>***

* 1. **Territorial Scope**: The License is restricted to the Territory only.
	2. **Material Scope**: The License is limited in scope to the Licensed Field of Use only and authorizes the Licensee to **[outline scope, e.g., manufacture, offer, use, market, or sell products or provide services; see Box 6]** based on the specified Technology. The Licensor reserves the right to license the Industrial Property Rights and Know-how to third parties outside the Licensed Field of Use at its sole discretion and without any limitation.

**Box 6. Importance of Licensed Field of Use**

**Defining the Licensed Field of Use is crucial in mitigating potential disagreements** over what is included or excluded under the license agreement. This delineation allows the Licensor to grant licenses to other parties for applications that fall outside the specified scope. Concurrently, it assures the Licensee that the Technology will not be licensed to competitors within the agreed field.

While it may seem straightforward, delineating the pertinent field with as much precision as possible is strongly recommended to avoid any future confusion or conflict.

***<PLEASE DELETE UPON COMPLETION>***

* 1. The grant of the License does not transfer ownership of the Industrial Property Rights or Know-how or any related intellectual property. Nor does the grant of the License create any claim or right of the Licensee in respect of any other items of intellectual property of the Licensor beyond those items of intellectual property expressly set out as subject matter of the License in this Agreement.
	2. During the term of this Agreement, the Licensor shall provide the Licensee with such reasonable assistance as may be reasonably requested by the Licensee for the exercise of the Licensee's rights under the License.
	3. The grant of the License shall be without prejudice to the rights of the Licensor to exercise all of the rights and activities for which the License was granted for the use of the Industrial Property Rights and Know-how for non-commercial research, development, educational and publication purposes **[see Box 7]**, including improvements and modifications to the Industrial Property Rights and Know-how, and any results obtained from such activities shall be the intellectual property of the Licensor. The Parties expressly agree that the provisions of this Article shall apply only to activities of an academic and non-commercial nature and any commercial use of the subject matter of the License is excluded without the written consent of the Licensee.

**Box 7. License back for non-commercial use**

**It is recommended that in the case of an exclusive license agreement, the Licensor retains rights to the Technology for research, educational, and non-commercial purposes**. The Licensee should have no objection to this provision. Nevertheless, it should be noted that any new intellectual property arising from this research could potentially be encompassed under the same license for commercial exploitation, as elaborated in Box 10. Reciprocity Principle below.

***<PLEASE DELETE UPON COMPLETION>***

# Remuneration and Purchase Price (see Box 8)

* 1. The Licensee agrees to pay to the Licensor a royalty consisting of the following:

a) A fixed part of the remuneration in the amount of **[insert amount, e.g., EUR 10,000] (**hereinafter referred to as the "**Fixed Remuneration**"),

b) The Share Award portion of the remuneration:

i. For Revenues up to and including **[insert amount and/or rate of Revenues, e.g., EUR 500,000.00 at the rate of 6% of revenues]**

ii. For Revenues from **[insert amount range, e.g., EUR 500,000 up to and including EUR 1,000,000]** in the amount of **[insert amount, e.g., EUR 30,000]** and **[insert portion of revenues, e.g., 5%]** of the portion of Revenues exceeding **[insert amount, e.g., EUR 500,000]**

iii. For Revenues from [**insert amount range, e.g., EUR 1,000,000 to EUR 5,000,000 inclusive],** and amount and/or portion of revenue **[insert amount and/or portion of revenue, e.g., EUR 55,000 and 4%]** of the portion of Revenues exceeding **[insert amount, e.g., EUR 1,000,000]**

iv. For Revenues from **[insert amount range, e.g., EUR 5,000,000 to EUR 10,000,000]** inclusive**, [insert amount and/or portion of revenue, e.g., EUR 215,000 and 3%]** of the portion of Revenues exceeding **[insert amount, e.g., EUR 5,000,000].**

v. For Revenues exceeding **[insert amount range and/or portion of revenue]** of the portion of Revenues exceeding **[insert amount].**

(hereinafter collectively referred to as the “Share Award”) and,

1. A share portion of the Exit Value of **[insert portion, e.g., 5-10%] (the “Exit Fee”)**.

(collectively, a) – c), the "Royalties").

