

**CONSULTANCY AGREEMENT**

*between*

**HERIOT-WATT UNIVERSITY**

*and*

[insert full name of the Company]

Sample Contract

## CONSULTANCY AGREEMENT

between

**HERIOT-WATT UNIVERSITY**, Riccarton, Edinburgh EH14 4AS (hereinafter referred to as "**the University**")

and

[insert full name of the company], a company incorporated under the Companies Acts (Registered No. [insert registered number]) and having its registered office at [insert address of registered office] (hereinafter referred to as "**the Company**")

WHEREAS the Company wishes to utilise certain expertise and facilities available within the University, and whereas the University is keen to increase external collaboration and the utilisation of its expertise and facilities, made available through the University's Technology and Research Services ("TRS").

THEREFORE, it is mutually agreed by the Company and the University that:

1. TRS will act as the co-ordinating body between the Company and the University.
2. All technical liaison in connection with this Agreement will be between [name individual] of the company, or his nominee, and [name academic] of the School of [insert details] of the University (the "Consultant").
3. Commencing [ ], the consultancy service to be provided by the Consultant will concern matters raised by the Company which require investigation, and shall be agreed by the Consultant in writing. The consultancy services will be required on at least [ ] days. Such services shall be carried out at the Company's facilities located at [ ], or at the University's facilities, as appropriate.
4. A fee of [ ] per day, plus VAT will be paid by the Company for the consultancy services of the Consultant. In addition, the Company will pay the reasonable round trip travelling and living expenses of the Consultant in connection with the provisions of the consultancy services.
5. Invoices for the consultancy services and associated expenses, will be issued by Heriot-Watt Trading Limited, a wholly owned company of the University. Payment will be made by the Company no later than 30 days after receipt of each invoice.
6. The Company accepts and agrees that payment in respect of the consultancy services does not prevent the Consultant from carrying out either his normal duties for the University or consultancy work for other clients of the University during the period of this Agreement. However, in the event of a possible consultancy for another client of the University being broadly similar to the consultancy services carried out for the Company, the Consultant will discuss the proposal in broad outline with the Company prior to accepting such other consultancy work taking care to maintain client confidentiality. The Consultant will verify with the Company that in his view there is no conflict of interest.
7. The University acknowledges that information relating to the Company's business, prospective business, technical processes, finances, and any other confidential information obtained by the Consultant from the Company during the provision of the consultancy services is the exclusive property of the Company under the terms of this Agreement. The

University will not disclose such information to any third party. However, this restriction will not apply to information which:

- 7.1 is in or passes into the public domain otherwise than through the fault of the University; or
  - 7.2 is rightfully obtained by the University or the Consultant from a third party who has not received the information directly or indirectly from the Company;
  - 7.3 is already in the possession of the University or the Consultant at the commencement date of this Agreement; or
  - 7.4 the University or the Consultant is required by law or regulation to disclose.
8. Both during the term of this Agreement and thereafter (subject to the other provisions of this Agreement), the University shall keep confidential any data, information and results arising from the provision of the consultancy services by the Consultant to the Company.
  9. The Company accepts that the Consultant may have reason to and is hereby permitted to consult with other academic staff and/or research associates on aspects of the consultancy services being carried out. The University undertakes to procure (in so far as reasonably practicable) that others so consulted will observe the provisions of this Agreement.
- 10.1 Background intellectual property (howsoever and whensoever constituted or arising) utilised by the Consultant in providing the consultancy services shall belong to whoever created or owns such background intellectual property as at the date of utilisation.
  - 10.2 Each of the parties grants to the other a non-exclusive, royalty free licence to use that party's background intellectual property in connection with the provision of the consultancy services. Neither party shall use the other party's background intellectual property for any purpose other than in connection with the performance of its obligations under this Agreement.
  - 10.3 Any proposed commercial use by the Company of background intellectual property created or owned by the University will be the subject of discussion with the University in order to agree terms for such proposed commercial use.
  - 10.4 Foreground intellectual property (howsoever and whensoever constituted or arising) created or arising from the provision of the consultancy services by the Consultant shall belong to the Company.
11. Without prejudice to Clause 10, all results and data derived by virtue of the provision of the consultancy services will belong to the Company.
  12. If any idea, proposal or suggestion of the Consultant or the University leads or is likely to lead to a commercial opportunity or development for the Company (other than those arising directly pursuant to the specific remit of the consultancy services provided), the Company undertakes to negotiate in good faith with the University to determine whether it would be appropriate for the University to receive additional financial reward or benefit in recognition of the contribution made by the Consultant and/or the University in relation to such opportunity or development.
  13. The Company agrees to ensure that any publication in newspapers, reports or journals or the like in respect of the business of the Company and which involves or relates to the consultancy services provided, shall acknowledge the assistance of the University and the Consultant.

14. The Consultant or the University will have the right to publish reports and papers on the foreground intellectual property and/or data and results derived from the consultancy services provided pursuant to this Agreement subject to the prior written agreement of the Company in accordance with Clause 15 (such agreement not to be unreasonably withheld or delayed).
15. Publications through written or oral presentations by the Consultant or the University with regard to the know-how and/or the results and data derived from the Consultancy will be allowed, on condition that the text of the intended publication will first be submitted to the Company for comment. In case the Company's business interests in general, and more specifically in the matter of patent protection, might be endangered by premature publication, the Company has the right to withhold the intended publication for a maximum period of nine (9) months and/or to ask for such reasonable changes in the proposed publication that the Company's business interests are no longer materially endangered.
16. Failing the availability of the Consultant for any reason, the parties will confer as to how the Agreement may then be satisfied. The Company accepts and agrees that the unavailability of the Consultant for whatever reason will not create or give rise to any liability or obligation (other than as specified above) whatsoever on the part of the University.
17. The provisions of this Agreement will not prevent the University from providing or carrying out consultancy services or research in the same area of interest as the Company. The Company agrees that it will have no claim on the ownership of intellectual property rights which arise or may arise by virtue of such consultancy services or research. The University will respect the Company's need to ensure there is no conflict of interest (see Clause 6 above).
18. Any dispute arising between the parties to this Agreement which cannot be resolved will be referred to the arbitration of a person mutually agreed upon whose decision will be binding on the parties.
19. This Agreement will be governed by Scots Law and any legal dispute will be dealt with under the jurisdiction of a Scottish Court.

This Agreement (comprising this and the three preceding pages) is executed as follows:-

Subscribed for and on behalf of **HERIOT-WATT UNIVERSITY** by [ ] Authorised Signatory, at Edinburgh on the [ ] day of [ ] 2004 in the presence of this witness:-

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Witness \_\_\_\_\_

Full Name \_\_\_\_\_

Address \_\_\_\_\_

Subscribed for and on behalf of [ ] by [ ], Authorised Signatory, at [ ] on the day of [ ] 2004 in the presence of this witness:-

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Witness \_\_\_\_\_

Full Name \_\_\_\_\_

Address \_\_\_\_\_

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## **USE**

For any piece of consultancy work or project with any company, whether industrial, commercial, government departmental, or charitable.

## **SUMMARY**

The price for the job is stated on a daily basis. The company which places the consultancy owns any intellectual property developed in the consultancy job. If the company makes a secondary commercial gain following from the intellectual property then we are entitled to a fair share of the gain for our contribution.

## **JUSTIFICATION**

Normally, the work will be specific to the company's products or processes and not of any generic use. The consultancy day rates include a minor element of profit for HWU and the individual consultant so intellectual property can be transferred. It is important that all lab and facilities use are costed into the price.

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