



COMBINED UNIVERSITIES IN CORNWALL

**COMBINED UNIVERSITIES OF CORNWALL – EUROPEAN SOCIAL FUND STUDENT
SPONSORSHIP AGREEMENT**

DATE _____ 201

THE UNIVERSITY OF A

- and -

THE UNIVERSITY OF B

- and -

THE COMPANY

**AGREEMENT RELATING TO A RESEARCH STUDENTSHIP
IN THE DEPARTMENT OF
[]**

PART FUNDED BY THE EUROPEAN SOCIAL FUND



COMBINED UNIVERSITIES IN CORNWALL
THIS AGREEMENT is made the _____ day of _____ 201_ between

THE UNIVERSITY OF [A] of [_____] of the first part and

THE UNIVERSITY OF [B] of [_____] of the second part and

[_____] whose registered office is situated at [_____] ('the Company') [_____] of the third part

The University of [A] and the University of [B] shall collectively be referred to as "the Universities".

The University of A, the University of B and the Company are hereinafter referred to individually as "Party" and collectively as "the Parties").

BACKGROUND

- (i) The Student is registered as a postgraduate research student in the University of A in the manner and for the period and the purpose stated therein.
- (ii) The University of B has research interests complementary to those of University A and will provide a Secondary Supervisor for the research of the Student.
- (iii) The Universities are participators in this CUC-ESF Convergence-funded studentship and have agreed to the CUC-ESF project and Convergence Standard Terms and Conditions.
- (iv) The Company agrees to support the research work/ Project of the Student in the Universities in the manner stated in Schedule A for the project defined in Schedule B.
- (v) The research work/Project will receive a grant of Convergence funding from CUC - ESF as defined in Schedule A.
- (vi) It is intended by the Parties that the Project will have the impact on the Cornish economy set out in Schedule C.
- (vii) The Universities and the Company desire to enter into an agreement to govern their relationship in the matter.
- (viii) The Student is also a signatory to this Agreement but is not a party or legally liable in connection herewith.

IT IS AGREED:



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1. DEFINITIONS

In this Agreement words defined above shall bear the meanings therein denoted and the following expressions shall have the following meanings:-

- “Background” means any invention and knowhow or other intellectual property (whether or not patentable) owned by one of the parties prior to the commencement of the Project or devised or discovered by one of them only in the course of other projects during the Project period and not arising directly from the Project.
- “CUC” means Combined Universities in Cornwall
- “CUC - ESF” means a Convergence-funded initiative which provides grants for education and skills development projects undertaken between CUC partner institutions, Cornish businesses and organisations and (occasionally) other English higher education institutions.
- “Intellectual Property Rights” means patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, [confidential information], applications for any of the above and any similar right recognised from time to time in any jurisdiction together with all rights of action in relation to the infringement of any of the above.
- “Knowhow” means unpatented technical information (including without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing of procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control, data analyses, reports and submissions) that is not already in the public domain.
- “Project” means the research work described in Schedule B.
- “Project Funding Period” means the period for which ESF funding will be available from the Convergence programme and is determined by the start date and end date of the project.
- “Project Period” means the period from the date on which the student registers as a Research Student at the University of A to the date of the award of a research degree in respect of the Project or the 5 years anniversary of the student’s registration whichever is the earlier.



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- “Results” means all technical and other information arising from the Project including but not limited to all data, results and experiments and any development discovery invention or materials (whether or not patented or patentable/arising from performance of the Project.
- “Main Supervisor” means the University of A employee with responsibility to jointly oversee the student’s performance of the Project named in Schedule A.
- “Secondary Supervisor” means the University of B employee with responsibility to jointly oversee the student’s performance of the Project named in Schedule A.
- “Student” means the person undertaking the project and named in Schedule A
- “the Supervisors” means the Main Supervisor and the Secondary Supervisor

2. THE PROJECT

- 2.1 The Universities and the Company shall agree a programme for the carrying out of the Project defined in Schedule B which will include arrangements for contact between the Company's officers, the Student and the Supervisors on at least a quarterly basis, and for attendance by the Student to work for certain periods on the Company's premises.
- 2.2 The University of A will consult the Company at its request on the selection of a Student for the Project and the continuation of this Agreement shall be conditional on the continued registration of the Student.
- 2.3 Should either the Main Supervisor leave the University of A before the end of the Project Period, or the Secondary Supervisor leave the University of B, the Universities will use reasonable endeavours to secure a replacement reasonably acceptable to the Company.
- 2.4 The Parties acknowledge that the Project is subject to the terms and conditions of the ESF and all Parties will use their best endeavours to comply with these terms and to allow the other Parties to comply with their respective obligations. In the event of a conflict between this Agreement and the terms and conditions of the ESF, then the terms of the ESF will take precedence.
- 2.5 Each Party confirms that it will act in good faith when complying with its respective obligations under this Agreement.