**Box 8. Remuneration**

**The calculation of the Remuneration/ Royalties always depends on the business case and business model of the Licensee.** Market analysis is always necessary to offer a remuneration model fair for both sides. Do not construct the model based solely on information provided by the Licensee. Consider using court appointed experts (or other external authority) to help you to construct unbiased and objective remuneration models and values.

**In case the Licensee considers selling the company in the future (venture capital business trajectory), the License Agreement should include an Exit fee.** This fee must be feasible for the Licensee. Remember, you are the Licensee’s partner, and their success is to some extent dependent on the conditions offered. If these conditions are too demanding it may cause the Licensee to underperform and hence result in lower license fees. This is extremely important to remember especially in case of spin-out and start-up companies, which may require more time to develop.

**Market analysis is crucial in setting a fair remuneration structure**. If you do not have sufficient expertise or resources in-house, a Market Analysis template is available to get started. Also, consider consulting experts in Technology Transfer Offices and/or external consultancy to assist with market analyses. Having an analytical basis is always helpful in negotiating with the Licensee.

**The type of firm using the license should also be considered when setting the remuneration structure.** For example, delayed payments or progression of payments (or minimum payments, see Box 9) may be considered when licensing to start-ups. This would help the start-up to reduce the risk of financial difficulties in the initial stages of their development. On the other hand, a higher license fee may be proposed for larger companies in the first years, where there is a risk that the company may lose interest in the Technology over time.

***<PLEASE DELETE UPON COMPLETION>***

* 1. The Fixed Remuneration will be paid based on an invoice issued by the Licensor, but no later than **[insert timespan, e.g., three (3) months]** after the conclusion of the Agreement, by wire transfer to the account specified therein.
	2. The Fixed Remuneration shall be non-refundable and shall not be deemed to be an advance on any other part of the Royalties under this Article.
	3. The Share Award is payable annually in arrears always by the end of the sixth (6th) month of the year following the calendar year in which the Revenues were made. The Share Award shall be paid in EUR (Euro). Any conversion that may be needed for that purpose will be done under the Euro foreign exchange reference rates of the European Central Bank valid on the date of the written statement. The Licensee undertakes to provide the Licensor with a written summary of all Revenues for the previous calendar year by the end of the third (3rd) month of the following calendar year at the latest.
	4. The Share Award will not be calculated on Revenues generated from the Related Persons of the Licensee, unless they have been made for the purpose of resale to final customers, distributors and other third parties. In such case, the Share Award shall be calculated on the Revenues made by the Related Persons of the Licensee and the Licensee agrees to include such Revenues in the written statement pursuant to Section 4.4.
	5. The obligation of the Licensee to pay the Share Award shall continue for the term of this Agreement and beyond its expiration for the purpose of selling goods or services produced by means of exploitation of the subject matter of the License in respect of which the delivery has commenced prior to the expiration of this Agreement. Upon full completion of such sale and/or the provision of the relevant services, the Licensee shall issue a statement of Revenues within three (3) months and the Share Award shall be payable within six (6) months of the completion of the sale.
	6. **[Optional paragraph; see Box 9:** Minimum Payments: in the event that the Share Award paid on the basis of Revenues does not reach the minimum amount, the following obligations shall apply:

a) **[Insert amount and year of maturity, e.g., 10 000,- EUR for the year 2023],**

b) **[Insert amount and year of maturity, e.g., 15 000,- EUR for the year 2024],**

c) **[Insert amount and year of maturity]**

d) **[Insert amount and year of maturity]**

The Licensee promises to pay the Licensor, by the end of the **[insert month, e.g., ninth (9th) month]** of the year following the calendar year in which the minimum amount outlined in Section 4.7 of the Agreement has not been met, an amount equal to the difference between the Minimum Payment and the Share Award actually paid for that period. Should this Agreement be terminated, the Minimum Payment rule will be applied pro rata, that is, the Minimum Payment will be calculated for the number of months of the Agreement in the relevant calendar year. The Minimum Payment rule will not apply in the case of sales as per Section 4.6 of this Agreement.**]**

**Box 9. Minimum Payment clause**

**In the case of an exclusive license, a Minimum Payment clause is strongly recommended.** It is crucial to motivate the Licensee either to commercialize the Technology or to terminate the agreement, thus permitting the Licensor to license the Technology to other partners.

**It is imperative to negotiate the minimum payments with the Licensee to ensure that they are feasible.** Alternatively (or concurrently), the commercialization of the Technology can be assessed through the Technology Utilization Plan, as detailed further in the subsequent section.

