Scottish University Agreements Consultancy Agreement

[INSERT UNIVERSITY/ INSTITUTION HEADER OR PRINT ON UNIVERSITY HEADED PAPER]

[DATE]

[NAME]

[ADDRESS]

[UNIVERSITY/ INSTITUTION] Ref: [ ]

Dear [ ]

**Offer for the Supply of Consultancy Services of [INSERT NAME OF UNIVERSITY/ INSTITUTION]**

I write on behalf of my academic colleague, **[ACADEMIC] (“Consultant”),** and have pleasure in confirming the consultancy arrangements between **[INSERT NAME OF UNIVERSITY/** INSTITUTION**]**, (the “University/Institution”) and [COMPANY NAME, COMPANY REGISTRATION NUMBER AND ADDRESS] (“the Client”). This letter serves as the Offer as defined in the enclosed “Conditions for Supply of Consultancy Services” (together “the Agreement”).

Consultancy Services: [insert details of the services to be provided]

Consultancy Period: The University/Institution shall provide the Consultancy Services for [XX] consultancy days during the period commencing on [XX] and ending on [XX].

Fee: £[XXX] per day + VAT (chargeable at the prevailing rate).

The above costs exclude any additional direct costs e.g. travel, accommodation and general expenses which may be incurred during the course of the provision of the Consultancy Services. All such charges will be reimbursed by the Client on provision of reasonable documentary evidence by the University.

Payment terms: 30 days from date of invoice.

The terms of the University/Institution’s credit policy shall apply.

Method of payment: Payment for the Consultancy Services should be made to the University/Institution either by BACS or by cheque, as detailed below. Please ensure that all payments quote the relevant invoice number.

BACS – The bank details required for payment by BACS are:

|  |  |
| --- | --- |
| Bank name: | [Insert bank details] |
| Branch: |  |
| Tel: |  |
| Fax: |  |
| Account Name: |  |
| Sort Code: |  |
| Account No: |  |
| IBAN number: |  |

Cheque – Cheques should be made payable to the “[Insert University/Institution details]”. Please address all cheques to the [Insert University/Institution details].

The Offer contained in this letter is subject to the enclosed “Conditions of Supply of Consultancy Services”, which are incorporated in their entirety by reference into this letter. The Offer is open to acceptance within 30 days from the date of this letter.

**To confirm acceptance please sign both copies of this letter and return one to: [Insert University return address].**

**If this letter is not returned signed, but the work is instructed to proceed, this will be deemed a binding contract.**

If you require any further help or information, please do not hesitate to contact [insert details of BDM/KE Manager].

Yours sincerely

**……………………………**

**[name of authorised signatory]**

**For and on behalf of the [Insert University/Institution name]**

On behalf of [COMPANY NAME], I hereby accept the terms and conditions set out in this Offer together with the annexed Conditions for Supply of Consultancy Services.

Full Name: Signed:

Designation: Date:

[Insert name of University/Institution] Conditions for Supply of Consultancy Services (as referred to in the Offer)

1. **Definitions**

In these conditions the following phrases shall have the following meanings:

**Background** means any Information or IPR, which (i) already exists at the start of the Consultancy Period or (ii) is created outwith the Consultancy Services;

**The Agreement, the Client, the Consultant, the Consultancy Period, the Consultancy Services & the Fee** all have the meanings given in the Offer;

**Deliverables** means written reports prepared by the Consultant for the Client in the performance of the Consultancy Services;

**Information** means any information (including samples, materials, drawings, specifications, photographs, designs, computer code, computer programs, data, formulae, processes, know-how, software, any technical or commercial information), reports, papers, correspondence or documents;

**IPR** means patents, trademarks, design rights (both registered and unregistered), semiconductor topography rights, copyright, database rights, and any other forms of intellectual property protection, whether arising automatically at law or otherwise, in each and every part of the world;

**Offer** means the attached offer by the University/Institution to provide the Consultancy Services;

**Party/Parties** means the University/Institution and/or the Client as context requires;

**University/Institution** means the [Insert full contractual designation of University/Institution].

1. **Provision of the Consultancy Services**

2.1 The Client acknowledges that the Consultant will perform the Consultancy Services, on the University/Institution’s behalf, however for the avoidance of doubt, the role of the Consultant is to advise and specifically not to undertake research work or supervise research.

2.2 The Client acknowledges that the Consultant is an employee of the University/Institution and as such is subject to the terms and conditions of his/her employment, including obligations to carry out research and/or service work that may be in the same field as that of the Consultancy Services, which the Client acknowledges will take precedence over any obligations the Consultant may have to the Client under the Agreement.

