# SCOTTISH INSTITUTE FOR REMANUFACTURE PROJECT AGREEMENT

between

[insert details] (the “University");

and

[insert details] (Company No. [insert details]) having its principal place of business at [insert details] (the "Company").

## WHEREAS

1. The University on behalf of the Parties has applied to the Scottish Institute for Remanufacture (“SIR”) for financial support towards the costs of a project, which application has been successful;
2. SIR is providing a contribution towards the project costs which is a VAT inclusive (if applicable) sum of up to a maximum of [insert details] Sterling (the “SIR Contribution”);
3. The Company contribution is expected to match the SIR Contribution in kind or in cash, and the Company has agreed to match the SIR Contribution in kind;
4. The Company wishes the University to carry out a project; and
5. The Parties agree such project shall be carried out on the terms and conditions set out below.

WHEREBY IT IS AGREED AS FOLLOWS

1. **DEFINITIONS AND INTERPRETATION**
   1. In this Agreement, unless the context otherwise require or permits:-

“Agreement” means this Scottish Institute for Remanufacture Project Agreement.

“Application” means the application form for SIR funding completed by the Parties and forming the Schedule to this Agreement.

"Background IP" means all Intellectual Property, information, data, software and materials belonging to a Party that are provided by that Party to the other for use in the Project (whether before, on or after the Effective Date), and including such Background IP as is set out in the Application but not, for the avoidance of doubt, the Foreground IP.

“Confidential Information” means each Party's confidential information disclosed by that Party to the other for use in the Project and identified as confidential before or at the time of disclosure, the other Party’s Background IP and any Foreground IP owned by it.

“Effective Date” has the meaning set out in clause 2.3.

“Field” has the meaning set out in the Application or as otherwise agreed between the Parties in writing;

"Foreground IP" means all Intellectual Property, information, data, software and materials identified, created or first reduced to practice or writing in the course of the Project.

"Intellectual Property" means any patents, trade marks, registered designs, copyright, unregistered design right, database right or semi-conductor topography right including the rights to apply for the same and for any renewals of such rights, rights in and to trade or business names, Know-how or Confidential Information, and any similar or analogous rights or forms of protection in any part of the world.

“Know-how” means technical information (including information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain and that is not the subject of a patent application.

“Option” has the meaning given to it in clause 4.12;

"Parties" means the Company and the University and "Party" shall be construed accordingly.

"Project" means the project described in the Application.

* 1. The headings in this Agreement are included for convenience only and shall be ignored in construing this Agreement.
  2. The Schedule shall form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and references to this Agreement include the Schedule.
  3. The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the word “without limitation”.

1. **THE PROJECT**
   1. The Company contribution shall match the SIR Contribution in kind (staff time materials, access to facilities et cetera) according to the information provided in the Application. All expenditure must be clearly accounted for in the final report (the “Final Report”) a pro forma of which is in the Application. In the event that value added tax is payable on the Company contribution (or the value thereof), the Company shall be liable to pay that value added tax.
   2. In consideration of the Company fulfilling its obligations set out hereunder the University will use reasonable endeavours to undertake the Project. The University and the Company will work together in order to complete and provide SIR with the Final Report timeously.
   3. The Project shall start on [insert details] and this Agreement shall take effect on that date (the “Effective Date”) and both shall continue in force until [insert details] unless terminated earlier in accordance with clause 10 of this Agreement.
   4. The Company undertakes to:
      1. carry out the Project in accordance with this Agreement, in a good and workmanlike manner, with good quality materials and substances of their respective kinds, and in accordance with the Application and any applicable regulatory consents;
      2. report to the University on the progress of the Project and such other matters as the University may request, in such manner, at such times and in such format as the University may request from time to time;
      3. meet and liaise with the University or its appointed staff as reasonably required by the University; and
      4. permit the University and its advisers and funders to inspect the Project and/or discuss any progress report as any of them may reasonably require and provide them with or ensure that they are provided with all necessary assistance and facilities for such purpose.
2. **PERSONNEL**

The Project will be supervised by [insert details] Department of [insert details] (the “Academic”) at the University or such other member(s) of staff as the Parties shall mutually agree.