***<PLEASE DELETE UPON COMPLETION>***

* 1. **Exit Fee**: The Licensee promises to promptly inform the Licensor of the finalization of a term sheet or similar preliminary agreement concerning the Exit Event and the amount of the Exit Fee, no later than thirty (30) days prior to the Exit Event. The Exit Fee is to be paid within sixty (60) days of the earliest of the Exit Event or the recording of the related change in the commercial register. The currency of payment of the Exit Fee will be EUR. Any conversion that may be needed for that purpose will be done under the Euro foreign exchange reference rates of the European Central Bank valid on the date of payment of the Exit Fee.
	2. **Audit**: The Licensee agrees to keep financial records of all transactions related to the use of the subject matter of the License granted by this Agreement. The Licensee shall, upon the Licensor's request at any point during the term of this Agreement, but no more than once per calendar year, make available all accounting and contractual documentation related to the use of the subject matter of the License or Exit Events to an independent auditor appointed by the Licensor to verify the reports submitted by the Licensee. In case the independent audit reveals an underpayment over **[insert percentage, e.g., 5%]** of the Royalties due under this Agreement, the Licensee agrees to, in addition to other remedies available to the Licensor under this Agreement or applicable law, compensate such underpayment, pay a contractual penalty to the Licensor in the equal amount, and compensate the cost of the audit. If the independent audit finds an underpayment not exceeding **[insert percentage, e.g., 5%]** of the Royalties due, the Licensee promises to compensate such underpayment and the cost of the audit. If the independent audit discovers no outstanding dues, the cost of the audit shall be borne by the Licensor. If the independent audit reveals an overpayment over **[insert percentage, e.g., 5%]** of the Royalties paid, this overpayment will be deducted from the nearest subsequent payment of the Royalties and the Licensor will bear the cost of the audit. All payments under this paragraph are due and payable within thirty (30) days of the Licensor’s delivering of the relevant invoice to the Licensee, given that the date of the taxable supply is deemed to be the date of the invoice for the purposes of this paragraph, except for penalties (if applicable) which shall not be considered for a taxable supply. The audit may be carried out for a period of not more than three (3) fiscal years retrospectively, even after the termination of the obligation under this Agreement, regardless of the reason and manner of its termination.
	3. **Default**: In the event of a default in payment of any payment under this Article, the Licensee is, in addition to other remedies available to the Licensor under this Agreement or applicable law, also obligated to pay the Licensor a statutory interest rate under the applicable law.

# Improvement of the subject of the license

* 1. The Parties agree that any Technology Enhancements resulting from the collaboration between the Parties and the associated intellectual property (of whatever type) shall automatically be included in the License **[see Box 10]**.
	2. The Parties agree that the Licensor shall at all times be the owner of the Technology Enhancements resulting from the cooperation of the Parties. If a Technology Enhancement is developed independently by either Party, the owner of such Technology Enhancement shall be the Party that developed it, without prejudice to the ownership or right to exploit or use of the original Technology (in respect of which the Technology Enhancement has been achieved).
	3. The Licensee agrees to the free, non-commercial use of its self-created Technology Enhancements by the Licensor. The Licensee also agrees to transfer these Technology Enhancements to the Licensor free of charge in the event of voluntary dissolution of the Licensee's company without a legal successor.
	4. The Parties commit to inform each other about the occurrence of the Technology Enhancement without undue delay, but no later than thirty (30) days after becoming aware of the occurrence of the Technology Enhancement.

**Box 10. Reciprocity principle**

**Modifications to the licensed technology will be included in the License Agreement.** If both the Licensor and Licensee collaborate to enhance the technology, this improvement is automatically included under the existing License Agreement. In essence, the Licensee is permitted to utilize the updated technology without the need for a separate agreement.

**Ownership of any advancements made through this joint effort remains with the Licensor, unless otherwise specified herein.** Conversely, if the Licensee independently develops an improvement, they retain ownership of that specific upgrade.

**This clause minimizes the risk of disputes concerning what is included within the scope of the agreement**. This is particularly beneficial in industries with frequent incremental improvements. It promotes a productive and useful partnership setup.

