

DATED

18/05/16

SOFTWARE EVALUATION AGREEMENT

between

UNIVERSITY COLLEGE DUBLIN

and

COMPANY

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THIS AGREEMENT is dated 18/05/2016

PARTIES

- (1) University College Dublin, National University of Ireland, Dublin, Belfield, Dublin 4, Ireland (**UCD**).
- (2) **COMPANY, ADDRESS. (Recipient).**

1. DEFINITIONS

The definitions in this clause apply in this agreement.

RPO (Research Performing Organisation): refers to the academic institution(s) that is carrying out this evaluation, which in this instance is **RPO**.

Evaluation Report: a report generated by the Recipient which details the results of tests and evaluations undertaken by the Recipient and any other observations relating to the Software which were undertaken during the Trial Period.

Information: information owned by RPO and obtained by the Recipient relating to the Software.

Objective: evaluation of the Software by the Recipient for use in the Recipient's business as defined in Schedule 4.

Software: the software programs listed in Schedule 1.

System: the Recipient's computer system specified in Schedule 2.

Trial Period: the evaluation period specified in Schedule 3.

2. LICENCE

- 2.1 UCD hereby grants the Recipient a personal, non-transferable, non-exclusive licence to use the Software on the System during the Trial Period solely for the purposes of the Objective. The Recipient acknowledges and agrees that the Software will, or may, automatically "time out" (that is to say, cease to operate) at the end of the Trial Period.
- 2.2 During the Trial Period the Recipient may not sell or make representations to sell the Software to their end customers or other third parties.
- 2.3 The Recipient may make such copies of the Software as are necessary to evaluate the Software on the System, but may not make any back-up or archival copies and may not load all or any part of the Software on any computer other than the System without prior written agreement from UCD.
- 2.4 The Recipient agrees to assist RPO in identifying any errors or malfunctions in the operation of the Software which may be observed during the Trial Period documenting such observations in the Evaluation Report.

3. TERMINATION

- 3.1 During the Trial Period this licence may be terminated immediately by UCD giving written notice if the Recipient is in breach of any of its obligations under this agreement. The licence may be terminated by the Recipient during the Trial Period upon seven days' written notice or upon acceptance by the Recipient of a full licence for the Software. At the end of the Trial Period, or upon termination, not followed by a full licence, the

Recipient shall within two working days return to RPO all copies of all or part of the Software on any tangible medium and any documents containing any item of the Information and shall completely delete all electronic copies of all or any part of the Software and/or the Information resident in the System or elsewhere.

4. WARRANTIES

- 4.1 No representations, conditions, warranties or other terms of any kind are given in respect of the Software or the Information, and all statutory warranties and conditions are excluded to the fullest extent possible.
- 4.2 The Software and Information are furnished on an “as is” basis and are of experimental nature and are furnished without warranty or representations (including as to merchantability, fitness for a particular purposes, accuracy, efficacy, completeness, capabilities or safety, or any other warranties or representations whether express or implied), and all warranties and representations with regard to the Software and Information are hereby excluded to the greatest extent permissible by law (including any warranty that the use of the Software does not infringe intellectual property rights of any third party).

5. LIABILITIES AND INDEMNITY

- 5.1 Save for death and personal injury caused by UCD's gross negligence, UCD shall have no liability of any kind to the Recipient in respect of the Software or Information. In particular, UCD shall have no liability for any data loss or corruption and the Recipient agrees that it has sole responsibility for protecting its data during evaluation of the Software.
- 5.2 Recipient shall indemnify and keep indemnified UCD in title against any claims (including any claims or costs arising out of alleged or actual infringement of third party intellectual property rights) arising out of any use by Recipient of the Software and/or Information and any loss to Recipient or third party(ies) arising out of the use thereof. UCD shall not be liable for any loss of profit, loss of business, loss of goodwill, loss of savings, loss of anticipated savings, whether direct or indirect, or for any indirect loss or consequential loss whatsoever and howsoever caused (even if caused by its negligence and/or breach of this Agreement and even if UCD was advised that such loss would probably result).
- 5.3 In the event that UCD shall be found liable to the Recipient for any reason other than death or personal injury caused by UCD's gross negligence, the sums payable to the Recipient in respect of such liability shall not exceed €10,000.