1. **INTELLECTUAL PROPERTY**
   1. The majority of SIR funded projects will not result in the generation of Intellectual Property. This clause provides the cover for those that do.
   2. No licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement.
   3. All Background IP used in connection with the Project shall remain the property of the Party introducing such Background IP (or, where applicable, the third party from whom its right to use the Background IP has derived).
   4. Subject to any third party rights, each Party grants the other a royalty-free, non-exclusive licence to use its Background IP for the purpose of carrying out the Project, but for no other purpose.
   5. Each Party shall promptly disclose in confidence to the other Party any Foreground IP identified, created or first reduced to practice or writing by that Party in the course of the Project.
   6. Foreground IP shall be owned by the University and the University shall grant to the Company a royalty-free, non-exclusive licence to any Foreground IP for the purposes of carrying out the Project.
   7. The Company hereby assigns and transfers to the University with effect from the date of their creation the whole right, title and interest in and to the Foreground IP and all rights of action, powers and benefits arising from ownership of the Foreground IP, including, without limitation, the right to sue for damages and other legal remedies in respect of all causes of action arising prior to, on or after the Effective Date.
   8. The Company undertakes to procure a waiver of any and all moral rights in the Foreground IP to which any of its employees and/or other representatives may now or at any future time be entitled under the Copyright, Designs and Patents Act 1998 or any similar provisions of law in any jurisdiction.
   9. To the extent that title to the Foreground IP does not vest in the University automatically by operation of law or under this Agreement, the Company shall hold legal title to such rights in trust for the University and shall execute all such documents and give such assistance as the University may require:
      1. to secure the vesting in the University of all rights in the Foreground IP;
      2. to uphold the University’s rights in the Foreground IP; and
      3. to defeat any challenge to the validity of, and resolve any question concerning the Foreground IP.
   10. The Party owning the Foreground IP shall make all decisions on whether such Foreground IP should be protected by patent or other intellectual property protection. The costs of filing and protection of such patent application(s) or other protection shall be paid by the owning Party unless the Parties agree otherwise. The Parties shall discuss any such protection that should be sought and shall use reasonable endeavours to reach agreement in relation thereto.
   11. The University hereby grants to the Company a non-exclusive, royalty free licence to use the Foreground IP for the purposes of the Project.
   12. The University hereby grants the Company an option (the “Option”) exercisable in accordance with clause 4.15 below to obtain a licence on fair and reasonable terms to all or part of the Foreground IP. The licence may be
       1. a non-exclusive licence not limited to a field, or
       2. an exclusive licence in the Field only.
   13. Following exercise of the Option by the Company, the terms of the licence will be negotiated between the Parties on a fair and reasonable basis, taking into account:-
       1. the nature of the licence;
       2. the Foreground IP to be licensed; and
       3. the Company’s contribution to the creation of that Foreground IP including, to the extent applicable, in terms of
          1. its Background IP;
          2. scientific leadership and guidance from the Company’s personnel; and
          3. the Company's contribution to the costs of the Project.
   14. The Option shall automatically terminate if this Agreement is terminated by the University in accordance with clause 10.1 or 10.2.
   15. The Company may exercise the Option at any time during the Project and a period of six (6) months from termination or expiry of the Project (whichever applies) by serving notice in writing to the University that the Company would like to exercise the Option and enter into negotiations.
   16. In the event of the Company exercising the Option, the University undertakes, but only to the extent that the University judges that the existing obligations and undertakings that it may have permit it, to grant to the Company a non-exclusive licence on fair and reasonable terms to use any of the University’s Background IP which the Company requires for the purpose of exploiting the Foreground IP licensed by the University to the Company under a licence agreement agreed following exercise by the Company of the Option, but for no other purpose. **Nothing shall prevent the University granting non-exclusive licences to parties other than the Company in relation to the University’s Background IP.**
   17. In the event that the Company does not exercise the Option or if the University and the Company are unable to agree the terms of a licence in relation to the Foreground IP within six (6) months of the date on which the Company exercises the Option, the University shall be free to license, assign or otherwise transfer the Foreground IP to any third party.
   18. The Company undertakes to grant to the University, upon written request from the University, a non-exclusive licence on fair and reasonable terms to use any of the Company’s Background IP which the University requires for the purpose of exploiting the Foreground IP but for no other purpose.
   19. If the Company wishes to obtain more or less extensive rights to the Foreground IP as are envisaged under this clause 4, it shall notify the University in writing and the Parties shall discuss the Company’s request. The decision as to whether to grant the requested rights shall remain at the University’s sole discretion.
2. **CONFIDENTIALITY**
   1. Any Confidential Information will not without prior written consent of the owning Party or as otherwise provided under this Agreement be used, published or disclosed.