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3. CONTRIBUTIONS BY THE COMPANY

- 3.1 In accordance with the ESF terms and conditions, the Company cannot make a financial contribution towards the core costs of the Project.
- 3.2 Notwithstanding Clause 3.1, the Company will provide direct funding to the University of A [to a maximum of XXXX] specified in Schedule A and as further agreed between the Parties in advance.
- 3.3 The Company will also provide the in-kind contribution to the Project as set out in Schedule A and B.
- 3.4 If requested to do so by the Universities, the Company will provide information on its size and status and other general details as appropriate so as to allow University of A to fulfil its obligations to CUC-ESF relating to eligibility checks, reporting and audit.
- 3.5 For the duration of the Project the Company undertakes to provide reasonable assistance and support to the Student and to ensure that the Company has in place adequate health and safety procedures to cover the Project and the Student in the event that any part of the Project is carried out on the premises of the Company. The Company will make the Student aware of any such procedures or policies that are to be followed when present at the premises and will nominate a representative to be the Student's point of contact at the premises and to act responsibly towards the Student. The Company will also comply with all applicable laws and regulations in respect of the Project, including all relevant health and safety legislation.
- 3.6 All costs outside the Project Funding Period will have to be met by the Universities, the Company and Student as agreed between the Parties.

4. PROGRESS

- 4.1 The Company shall be entitled to seek progress reports from the Student and the Supervisors at not less than six monthly intervals during the Project Period.
- 4.2 An annual report will be produced for CUC-ESF by the Universities on the progress of the Project within 3 months of each anniversary of this Agreement. The Company agrees to provide comments on these reports including a description of any benefits delivered by the Project. The Company and the Universities shall be entitled to copies of the report.
- 4.3 At the mid point of the Project and at its conclusion, the Company agrees to make a statement concerning the overall impact of the Project on its business which may be used to help the Universities identify areas of best practice.
- 4.4 Following each annual report the Company will have the opportunity to suggest refinements to the research Project and to comment on the progress of the student.



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4.5 The Universities shall send to the Company and CUC-ESF Programme Manager a final report within six months of the end of the Project Period. For this purpose a copy of the thesis submitted by the Student for a higher degree shall with the addition of any commentary by the Supervisors be deemed to constitute the final report.

5. CONFIDENTIALITY AND PUBLICATION

5.1 For the purpose of this clause, “Confidential Information” means all and any specifications, drawings, circuit diagrams, tapes, discs and other computer-readable media, documents, information, techniques and know-how which either:

- (a) are disclosed by one party to the other in connection with the Project and marked or labelled “Proprietary”, “Confidential” or “Sensitive” or stated verbally to be confidential by the disclosing party at the time of disclosure; or
- (b) are written, prepared or generated in the course of, and as part of, the Project.

5.2 Subject to the remainder of this Clause 5, and save in so far as Confidential Information is the subject matter of an option exercised by the Company pursuant to Clause 6.4, each party will use all reasonable endeavours not to disclose to any third party any Confidential Information within clause 5.1(a), and not to make to any third party any disclosure of Confidential Information within clause 5.1(b) which would prejudice the rights of the other party under this Agreement.

5.3 Neither party shall incur any obligation under Clause 5.2 with respect to information which:

- (a) is known to the receiving party before the Effective Date, and not impressed already with any obligation of confidentiality to the disclosing party; or
- (b) is or becomes publicly known without the fault of the receiving party; or
- (c) is obtained by the receiving party from a third party in circumstances where the receiving party has no reason to believe that there has been a breach of an obligation of confidentiality owed to the disclosing party; or
- (d) is independently developed by the receiving party; or
- (e) is approved for release in writing by an authorised representative of the disclosing party; or
- (f) the receiving party is specifically required to disclose in order to comply with applicable law, regulation or to fulfil an order of any Court of competent jurisdiction.