***<PLEASE DELETE UPON COMPLETION>***

# Industrial Property Rights Protection

* 1. The Licensor shall work, on a best effort basis, to ensure the maintenance and renewal of the Industrial Property Rights throughout the term of this Agreement, always after consultation and in agreement with the Licensee, and at the Licensee's expense **[see Box 11]**. The Licensee shall reimburse the Licensor for **[insert costs, fees, and obligations, e.g., all costs, administrative fees, attorney and patent agent's fees and expenses of any nature incurred by the Licensor from the time in relation to such renewal and maintenance]** (including fees incurred in opposition, invalidation, cancellation or similar proceedings) within thirty (30) days of receipt of a corresponding invoice from the Licensor. The Licensor shall be entitled to make as a condition of any action by the Licensor under this Article an advance payment by the Licensee to cover the costs likely to be incurred in connection with the necessary action.

**Box 11. Licensee covering intellectual property rights (IPR) costs?**

**Who covers the costs associated with the intellectual property protection depends to a large extent on the exclusivity of the License agreement.**

*Exclusive License*

**In the context of an exclusive license, the Licensee is typically responsible for covering the costs associated with IP protection**. This is because, with exclusive rights to the licensed technology, the Licensee has a strong interest in ensuring robust protection and maintenance of the intellectual property, since they alone hold the rights to its commercialization.

*Non-Exclusive License*

**In cases of a non-exclusive license, the Licensor is more likely to bear the costs of IP protection.** The Licensor retains the capacity to license the technology to multiple parties and by safeguarding the IP, upholds the value of the technology, facilitating its licensing to multiple companies. However, it's worth noting that these costs might also be distributed among the various Licensees.

**In all situations, the decision concerning who will bear the costs of IP protection should be made based on negotiations** and the specific circumstances and resources of the involved parties. This decision should be clearly outlined in the agreement to preempt any future disputes.

***<PLEASE DELETE UPON COMPLETION>***

* 1. In the event that the Licensor decides to abandon the protection of the Industrial Property Rights in one or more countries of the Territory, the Licensee shall have the right to request the transfer of the related Industrial Property Rights that the Licensor has decided to abandon to the Licensee. The Licensor must notify the Licensee of its decision within **[insert timespan, e.g., three (3) months prior]**.
	2. In the event that this Agreement is terminated for any reason prior to the expiration of the term for which it is entered into, the Licensor shall refund to the Licensee within **[insert timespan, e.g., fourteen (14) days]** of termination of the Agreement a pro rata portion of the unused deposit paid by the Licensee in accordance with Section 6.1 of this Agreement.
	3. If the Licensor fails to fulfil its obligations under this Article 6 of the Agreement, in particular if the protection of Industrial Property Rights is interrupted due to the failure by the Licensor to maintain and renew the Industrial Property Rights in accordance with this Agreement, the Licensee shall be entitled to damages incurred by the Licensee as a result of such failure.

# Rights Enforcement

* 1. The Parties undertake to inform each other of any infringement, even threatened, of the Industrial Property Rights or Know-how by a third party of which they become aware.
	2. Either party may, at its own expense, take Legal Action in connection with any such infringement, even if only threatened. Prior to taking Legal Action and unless in case of urgency a Party shall discuss any proposed action with the other Party and shall give due consideration to its legitimate interests.
	3. In the event that a Party takes Legal Action pursuant to Section 7.2, it shall keep the other Party informed of the progress of the Legal Action, including any claims brought by third parties relating to the Industrial Property Rights or Know-how
	4. The Parties shall provide each other with all appropriate assistance (including, for example, provision of the relevant information, evidence materials, execution of powers of attorney) in proceeding under this Article 7.

# Statements, Rights and Obligations of the Parties

* 1. The Licensor represents and warrants to the Licensee that:
1. it is authorized to enter into this Agreement and by entering into this Agreement and/or performing its obligations hereunder, does not violate any provisions of applicable law or its own internal regulations or its contractual or other obligations,
2. it is authorized to grant the License to the extent set forth in this Agreement.
	1. The Licensor notifies the Licensee, and the Licensee acknowledges, agrees and accepts that there may be pre-existing industrial property rights (in particular patent applications and patents) of third parties, and that the use of the Know-how could in fact constitute an infringement of such third-party rights. The Licensee acknowledges that the Licensor provides no warranty to the Licensee that the Know-how does not infringe any third-party rights. The Licensee declares that it accepts the License with the understanding that before starting to use the License it is advisable to conduct a full search in specialized databases and to have a freedom-to-operate analysis prepared, which the Licensee shall carry out independently at its own discretion and expense.
	2. The Licensee expressly acknowledges, agrees, and accepts the License with the understanding that no warranty is given by the Licensor that the Know-how or Industrial Property Rights are suitable for any use or purpose intended by the Licensee and that they will be successfully implemented into the Licensee's production conditions without the need for modifications and additional costs on the part of the Licensee.
	3. The Licensee represents and warrants to the Licensor that:

a) it is authorized to enter into this Agreement and by entering into this Agreement and/or performing its obligations hereunder, does not violate any provision of law or its contractual or other obligations,

b) it is not bankrupt or threatened with bankruptcy, and no petition has been filed for the commencement of insolvency proceedings or a decision has been made to dissolve it without liquidation or with liquidation,

c) there is no pending judicial or administrative enforcement against it that could jeopardize its performance of this Agreement and/or its use of the License and payment of the Royalties.

* 1. The Licensee, on its own behalf, at its own expense and under its own responsibility, shall perform all activities related to the use of the License, including (but not limited to) the commercialization of the Technology. The Licensor shall not be liable for any violation of the law, the rights of third parties or for any damage or injury incurred by the Licensee or third parties in connection with the Licensee's activities in the use of the License and the commercialization of the Technology.
	2. The Licensee undertakes to inform the Licensor in writing (electronic form is sufficient) and without delay of the commencement of sales of products or services related to the Technology. Furthermore, the Licensee shall be obliged to inform the Licensor of planned changes in the ownership structure of the Licensee or changes in the composition of its bodies, changes in the registered office or business premises of the Licensee and other significant changes without undue delay.
	3. The Licensee agrees to defend, indemnify and hold harmless the Licensor from and against any and all claims, demands, liabilities or expenses (including legal costs) incurred or asserted against the Licensor by reason of any damage or injury caused by the Licensee, its statutory bodies or employees in the use of the License. The obligations of the Licensee under this clause shall survive the termination of this Agreement for a period of ten (10) years from the termination of this Agreement.
	4. If any statement or warranty made by either Party in this Article of the Agreement proves to be incorrect, false or incomplete at any time from the start date of the Agreement until its termination, and the party in breach fails to remedy the breach at its own expense within thirty (30) days of being requested to do so in writing by the other party, the non-breaching party shall be entitled to:

a) terminate the Agreement under the terms stipulated in the same, and/or

b) claim from the breaching party damages incurred as a result of the inaccuracy, falsity or incompleteness of the relevant statement or warranty.

# Practical application of the technology

* 1. The Licensee shall, consistent with the responsibilities outlined in Section 2.3, utilize the subject matter of this Agreement with appropriate professional care and responsibility, endeavoring to optimize its monetary value for both parties. The Licensee must adhere to the Technology Utilization Plan **(see Box 12)** when using the subject matter of this Agreement.
	2. The Licensee commits to arranging a face-to-face meeting with representatives nominated by the Licensor at least annually. During this meeting, the Licensee will provide a comprehensive report on the implementation of the Technology Utilization Plan and discuss any necessary amendments.
	3. The Technology Utilization Plan includes the following binding milestones, among others:

a) **[Insert additional applications and timespan, e.g., completion of the prototype and initiation of commercial product exploitation (Responsible Party: Licensee, Deadline: First (1st) of June 2023)]**

b) **[Insert additional applications and timespan, e.g., Onboarding of a strategic investor, potentially raising capital to commence commercial/serial production (Responsible Party: Licensee, Deadline: First (1st) of June 2025)].**

* 1. The Licensee shall provide the Licensor with a revised Technology Utilization Plan, including all supporting information necessary for its review, at least thirty (30) days prior to the commencement of each subsequent calendar year. The Licensee shall consult with the Licensor on the draft plan and take into account any feedback raised by the Licensor. Upon the Licensor's approval of the revised plan, it will become the Technology Utilization Plan for the upcoming year.

**Box 12. Importance of Technology Utilization Plan**

**A Technology Utilization Plan is a comprehensive strategy that outlines how the Licensee plans to exploit and maximize the value of the licensed technology.** Including this in the license agreement can be beneficial for several reasons and in various scenarios:

*Transparency and Accountability:* A Technology Utilization Plan promotes transparency and accountability between the Licensor and Licensee. It outlines the Licensee's commitment and strategy towards the commercialization of the technology, which provides assurance to the Licensor about the intent and capability of the Licensee.