6. OPTION FOR FULL COMMERCIAL LICENSE

- 6.1 At any time during the Trial Period and for a period of 3 months following the end of the Trial Period, except where terminated by either UCD or the Recipient, UCD grants the Recipient the option to negotiate a non-exclusive worldwide, fee-bearing licence on fair and reasonable commercial terms (with the right to sub-license) in the Software to develop, to make, have made, use, import, offer to sell and sell products and/or services for use in a specified field.

7. NON-DISCLOSURE AGREEMENT

- 7.1 In consideration of the disclosure by RPO to the Recipient of the Software and the Information for the purpose of the Objective, the Recipient undertakes that it will

respect and preserve the confidentiality of the Information for a period of five years after the date of such disclosure (subject to clause 7.3 below). The Recipient shall not without the prior written consent of UCD:

- (a) communicate or otherwise make available the Information to any third party; or
- (b) use the Information itself for any commercial, industrial or other purpose other than the Objective; or
- (c) copy, adapt, or otherwise reproduce the Information save as strictly necessary for the purposes of the Objective.

7.2 The Recipient may disclose the Software and Information or any part thereof, with the prior consent of UCD, to any employee of the Recipient who needs access to the Software and the Information in connection with the Objective. In such an event the Recipient agrees to ensure, prior to such disclosure, that the employee in question is made aware of the confidential nature of the Software and Information and understands that he/she is bound by conditions of secrecy no less strict than those set out here. The Recipient agrees to monitor the use of the Software and Information by these employees and to enforce their obligations of confidence at the request of UCD.

7.3 The obligations contained in this clause 0 shall not apply, or shall cease to apply, to such part of the Information as the Recipient can show to the reasonable satisfaction of UCD:

- (a) has become public knowledge other than through the fault of the Recipient or an employee or director of the Recipient to whom it has been disclosed in accordance with clause 7.2 above; or
- (b) was already known to the Recipient prior to disclosure to it by RPO; or
- (c) has been received from a third party who neither acquired it in confidence from RPO, nor owed RPO a duty of confidence in respect of it.

7.4 At the end of the Trial Period or in the event that this license is terminated during the Trial Period, the Recipient shall return to RPO all copies of all or any part of the Information which have been provided to the Recipient pursuant to this agreement, together with all analyses, studies and other materials produced by the Recipient which contain, or could reveal, all or any part of the Information, and any summaries (in whatever form) prepared by the Recipient of oral Information disclosed by RPO.

8. PROPERTY RIGHTS

8.1 The Software, Information and all related documentation are proprietary to RPO. The Recipient acknowledges that any disclosure pursuant to this agreement shall not confer on the Recipient any intellectual property or other rights in relation to the Software or the Information.

8.2 Ownership of all complete or partial copies of the Software and related documentation shall at all times remain with RPO. The Recipient agrees to mark any copies of the Software which it may make in any tangible medium with a notice that such copy belongs to RPO.

8.3 The Company hereby assigns all rights, title and interest in the Evaluation Report to RPO which shall be delivered to UCD no later than the end of the Trial Period.

8.4 In the event that the Recipient is notified by a third party that that party claims rights in the Software or that use of the Software infringes any right of that third party, the Recipient agrees to immediately notify UCD and, at UCD's request, to immediately cease use of the Software. If UCD is unable to allow the Recipient to continue evaluation of the Software, the provisions of Clause 2.3 shall apply.

9. GENERAL

9.1 The person signing this agreement on behalf of the Recipient confirms that he/she is authorised to enter into this agreement on the Recipient's behalf, and to bind the Recipient to its terms and conditions.

9.2 No variation of this agreement shall be effective unless it is in writing and signed by or on behalf of both parties.

9.3 "Writing" or "written" includes faxes but not e-mail or any other form of electronic communication except where expressly provided to the contrary.

9.4 This agreement shall be interpreted and construed in accordance with Irish law.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Software

CeADAR Technology Demonstrator: TECHNOLOGY

Schedule 2 System

Schedule 3 Trial Period

The Software may be evaluated for two (2) months from the date of signing of this agreement.

Schedule 4 Evaluation/Test Plan

Signed by Dr Ciaran O'Beirne
for and on behalf of University
College Dublin

.....
Technology Transfer Manager UCD

Date

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Signed on behalf of Recipient

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Date

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