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- 5.4 The Project will form part of the actual carrying out of a primary charitable purpose of the Universities; that is, the advancement of education through teaching and research. Furthermore, the conditions of the funding dictate that there must therefore be some element of benefit to the Cornish economy arising from the Project, and this is secured through the following sub-clauses.
- (a) This Agreement shall not prevent or hinder the student or any other registered students of the Universities from submitting for degrees of the Universities theses based on results obtained during the course of work undertaken as part of the Project; or from following the Universities' procedures for examinations and for admission to postgraduate degree status.
 - (b) In accordance with normal academic practice, all employees, students, agents or appointees of the Universities (including those who work on the Project) shall be permitted:-
 - (i) following the procedures laid down in clause 5.5, to publish results obtained during the course of work undertaken as part of the Project; and
 - (ii) in pursuance of the Universities' academic functions, to discuss work undertaken as part of the Project in internal seminars and CUC-ESF events, and to give instruction within the Universities on questions related to such work, always subject to the provisions of clause 5.2.
- 5.5 The Universities will use all reasonable endeavours to submit results intended for publication to the Company in writing not less than thirty (30) days in advance of the submission for publication. The Company may require the Universities to delay submission for publication if in the Company's opinion such delay is necessary in order to exercise its option at Clause 6 and/or to arrange in conjunction with the Universities to patent or similar protection for the Intellectual Property Rights in the Results. A delay imposed on submission for publication as a result of a requirement made by the Company shall not last longer than is absolutely necessary to seek the required protection; and therefore shall not exceed three (3) months from the date of receipt of the results by the Company, although the Universities will not unreasonably refuse a request from the Company for additional delay in the event that property rights would otherwise be lost. Notification of the requirement for delay in submission for publication must be received by the University of A within thirty (30) days after the receipt of the results by the Company, failing which the Universities and the Supervisors and the Student shall be free to assume that the Company has no objection to the proposed publication.
- 5.6 The Company must keep University of A informed about any publicity arising from the research work and provide a chance for the Universities to approve any such publicity in advance. Where appropriate, the CUC and ESF logos should be used on any publicity material, with the prior written agreement of the Programme Manager.



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6. INTELLECTUAL PROPERTY

- 6.1 All and any Background Intellectual Property which belongs to any Party and which may be used or disclosed by that Party in the course of the Project shall at all times remain the sole and exclusive property of that Party. Each Party grants the other Parties a royalty-free, non-exclusive licence to use its Background Intellectual Property for the purpose of carrying out the Project, but for no other purpose.
- 6.2 The Results and all Intellectual Property Rights therein shall vest in and be the absolute property of the University of A who shall be at liberty to file a patent application in relation thereto, but shall first inform the Company and other University.
- 6.3 The University of A hereby grants to the Company and to University of B a royalty-free, non-exclusive licence to use the Results owned by the University of A in accordance with Clause 6.2 for internal research and academic purposes, but not for commercial purposes.
- 6.4 The Universities hereby grant the Company and/or the University of B an option to obtain a non-exclusive or an exclusive licence to the Intellectual Property Rights in the Results and a non-exclusive royalty-free licence to Knowhow in connection herewith for commercial purposes (including the right to sub-licence) and subject always to Clause 6.9, such option to be exercisable at any time during the Project and for a period of six months thereafter by serving written notice on the University of A.
- 6.5 In the event of the Company or the University of B wishes to exercise its option in Clause 6.4, the University of A also agrees (where they are free to do so and subject to any pre-existing third party rights) to grant the Company a non-exclusive licence on fair and reasonable commercial terms to any University of A owned Background Intellectual Property which the Company or the University of B may require for the purpose of exploiting the Results.
- 6.6 The licence to Intellectual Property Rights the subject of the option in Clause 6.4 shall be on fair and reasonable commercial terms to be agreed, which shall take due account of the relative contributions made to the Intellectual Property Rights by each Party, the financial contribution to the project by the Company and the costs of further research and development necessary for commercial exploitation under such licence(s) the Company shall agree to pay to the Universities:
- (a) a reasonable proportion of all up-front, milestone and other payments received by the Company and attributable in whole or in part to the Intellectual Property Rights in the Results,
 - (b) reasonable royalties based on the net selling prices of all licensed products (that is to say, all products and services marketed by the Company or the Company's sub-licensees and derived from, produced by, or containing the Intellectual Property Rights in the Results),