*Performance Measurement:* The Technology Utilization Plan can serve as a performance benchmark against which the Licensee's efforts and progress can be assessed. This can be crucial in situations where the technology is complex or requires a significant investment of resources for successful commercialization.

*Milestone Tracking:* The Technology Utilization Plan can include specific milestones that the Licensee aims to achieve in the commercialization process. This can be especially important for advanced technologies, where the path to commercialization may be long and involve multiple stages.

*Mitigating Risks:* In situations where there is a high level of uncertainty about the market or the commercial potential of the technology, a detailed Technology Utilization Plan can help to mitigate risks by providing a clear roadmap for commercialization.

*Exclusive Licensing*: In the case of exclusive licenses, a Technology Utilization Plan is particularly crucial. It ensures that the Licensee is actively working on commercializing the technology, as they are the sole entity with the rights to do so.

*Start-ups and Small Companies:* If the Licensee is a start-up or a small company, a Technology Utilization Plan can demonstrate that they have a clear plan for the technology, increasing the Licensor's confidence in their ability to effectively utilize the technology.

**In summary, a Technology Utilization Plan helps to ensure that the technology will be effectively utilized**, the Licensee is making progress towards commercialization, and that both parties have a shared understanding of the intended path towards market.

*<PLEASE DELETE UPON COMPLETION>*

# Confidentiality

* 1. Both Parties hereby commit to maintain the confidentiality of the Know-how and all other Confidential Information (as defined in Section 10.2 below) as well as the internal affairs of the other Party, of which they have been made aware or become aware during negotiations and collaboration, and which is not publicly accessible.
	2. Confidential Information encompasses, but is not limited to, Know-how, as well as any intellectual property, unpublished applications, data, processes, procedures, specifications, scientific and research reports, records, laboratory logs, and other similar information, trade secrets, pricing information, business contacts, and any other information that is directly or indirectly related to the grant of the License and/or the use of the Technology and that is not generally known and accessible to the public ("Confidential Information"). To avoid any doubt, the Parties acknowledge and agree that the Know-how is Confidential Information belonging to the Licensor, and any disclosure or use thereof in violation of the provisions of this Agreement would constitute an irrevocable and significant infringement of the Licensor's rights and would seriously jeopardize the economic interests of the Licensor.
	3. Each Party hereby agrees not to disclose, publish, or allow access to or use, with the purpose other than set out in this Agreement, of the other Party's Confidential Information, without the prior written consent of the other Party.
	4. The following disclosures of Confidential Information (or portions thereof) by one Party shall not be considered a breach of the confidentiality obligation under this Article 10, upon evidence provided by the disclosing Party:

a) Disclosure of Confidential Information that was already generally known or available prior to the execution of this Agreement;

b) Disclosure of Confidential Information that becomes generally known after the execution of this Agreement without the disclosing Party being accountable for such disclosure;

c) Disclosure of Confidential Information that has been revealed to the disclosing Party by a third party authorized to do so and without a confidentiality obligation, and the disclosing Party has not been or should not have been aware that the other Party regards it as Confidential Information;

d) Necessary disclosure of Confidential Information to governmental authorities or individuals legally authorized to request such Confidential Information and to inspect or monitor the activities of the relevant Party, within the boundaries and in accordance with the requirements of applicable law;

e) Any other use or disclosure of the other Party's Confidential Information with its prior written consent.

* 1. The Parties agree to permit access to the Confidential Information of the other Party only to individuals whose knowledge of such information is essential for the purposes of using the License and performing this Agreement. If it becomes necessary to reveal Confidential Information to individuals other than the Parties' employees, the Parties commit to ensuring that such individuals are bound by a confidentiality obligation at least to the same extent as outlined in this Agreement.
	2. Each Party commits, with regard to the Confidential Information of the other Party, to take all feasible precautions and security measures to prevent unauthorized access to or transmission, loss, damage, alteration, use or misuse of the Confidential Information of the other Party by any person.
	3. Each Party shall be liable for damages caused by the breach of the confidentiality obligation under this Article of the Agreement by its statutory bodies, employees, external collaborators, contractors, agents, and other third parties who may come into contact with the Confidential Information of the other Party through its agency or fault. Each Party shall also be liable for damages caused by individuals to whom it is permitted to disclose the Confidential Information of the other Party under this Agreement, unless it demonstrably binds such individuals to confidentiality contractually.
	4. If the Parties have entered a confidentiality or non-disclosure agreement prior to entering this Agreement and related to the same, such prior confidentiality or non-disclosure agreement will continue to apply between the Parties it and to the extent that it provides for a broader (in scope, territory or otherwise), stricter and/ or longer protection of the Confidential Information than this Article 10.