2.3 The University/Institution will use reasonable endeavours to procure the completion of the Consultancy Services by the Consultant within the Consultancy Period. The University/Institution and the Consultant are not obliged to take any action to progress the Consultancy Services where the Client fails to provide anything that is necessary to undertake the Consultancy Services.

2.4 The University/Institution shall not have any liability for any delay in carrying out or failure to carry out any of its obligations under the Agreement caused by any circumstances outside the reasonable control of the University/Institution.

2.5 The University/Institution shall have the right to extend the Consultancy Period as the University/Institution and the Client may agree in writing from time to time.

2.6 The University/Institution reserves the right following acceptance of the quotation by the Client to increase the Fee, in so far as such increase relates to any increase in the cost to the University/Institution of any change in the Consultancy Services which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to provide the University/Institution with adequate information or instructions (but not further or otherwise).

2.7 Where the University/Institution has failed to perform the Consultancy Services using reasonable skill, care and professionalism and such failure is reported to the University/Institution by the Client within one month of completion of the Consultancy Services, the University/Institution shall be liable to re-perform the Consultancy Services or such part of the Consultancy Services which is defective up to the limit in Condition 7.3.

2.8 The University/Institution shall not be held liable under Condition 2.7 where any defects in the performance of the Consultancy Services arise from any work scope, specification, drawing or other material or information or instructions supplied by the Client which are incomplete, incorrect, inaccurate or illegible or where some other fault of the Client is established.

2.9 The Client will ensure that the University/Institution is granted such access to the work site as shall be necessary for the proper performance of the Consultancy Services. Additionally the Client will: (i) ensure the University/Institution’s personnel have a safe place of work at the work site and that the University/Institution’s personnel are made fully aware of any health, fire and safety regulations of the relevant authorities as applying to the work site and to any property, tools, materials or equipment (howsoever supplied) being used at or otherwise located on, the work site; (ii) ensure that appropriate insurance cover is arranged (whether directly by the Client or by any relevant third party) and is in force to provide cover for the University/Institution’s personnel when working at the work site and to provide cover for all property, tools, material or equipment used at the work site; (iii) provide the University/Institution upon request with reasonable evidence including supporting documentation of the insurance coverage referred to in Condition 2.9(ii).

2.10. The University/Institution, will make use of such of its academic staff and researchers as shall have been agreed for that purpose with the Client and, in the event that any one or more of such individuals shall cease to be employed by, or otherwise connected with the University/Institution then the University/Institution will use reasonable endeavours to provide a suitable replacement subject to the University/Institution having available suitably qualified individuals within the University/Institution.

[2.11 If the University/Institution considers it necessary to use the services of a third party in addition to any detailed within the Offer, the University/Institution (except in matters of a minor and obvious nature) shall contact the Client to discuss the cost implication and any contractual variation.]

1. **Payment**

 3.1 As consideration for the Consultancy Services, the Client shall pay the Fee in GBP Sterling to the University/Institution.

 3.2 The Fee and any other monies due under the Agreement (i) are stated exclusive of Value Added Tax (“VAT”); and (ii) shall be paid gross without the deduction or withholding of any taxes, charges, or other duties.

 3.3 In addition to the Fee, the Client shall pay within thirty (30) days of written demand to the University/Institution (i) any chargeable VAT; and (ii) all travel, subsistence and other out of pocket expenses reasonably incurred in the performance of the Consultancy Services, subject to the production of receipts or vouchers for the same where reasonably available.

3.4 If the Fee and any other monies due under the Agreement are not paid by fourteen (14) days after the due date, the Client shall pay interest on such outstanding payments from the due date until the actual date of payment accruing on a daily basis, after, as well as before, judgement, at the rate of four (4) per centum per annum over the base lending rate of The Royal Bank of Scotland plc from time to time. In the event of non-payment, the University/Institution may either cease to provide the Consultancy Services forthwith until payment is made in full or, at its option, treat the Agreement as repudiated.