   2. The foregoing obligations shall not apply, or shall cease to apply, to such Confidential Information as the receiving Party can show to the reasonable satisfaction of the disclosing Party:
      1. has become public knowledge other than through any fault of the receiving Party;
      2. was already known to the receiving Party prior to disclosure by the disclosing Party;
      3. was independently developed by the receiving Party without recourse to or use of any Confidential Information;
      4. has been received by the receiving Party 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; or
      5. the receiving Party is required to disclose by law or by a requirement of a regulatory body.
   3. Notwithstanding any other provision of this Agreement, where either Party is in receipt of an information request pursuant to the Freedom of Information (Scotland) Act 2002 or any analogous regulations in respect of Confidential Information (or any other information) relating to this Agreement or to the Project (the “Request”) it shall make an analysis as to whether the Confidential Information or other information requested is capable of benefiting from an exemption from disclosure. In the event that the Party in receipt of the Request considers that disclosure is legally required and makes the requested disclosure, no liability shall attach thereto.
   4. Notwithstanding any other provision of this Agreement, SIR may disclose:
      1. non-confidential information concerning the Project and the Company to third parties in order to promote, as it thinks fit, its association with the Project and for the purposes of research, reporting to the government or any public bodies and provision of publicly available information; and
      2. information concerning the Project and the Company (including the Company’s confidential information) to its advisers, consultants and funders as required solely for the purposes of this Agreement.
3. **PUBLICATION**
   1. Notwithstanding the provisions of clause 5 above, it is recognised that the University will be expected to publish Foreground IP and otherwise disclose such Foreground IP in accordance with academic practice.
   2. Prior to the publication of any Foreground IP, the University shall forward a copy of the proposed publications to the Company for review. The Company shall have a period of one (1) month from receipt of said text in which to intimate, in writing, to the University that such text contains either confidential or commercially sensitive information belonging to the Company. In the event of the Company intimating that the text contains either confidential or commercially sensitive information belonging to it, the University shall not publish such confidential and/or such commercially sensitive information.
   3. The Company agrees that information relating to or arising from the Project may be included without restriction in a dissertation prepared by a research student involved in the Project for submission in accordance with the regulations of the University. Nothing contained in this Agreement shall be interpreted as preventing or unduly delaying such submission. The University agrees to consult with the Company regarding the selection of external examiners. External examiners shall be required to sign a confidentiality agreement relating to the dissertation should the Company make a written request to the University. Should the Company wish to seek any special requirements in respect of the lodging of the dissertation such as an embargo, it will inform the University in writing within 30 days of receipt of a manuscript of the dissertation.
   4. Without prejudice to the foregoing, the University may make certain information relating to the Project public in accordance with usual academic principles. Such information may include the provision of knowledge transfer and / or impact metrics to any co-funders of the Project and other relevant bodies and may include a brief outline of the Project including reference to the Company together with any outcomes and impacts generated therefrom. In addition the University shall be allowed to use the subject matter of the Project and the Company’s participation therein as a case study in the University’s marketing material.
4. **LIABILITY**
   1. The University shall use reasonable endeavours to ensure the accuracy of the work performed and any information given but the University makes no warranty, express or implied, as to accuracy and accepts no responsibility for any use by the Company of the University-owned Background IP or any use of the Foreground IP, nor for any reliance placed by the Company on the University-owned Background IP or any reliance on the Foreground IP, nor for advice or information given in connection with the Project. All implied terms, conditions and warranties are hereby excluded to the maximum extent permitted by law. Any use of the University-owned Background IP or any use of the Foreground IP by the Company shall be at the Company’s sole risk.
   2. Nothing in this Agreement limits or excludes either Party’s liability for
      1. death or personal injury;
      2. any fraud or any sort of liability that by law cannot be limited or excluded; or
      3. any loss or damage caused by a deliberate breach of this Agreement.
   3. Subject to clause 7.2, the liability of neither Party to the other for any breach of this Agreement, or any negligence shall extend to any indirect damages or losses, even if the Party bringing the claim has advised the other of the possibility of those losses or if they were within the other Party’s contemplation.
   4. Subject to clause 7.3, the Company will indemnify the University and keep it fully and effectively indemnified against any loss which the University may incur as a result of the Company having provided inaccurate or incorrect information in the Application. In such cases, the Company shall be liable to pay to the University a sum equal to the SIR Contribution with such sum due for payment immediately.
5. **USE OF UNIVERSITY'S NAME**