# Validity and Termination of the Agreement

* 1. This Agreement shall take effect upon its execution by both parties. This Agreement is established for a specific duration, namely **[specify the date of entry into force and duration].** This Agreement shall terminate:

a) upon the expiry of the period for which it was entered into,

b) by mutual written agreement of the Parties,

c) termination of this Agreement in accordance with the same or the applicable law.

* 1. The Licensor is authorized to terminate this Agreement by giving notice of termination if any of the following occur and the Licensee fails to rectify the situation within thirty (30) days from the date of receipt of the Licensor's written notice to rectify:

a) The Licensee is in default of payment of any part of the Royalties,

b) An audit conducted according to Section 4.9 identifies an underpayment exceeding **[insert value or percentage, e.g., 5%]** of the Royalties owed,

c) The Licensee commences liquidation proceedings or becomes subject to pre-bankruptcy, insolvency or special administration proceedings, or application for the institution of any such proceedings,

1. The License under this Agreement is transferred to a new licensee due to the sale of the Licensee's business or business plant in its entirety, as part of a business plant, transfer of a business interest, or other transfer of the rights and obligations of the Licensee to a successor in title to which the Licensor does not agree,

e) The Licensee sublicences, assigns or transfers the License from this Agreement to a third party without the Licensor’s prior written approval or is in violation of Section 2.4 or Section 2.5,

f) The Exit Fee paid according to Section 4.8 of the Agreement is significantly disproportionate to the actual value of the Licensee’s shares being transferred to a third party at the time of the Exit Event

g) The Licensee’s actions will, in the Licensor’s reasonable belief, damage or significantly jeopardize the good reputation of the Licensor; such actions include, but are not limited to, changes in the ownership structure, **[optional:** changes in registered office or business premises of the Licensee leading to the diversion of economic and social benefits derived from the business activities of Licensee from **insert jurisdiction, e.g., the Republic of Croatia, European Union, etc., to foreign countries],** or changes in the persons of partners or bodies of licensee as persons suspected or prosecuted for criminal activities,

h) The Licensee is unable to make practical use of the Licensee as per Article 9 of this Agreement. The Licensee is considered incapable of making practical use of the Technology if the Licensee’s Revenues in a given year in each Licensed Field of Use do not reach the minimum amount of **[insert amount].** In such cases, the Licensor may terminate the Agreement only in relation to a specific Licensed Field of Use, or

i) neither party has taken Legal Action as per Article 7 of this Agreement despite the fact that the requirements for taking such Legal Action have been met.

* 1. The notice period is three (3) months and commences from the first (1st) day of the month following the month in which the notice of termination has been delivered to the other Party.
	2. The Licensee is entitled to terminate this Agreement if:

a) The patent application(s) making part of the Patent are refused protection by the competent intellectual property offices, or

b) The Licensor breaches its obligations to preserve and maintain the Industrial Property Rights as per Section 6.1 of this Agreement.

* 1. In the event of termination of this Agreement, the following provisions shall apply:

a) The Licensee must cease to use the License and all rights granted under this Agreement immediately upon the termination of this Agreement, except for the resale of products related to the Licensed Technology produced before the effective date of this Agreement as per Section 4.6;

b) Termination of this Agreement by either Party (irrespective of the method in which it occurs) will have only a prospective effect. The Licensor will not be obliged to refund any Royalties paid by the Licensee under this Agreement prior to the termination of this Agreement. The Licensor will be entitled to the Royalties relating to the period ending with the termination of this Agreement even if such Royalties have not been paid before the termination of this Agreement;

c) Within sixty (60) days of the termination of this Agreement, the Licensee must provide the Licensor with written summaries of the Revenues corresponding to the summary provided in Section 4.4 of this Agreement for the period prior to the termination of this Agreement. The obligation of the Licensee to pay the Royalties and to submit statements in accordance with the terms of this Agreement will survive the termination of this Agreement until all products related to the Licensed Technology have been sold out;

d) The Licensor's rights in the Know-how will remain unaffected in the event of termination of this Agreement, regardless of the method or reason for termination.