1. **Deliverables and IPR**

4.1 [Subject to receipt by the University/Institution of the full Fee, Deliverables and IPR therein shall be the property of the Client, however the University/Institution and the Consultant shall be entitled to keep a copy of the Deliverables for record purposes. Subject to the terms of Conditions 5.1, 5.2 and 5.3 below, the University/Institution and the Consultant shall be free to use the Deliverables for academic publication, education or research. OR The Deliverables and IPR therein shall be the property of the University/Institution. In consideration of the University/Institution’s receipt of the full Fee, the University/Institution hereby grants the Client a personal non-exclusive, royalty free licence to use the Deliverables and IPR therein for the purposes of internal research and development but not, for the avoidance of doubt, for the purposes of exploitation]

4.2 All Background shall remain the property of the Party introducing it.

4.3 For the avoidance of doubt, in the case of the University/Institution owned Background (i) nothing in the Agreement shall prevent the University/Institution from using the same, or authorising third parties to use the same, for any purpose; and (ii) the Client shall treat as confidential the details of any such Background which may be disclosed to, or which may come to the attention of, the Client.

1. **Confidentiality**

5.1 Throughout, and for five (5) years after the expiry of the Consultancy Period, both the University/Institution and the Client shall (i) keep confidential any Information that is of a confidential nature, supplied for use in the provision of the Consultancy Services by the other Party; and (ii) shall not communicate such Information to any third party.

5.2 Condition 5.1 shall not apply if such Information (a) is already in the public domain or if it subsequently comes into the public domain other than by breach of the Agreement by the receiving Party; (b) was already known to the receiving Party prior to its disclosure by the other Party; (c) is received from a third party who did not acquire it in confidence from the disclosing Party, or someone owing a duty of confidence to the disclosing Party; (d) is required to be disclosed by law or order of any court or authority of competent jurisdiction; or (e) is required to be disclosed lawfully by the University/Institution or in accordance with the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information (Scotland) Regulations 2004.

5.3 No public announcement or other disclosure of the existence of this Agreement shall be made by either Party without the prior written consent of the other

1. **Limited Warranty**

The University/Institution will use its reasonable endeavours to ensure accuracy of the Deliverables, however, to the maximum extent permitted by law, the University/Institution gives no warranty, express or implied, (i) as to the accuracy of the Deliverables; (ii) that the use of the Deliverables will provide the desired objective; (iii) that the Deliverables are free from defects or faults; and (iv) that use of the Deliverables will not result in infringement of third party rights. Deliverables are provided ‘as is’ without any express or implied warranty including but not limited to implied warranties as to satisfactory quality or fitness for a particular purpose. The University/Institution accepts no liability whatsoever in respect of any claim(s) of whatsoever nature arising from the use by the Client or by any third party of any of the Deliverables.

1. **Indemnity**

7.1 The Client shall indemnify, keep indemnified and hold harmless at all times the University/Institution and the Consultant from and against all claims, actions, losses, damages, demands, liabilities, costs and expenses (including all interest, penalties and legal and other professional costs and expenses) which may be brought against or be incurred or suffered by the University/Institution or the Consultant and which arise out of or in connection with (i) the use of the Deliverables by the Client or others for whom it is responsible; (ii) product liability claims in respect of any of the Client’s (or others for whom it is responsible) products or services which are based on the Deliverables; (iii) taxes incurred in performing the Consultancy Services and (iv) any interest and penalties arising as a result of the Client’s failure to deduct, withhold, or remit taxes in accordance with relevant local legislation.

7.2 For the avoidance of doubt, (i) neither Party shall be liable to the other for any indirect or consequential damages; and (ii) neither Party excludes, restricts or otherwise limits their liability for any death or personal injury arising from that Party’s negligence or for any loss suffered by the other Party for that Party’s fraud.

7.3 Subject to Condition 7.2 , the aggregate liability of the University/Institution for any breach or non-performance of this Agreement, any negligence in the performance of this Agreement or any liability arising in any other way out of the subject matter of this Agreement, will not exceed in total the Fee.

1. **Termination**

8.1 The Agreement may be terminated forthwith by written notice by either Party in the event of (a) a material breach by the other Party of any of its obligations in the Agreement which, if the breach can be remedied, remains unremedied on the expiry of thirty (30) days after receipt by the Party in breach of written notice from the other specifying the breach and the action required to remedy same; or (b) any delay invoked under Condition 2.5 exceeding the period of extension agreed between the Parties thereunder; or (c) in the event of (i) insolvency, bankruptcy, administration, receivership, liquidation or analogous insolvency procedure of the other Party; or (ii) the other Party’s ceasing or threatening to cease trading; or (iii) the sale of the whole or any substantial part of the other Party’s business or assets.

8.2 The Agreement may be terminated forthwith by written notice by the University/Institution (a) in the event of any sum due by the Client remaining unpaid after fourteen (14) days from the due date; or (b) if, during the Consultancy Period, the Consultant becomes unable to provide the Consultancy Services for any reason outwith the reasonable control of the University/Institution.