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- (c) reasonable royalties on any cross-licensing and other non-monetary compensation received by the Company from the exploitation of the Intellectual Property Rights in the Results and
 - (d) reimbursement to a University, which has filed a patent with regards to the relevant Intellectual Property Rights of any expenses and fees incurred in respect of patent applications filed which cover the Intellectual Property Rights in the Results.
- 6.7 The remaining terms of the licence shall be settled between the parties in good faith negotiations: if at any point they were unable to agree within a period of 3 months of the date of exercise of the option, the point in dispute would be settled by an arbitrator. The arbitrator would be a specialist in intellectual property law, who had no prior association with either party or was otherwise acceptable to both parties. In default of an agreement the expert shall be appointed by the Chairman of the Bar Association.
- 6.8 The Universities shall, where they are free to do so, use their reasonable endeavours to bring to the attention of the Company any Background Intellectual Property that they own or use relevant to the Project.
- 6.9 If the Company does not exercise the option referred in Clause 6.4, or if agreement cannot be reached between the Company and the relevant University or Universities which own or owns the Intellectual Property Rights as to the terms of the licence, the Universities shall enter into appropriate arrangements with each other as to which is to be the exploiting party and shall enter into an assignment and revenue sharing Agreement on that basis and until execution of such agreement neither University shall exploit the Intellectual Property Rights in the Results whether on its own account or by way of a sub-licence.
- 6.10 Notwithstanding the grant of licences referred to in Clause 6.4 above the Universities shall retain all the rights to the respective Results generated by each of them and/or Intellectual Property Rights therein necessary in order to exploit other results belonging to the University and to carry out research in a similar or related field.

7. PATENT APPLICATIONS

- 7.1 In the event that either University (being a contributor to the relevant Intellectual Property Rights in the Results) and/or the Company is of the view that it would be prudent to make a patent application in respect of the Intellectual Property Rights in the Results, at any time the Company and any relevant University shall agree on a case by case basis who is to be the applicant and bear the costs in relation to any particular patent application.

8. LIMITATION OF LIABILITY



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- 8.1 The Universities will make every effort to perform the Project with reasonable care and skill. However, the Universities are charitable foundations devoted to education and research; and in order to protect their assets for the benefit of those objects, the Universities impose the following conditions on the performance of the Project, and the following limits on the Universities' liability:
- 8.2 The Universities make no representation or warranty that advice or information given by the Supervisors or the Student or any other of their employees, students, agents or appointees who work on the Project, or the content or use of any materials, works or information provided in connection with the Project, will not constitute or result in infringement of third-party rights.
- 8.3 It is acknowledged that the Project is concerned with the carrying out of experimental research and may entail the use of experimental materials whose properties and safety have not been established. Accordingly, specific results cannot be guaranteed and any materials or information provided under this Agreement are provided "as is" and without any express or implied warranties, representations and undertakings. In particular, but without limitation, neither of the Universities gives any warranty that the Intellectual Property Rights in the Results or Knowhow in connection therewith do not infringe third party rights, are of satisfactory quality, fit for any particular purpose, comply with any sample or description or are viable, uncontaminated safe or non-toxic or that patent applications made or licensed hereunder will result in valid granted patent.
- 8.4 The Universities accept no responsibility for any use which may be made of any work carried out under or pursuant to this Agreement, or of the results of the Project, nor for any reliance which may be placed on such work or results, nor for advice or information given in connection with them.
- 8.5 The Company undertakes to make no claim in connection with this Agreement or its subject matter against the Supervisor or the Student or any other employee, student, agent or appointee of the Universities (apart from claims based on fraud or wilful misconduct). This undertaking is intended to give protection to individual researchers: it does not prejudice any right which the Company might have to claim against the Universities individually.
- 8.6 The liability of any party for any breach of this Agreement, or arising in any other way out of the subject-matter of this Agreement, will not extend to loss of business or profit, or to any indirect or consequential damages or losses.
- 8.7 In any event, the maximum liability of the Universities to the Company under or otherwise in connection with this Agreement or its subject matter shall not exceed £60,000.
- 8.8 If any sub-clause of this clause 8 is held to be invalid or unenforceable under any applicable statute or rule of law then it shall be deemed to be omitted, and if as a result



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any party becomes liable for loss or damage which would otherwise have been excluded then such liability shall be subject to the remaining sub-clauses of this Clause 8.

- 8.9 None of the preceding sub-clauses will operate to exclude or restrict any liability which the Universities may have for death or personal injury resulting from negligence.

9. TERMINATION

- 9.1 Unless the parties agree otherwise this Agreement shall expire at the end of the Project Period) but Clauses 5 (Confidentiality), 6 (Intellectual Property) and 8 (Limitation of Liability) shall continue in full force and effect notwithstanding such termination or expiry.