* 1. The obligations of the Parties under the provisions on Royalties and protection of Confidential Information, particularly Know-how, will continue to bind and apply even after the termination of this Agreement.

# Final Provisions

* 1. The designated representatives for communication regarding the execution of this Agreement are:

a) For Licensor**: [Name of the contact person], [Title of the contact person]; [Email of the contact person]**

b) For Licensee: **[Name of the contact person], [Title of the contact person]; [Email of the contact person]**

* 1. Any modifications or extensions to the Agreement must be in the form of a written amendment, signed by both Parties.
	2. Without the prior written consent of the other Party, no Party shall have the right to assign this Agreement or any obligation or claim under it. The Agreement is binding on the successors of the Parties, irrespective of the succession mode. Transfer of the License under this Agreement to a third party in case of sale of the business or a part of it, is subject to the prior consent of Licensor.
	3. The requirement for written consent, opinion, or information under this Agreement can be satisfied by electronic communication (e-mail, fax), except for acts according to Article 11 (e.g., requests for remedies, termination of the Agreement), which must be delivered to the Party’s address specified in the heading of this Agreement.
	4. If any provision of this Agreement is found to be null, void, or unenforceable, such defect shall not impact other provisions or the validity of the Agreement as a whole. The Parties commit to negotiating a new provision that closely matches the original provision’s contractual purpose.
	5. The provisions of this Agreement relating to the protection of Confidential Information disclosed mutually shall take effect from the Agreement's date and shall survive the term of this Agreement and for a period of three (3) years from its termination.
	6. This Agreement is prepared in two copies, with each Party receiving one copy.
	7. The laws of the Republic of Croatia shall govern this Agreement and the relations of the Parties not explicitly addressed by this Agreement.
	8. The Parties commit to resolving any disputes arising from this Agreement through mutual negotiations. Should the resolution through negotiations not be possible, the relevant dispute(s) will be settled before the competent court in **[insert court of jurisdiction, e.g., Zagreb, Croatia]** or as specified by the Parties **[see Box 13].**

**Box 13. Dispute resolution**

**We strongly recommend considering alternative dispute resolution methods.** Mediation is particularly suitable for settling disputes in licensing relations, where the parties’ mutual interest often lies in the continuation of the cooperation. WIPO Expedited Arbitration clause, which would apply in case that the Parties fail to reach agreement in mediation, should enable quicker and more efficient proceedings, compared to regular court proceedings in Croatia where the usual workload and the often lack of specialization of judges in intellectual property matters may lead to prolonged proceedings with likely uncertain outcomes.

**The proposed language for such an alternative dispute resolution clause is as follows:**

12.9. Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. Unless otherwise specified by the Parties herein, the place of mediation shall be **[insert place of mediation, e.g., Zagreb, Croatia].** Unless otherwise specified by the Parties herein, the language to be used in the mediation shall be **[insert language of mediation, e.g., Croatian].** If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within ninety (90) days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of ninety (90) days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The arbitral tribunal shall consist of a sole arbitrator. Unless otherwise specified by the Parties herein, the place of arbitration shall be **[insert place of arbitration, e.g., Zagreb, Croatia].** Unless otherwise specified by the Parties herein, the language to be used in the arbitral proceedings shall be **[insert language of arbitration, e.g., Croatian].** The dispute, controversy or claim referred to arbitration shall be decided in accordance with the law of the **[insert jurisdiction, e.g., Republic of Croatia].**

*<PLEASE DELETE UPON COMPLETION>*

* 1. Both Parties affirm that they entered into this Agreement willingly and seriously, were not aware of any facts that would prevent the Agreement's conclusion, did not intentionally mislead each other, and are fully aware of the legal consequences arising from knowingly false statements. The Parties agree with its contents, confirmed by their handwritten signatures.
	2. **[Insert annexes as applicable, e.g., The following annexes constitute an integral and inseparable part of this Agreement:**

**Annex no. 1: Technical Specifications / Description of the Technology**

**Annex no. 2: Other documents related to the Technology**

**Annex no. 3: Specification of patents or registration**

**Annex no. 4: Specification of other annexes]**

***[Licensor]***

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| Name:[●] Title:[●] | Name:[●] Title:[●] |

***[Licensee]***

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