8.3 The University/Institution shall also be entitled to terminate the Agreement without liability to the Client on giving written notice to the Client to the effect that the individual carrying out the Consultancy Services has ceased to be employed by or otherwise connected with the University/Institution and the University/Institution is unable to provide a suitable replacement. Provided that the Consultancy Services are capable of part completion and the University/Institution provides to the Client such part of the Consultancy Services which has already been completed, the Client shall be liable to pay a reasonable sum for such part of the Consultancy Services that has been supplied in accordance with the Fee.

8.4 Upon expiry of the Consultancy Period or earlier termination:- (i) the University/Institution shall return, or shall procure return by the Consultant, to the Client any Information supplied by the Client for use in the provision of the Consultancy Services; (ii) all monies due under the Agreement (including any outstanding part of the Fee) for the Consultancy Services performed up to such date, together with all expenses and non-cancellable commitments incurred up to such date, shall become immediately due and shall be paid within fourteen (14) days of such date of termination; (iii) the accrued rights and liabilities of the Parties shall survive such termination; and (iv) Conditions 3, 4, 5, 6, 7 & 13.7 shall survive such expiry or earlier termination.

1. **Compliance with Anti-Bribery Laws**

9.1 Each Party shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption in each country where a party has its principle place of business and where such Party conducts activities under this Agreement, including but not limited to the UK Bribery Act 2010 and other analogous legislation(“Anti-Bribery Laws”). Any breach of Anti-Bribery Laws by a Party shall not relieve the other Party of its obligations hereunder, including in relation to its obligations of confidence.

9.2 Each Party shall have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the UK Bribery Act 2010, to ensure compliance with Anti-Bribery Laws and will enforce them where appropriate.

9.3 Breach of this Condition 9 shall be deemed a material breach of this Agreement.

1. **Data Protection**
	1. Each Party shall comply with its respective obligations under while they remain in force the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (GDPR) and any other laws and regulations relating to the processing of personal data and privacy which apply to a Party. (“Data Protection Laws”) and neither Party shall do any act that puts the other Party in breach of its obligations in this Condition 10.
	2. Nothing in this Agreement shall be deemed to prevent any party from taking the steps it reasonably deems necessary to comply with Data Protection Laws.
2. **Notices**

Any notice, request or consent under this Agreement shall be in writing and shall be sufficiently served if sent by recorded delivery post to the recipient’s principal office. For the University this means all correspondence should be sent to [insert name, title, office address], and for the Client all correspondence, including invoices should be sent to its head office.

1. **Non-assignation**

Neither Party shall, without the prior written consent of the other Party, assign this agreement or any of its rights and obligations under this Agreement.

1. **General**

13.1 Nothing in this Agreement shall: - (i) be deemed to prevent the University/Institution or the Consultant from undertaking consultancy or other services of a nature similar to the Consultancy Services on behalf of any third party; or (ii) require the University/Institution or the Consultant to direct or conduct research for the Client; or (iii) be deemed to prevent the University/Institution or the Consultant from carrying out any research or service work as contemplated by Condition 2.2.

13.2Nothing in the Agreement and no action taken by the Parties contemplated pursuant to this Agreement shall constitute or be deemed to constitute a partnership between the Parties or shall constitute either Party as an agent, employee or representative of the other.

13.3 No variation or amendment of the Agreement shall bind either Party unless made in writing and signed by authorised representatives of the Parties.

13.4 Failure by either Party to enforce at any time or for any period any condition of the Agreement does not constitute and shall not be construed as a waiver of such condition and shall not affect the right later to enforce such condition and any other condition in the Agreement.

13.5 If any part or the whole of any condition of the Agreement is held to be invalid or unenforceable by any legislation or legal authority, the remaining portion of such condition and the rest of the Agreement shall remain in force and effect as if the Agreement had been granted with no such provision.

13.6 The Agreement constitutes the entire agreement and understanding between the Parties in respect of the subject matter hereof and the Parties accept that no other conditions shall apply to the provision of the Consultancy Services, unless expressly stated in writing by the Parties to supersede or amend the Agreement.

13.7 The Agreement, all questions of construction, validity and performance under this Agreement and all claims and disputes arising out of or in connection with the subject matter of this Agreement (whether or not contractual in nature), shall be governed by laws of Scotland. The Parties hereby irrevocably prorogate the exclusive jurisdiction of the Scottish courts

13.8 This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts.  A copy of this Agreement delivered by electronic means (including e-mail) shall be deemed to be a duly signed original for all purposes. Where executed in counterparts each counterpart will be held as undelivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 until the last date of signature hereof.