- 9.2 In the event of either of the Universities or the Company

- (a) being in material breach of its obligations under this Agreement which if capable of remedy is not remedied within 60 days of notice from the other Party requiring that it be remedied or
- (b) being or becoming bankrupt or insolvent or making any composition with its creditors or having a receiver, an administrative receiver or manager appointed in respect of its undertaking or any of its assets or (otherwise than as a solvent entity for the purpose of and followed by an amalgamation or reconstruction where under its successor shall be fully and effectually bound by its obligations hereunder) commencing to be wound up,

then and without prejudice to any other rights or remedies available to it the other Party shall have the right to terminate this Agreement by notice in writing to the Party in default. Termination of this Agreement by either party shall not affect the rights and obligations of the parties accrued prior to the date of termination. Where termination takes place pursuant to this Clause 9 due to the default of the Company Clauses 6.3 – 6.7 shall not survive such termination.

- 9.3 This Agreement shall automatically terminate in the event that:

- (a) the Student leaves the Project and/or ceases to be registered at the University of A;
- (b) the funding and support of the ESF for the Project is withdrawn.

- 9.4 In the event of early termination, the Company agrees to reimburse the Student, and the Universities in respect of reasonable costs and expenses that have been incurred by the Student, and the Universities in the performance of the Project and which costs the Company has agreed to cover in connection with Clause 3.2.

10. NOTICES



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- 10.1 Any notice or other communication given under this Agreement shall be in writing and signed by or on behalf of the party giving it and may be served by delivering it personally or sending it by pre-paid recorded delivery or registered post or fax or by email to the address and for the attention of the relevant party set out in clause 10.2 (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:
- a) if delivered personally, at the time of delivery;
 - b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting;
 - c) in the case of fax or email, at the time of transmission.
- 10.2 The addresses and fax numbers and email addresses of the parties for the purposes of clause 12.1 are:
- [Party 1]
Address:

For the attention of:

Fax number:
Email address:
- [Party 2]
Address:

For the attention of:

Fax number:
Email address:
- or such other address[,][or] facsimile number or email address [in the United Kingdom] as may be notified in writing from time to time by the relevant party to the other party [parties].
- 10.3 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party set out in clause 10.2 (or as otherwise notified by that party under the agreement) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax



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number of the relevant party set out in clause 10.2 (or as otherwise notified by that party under this agreement).

- 10.4 A communication sent by email shall not be effective until the addressee acknowledges receipt of such communication, such acknowledgement to take the form of a return receipt. Any notice given by email shall be deemed to have been duly given when the recipient of the said return receipt is able to access it.

11. GENERAL TERMS

- 11.1 This Agreement shall be construed for all purposes in accordance with the Laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts. The place of performance of the contract shall be England.
- 11.2 The heading of each clause of this Agreement is for reference purposes only and does not form part of this Agreement.
- 11.3 Nothing in this Agreement or in any antecedent negotiations or proposals shall be deemed to constitute a partnership between the parties or constitute one party the agent of any other for any purpose.
- 11.4 Failure or omission by any Party to carry out or observe any of the stipulations conditions or obligations to be performed hereunder shall not give rise to any claim against such Party or be deemed to be a breach of this Agreement if such failure or omission arises from any cause reasonably beyond the control of that Party.
- 11.5 Except as otherwise expressly provided for herein, nothing in this Agreement shall confer or purport to confer on any third party not a party to this Agreement any benefit or any right to enforce any term of this Agreement.
- 11.6 This Agreement and its Schedules, which are incorporated into and form part of this Agreement, constitute the entire Agreement between the Parties with regard to the Project. No amendment or addition to this Agreement shall be effective unless it is in writing and signed by the duly authorised representatives of the Parties.
- 11.7 Neither party may assign any of its rights and obligations under this Agreement without the prior written consent of the other.
- 11.8 Neither the Universities nor the Company shall use the name of the other in any press release or product advertising, or for any other commercial purpose, without the prior written consent of the other, provided, however, that publication of the sums received from the Company in the Universities' Annual Reports and similar publication shall not be regarded as a breach of this Clause.
- 11.9 Each Party hereby warrants that they have the full power and authority under its constitution, and has taken all necessary actions and obtained all authorisations,



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licences, consents and approvals, to allow it to enter into this Agreement and to carry out the Project.



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SCHEDULE B
PROJECT DESCRIPTION

Brief title, objectives, procedures, timescales and outcomes as set out in the CUC-ESF application



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SCHEDULE C

BENEFITS TO THE CORNISH ECONOMY

As set out in the CUC-ESF application



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IN WITNESS WHEREOF this Agreement has been duly signed by the authorised representatives of the Parties on the day and year first above written

Signed

For and on behalf of
The University of A

Name

Office

For and on behalf of
The University of B

Name

Office

For and on behalf
of the Company

Name

Office

I confirm that I have read and understood the terms and conditions of this Agreement and agree to undertake the Project in compliance with them.

.....Main Supervisor

.....Secondary Supervisor

.....Student