

Terms and Conditions

Appendix A – Terms and Conditions for Consultancy (November 2009 R&IS Ref: 08715/04)

1. Definitions: In this Contract, the following words shall have the following meanings:

The Definitions “**Commencement Date**”, “**Completion Date**”, and “**Total Cost**” shall have the meanings set out in the Quotation.

“**Background IP**” shall mean all technical know-how and information known to either Party, together with all IPR owned by, or licensed to the Parties at the start date of the Work which is not Foreground IP.

“**Deliverable(s)**” shall mean those deliverables as specified in the Proposal at Quotation.

“**Foreground IP**” shall mean all information, know-how, results, designs, inventions and other matter capable of being the subject of IPR which is conceived, first reduced to practice or writing or developed by the University during the Work and in whole or in substantial part for the generation of the Deliverables.

“**Intellectual Property Rights (IPR)**” shall mean patents, applications for patents and patentable know-how, trademarks or trading names (whether or not registered or registrable), designs (registered or registrable and including applications for registered designs), copyright (including rights in computer software and any sui generis rights), topography rights and other rights in semiconductor chips, rights in inventions, the right to claim damages for past infringements of the same and all rights having equivalent or similar effect wherever situated.

“**Work**” shall be as detailed specifically the Quotation and in any supporting documents referred to therein.

“**Quotation**” shall be the quotation/test plan specifying the scope of Work, the Total Cost and the Deliverables as prepared by the University for the Client.

“**Client**” shall be the client named on the Quotation.

“**University**” shall be University of Southampton, as represented by the Tony Davies High Voltage Laboratory.

2. Incorporation

a) The conditions set out herein shall, together with the Quotation, constitute the entire terms of the Contract between the University and the Client. Any other terms and conditions whether contained in Client’s purchase order or other documentation that purport to impose terms on the Work shall have no effect.

Terms and Conditions

b) No variation or amendments to these Terms and Conditions shall be valid unless agreed to in writing by the Parties as a specific variation of amendment agreement.

3. Price

a) The Client will pay the full price for the conduct of the Work as set out in the Quotation at the agreed dates. Where the Work is delayed through no fault of the University for more than 3 months then the University shall be entitled to submit an invoice for all work done up to that date and such invoice shall be payable within 30 days of receipt, unless otherwise agreed in writing. All sums due are exclusive of Value Added Tax which where applicable shall be paid by the Client in addition to the price.

b) If travel is required, all travel expenses shall be pre-authorized by the Client and be reimbursed by the Client unless otherwise agreed in writing.

4. Ownership of Deliverables and IP

a) Subject to clause 4c any Deliverables generated will be owned by the Client. The University will pass, free of charge, such Foreground IP intrinsic to the Deliverables and necessary for affecting the Client's ownership in the Deliverable.

b) Any existing Background IP which belongs to the University and is used in the Work will remain the property of the University and the University will grant a non-exclusive licence to such Background IP on fair and reasonable terms where Background IP is necessary for use of the Deliverables. Any work and all IPR in such work undertaken, by employees or consultants of the University solely in the course of their duties as employees or consultants of the University, including research, will belong to the University.

c) Ownership of any Deliverables or relevant Foreground IP and the right to negotiate a licence to Background IP shall not pass to the Client until full payment of the price for the Work has been received by the University from the Client, and the Client will not have the right to use, dispose of or in any way deal with such Deliverables or Foreground IP until such time as payment has been made and title in the same passed to the Client.

5. Equipment, Materials and Substances

a) The Client will provide the University with all such information and materials as are necessary for the University to carry out the Work and the Client warrants that all information provided by it or on its behalf to the Unit will be accurate. The Client further warrants that it will give the University written notice of any hazards, known or suspected by the Client, which might potentially arise in the use of such materials. Before supplying any materials or substances to the University for the purposes of the Work the Client shall inform the University of any special legislation, regulations or statutory restrictions that apply to the same.

Terms and Conditions

b) All models or experimental equipment used by the University during the course of the Work shall remain the property of the University unless otherwise agreed between the Parties in writing or supplied by the Client for the purposes of the University undertaking the Work. Although all reasonable precautions will be taken, any equipment supplied to the Unit by the Client will be held at the risk of the Client, and the University will not be liable for any loss, damage, destruction or disclosure of the same.

c) The Client acknowledges that any materials or substances supplied by it to the University may be altered, damaged, rendered useless and/or destroyed as a result of the Unit undertaking the Work and the University shall therefore not be liable for any loss, damage or destruction of the same. After completion of the Work the University shall be entitled to destroy or dispose of any materials or substance supplied by the Client without further reference to the Client unless otherwise agreed in writing prior to commencement of the Work.

6. Warranties, Liabilities and Indemnities

a) The University will be responsible for ensuring the Deliverables meet the specifications included in the Proposal and will carry out the Work with the due care and skill commensurate with Work of this nature and quality standards set out in the Proposal but the University does not warrant that the Deliverables are fit for any particular purpose and shall not be liable for any loss or damage caused by failure in the performance of the Deliverables save to the extent that such loss or damage was caused by the negligence of the University.

b) Except in the case of personal injury (including death) caused by the negligent or wilful act or omission of either party or their servants or agents, the aggregate liability to the other party will not exceed twice the total amount payable by the Client to the University under this Contract. The liability of either party for any breach of this Contract will not extend to any indirect, incidental or consequential damages or losses including (without limitation) loss of profits. The University accepts no responsibility for use of or reliance on information, reports, materials or equipment arising from the Work, or for advice or information given in connection with them, either by the Client or by any third party who has obtained any of the said information, materials or equipment directly or indirectly from the Client.

7. Confidentiality

a) Any drawings, models, samples, or other matter submitted by one Party ("the Disclosing Party") to the other Party (the Receiving Party") with the Proposal are confidential and must not be copied or transmitted to any third party or used for any purpose other than carrying out the Work. The drawings, models, samples and other matter and any copies thereof shall remain the property of the Disclosing Party and the Receiving Party must return promptly the same together with any tangible copies (including any electronic or digital copies) to the Disclosing Party upon the Disclosing Party's written request.

Terms and Conditions

b) Any information relating to either Party's operations shall be regarded as confidential and will not, without the prior written consent of the Disclosing Party, be used (except in connection with the Work) communicated or disclosed by the Receiving Party. This restriction does not apply to information which: is or at the time of communication or disclosure was already in the public domain when it was provided by the Disclosing Party; subsequently enters the public domain through no fault of the University; is received from a third party who has the right to provide it to the receiving party without imposing obligations of confidentiality; or is required to be disclosed by law, by an order of any court of competent jurisdiction or governmental authority.

c) Details of and Foreground IP in the Deliverables will not be used, communicated, disclosed or published by the University except by mutual consent of the parties.

8. Termination

Notwithstanding either Party's rights that may exist in law to terminate or treat as terminated this Contract, either Party may terminate this Contract forthwith by written notice given to the other Party if the other Party is either (i) a company, and the company passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding up order; or (ii) is an individual or a partnership which at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so.

9. Governing Law

This agreement shall be governed by the Laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts, save where the parties agree to resolve any dispute by arbitration, mediation or other similar means.