The Company shall not use the University's name in connection with the work undertaken under the Agreement without the express written consent of the University which shall be sought on each occasion. Such consent shall not be unreasonably withheld.

1. **FORCE MAJEURE**

Neither Party shall be deemed to be in breach of this Agreement if it is unable to carry out any provision of it for any reason beyond its control including acts of God, legislation, fuel shortages, war, fire, flood, drought, failure of power supply embargo, civil commotion and employee action.

1. **TERMINATION**
   1. Either Party may terminate this Agreement with immediate effect by notice in writing to the other Party (the “Breaching Party”) in the event of the Breaching Party committing a material breach of this Agreement, which if the breach is capable of remedy the Breaching Party has failed to remedy within thirty (30) days after receipt of notice in writing.
   2. The University may terminate this Agreement with immediate effect by notice in writing to the Company in the event that any information provided by the Company in the Application is discovered to be inaccurate or incorrect. In this case, the Company shall be liable to pay to the University a sum equal to the SIR Contribution with such sum due for payment immediately.
   3. In the event of termination, the University shall be reimbursed by the Company for all expenses properly incurred on the Project, including expenses falling due for payment after the date of termination which arise from commitments reasonably and necessarily incurred by the University for the performance of the Project.
   4. Notwithstanding the expiry or earlier termination of this Agreement, the provisions of clause 4 (except the Option, in the case of termination of this Agreement by the University pursuant to clauses 10.1 or 10.2), 5, 7, 8, 10.4, 13, 14 and 15 shall survive and continue in in full force and effect, together with any other provisions of this Agreement necessary to give effect to such provisions.
   5. The University will also have the right to terminate this Agreement at any time without cause by notice to the Company and in such circumstances the University will pay the Company a fair and reasonable amount for the Project completed to the satisfaction of University before the date of termination.
   6. In the event of termination, the Company will promptly provide the University with a full report on the status of the Project together with all information, documentation, property and materials relating to the Project as soon as reasonably practicable and in any event within twenty (20) days of the date of termination.
   7. The Project shall terminate automatically on termination of this Agreement for any reason.
2. **ASSIGNATION**
   1. Except as expressly provided for in this Agreement neither Party shall be entitled to:-
      1. assign or transfer any or all of its rights and/or obligations under this Agreement (or purport to do so); or
      2. sub-license or sub-contract any or all of its obligations under this Agreement (or purport to do so);

save, in either case, with the prior written consent of the other Party.

1. **DE MINIMIS**

Any SIR Contribution constitutes State Aid as defined under Articles 87 and 88 of the Treaty of Rome and is being granted as ‘de minimis’ aid under Commission Regulation 1407/2013 (the "De Minimis Aid Regulation”). European Commission rules prohibit any single undertaking (see definition below) from receiving more than €200,000 ‘de minimis’ aid over any period of three fiscal years (that being the undertaking’s current fiscal year and its previous two).

Any ‘de minimis’ aid granted over the €200,000 limit may be subject to repayment with interest.

The sterling/euro equivalent is calculated using the Commission exchange rate applicable on the written date of offer of the de minimis funding at the following link - European Commission’s exchange rate: <http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm>

"Single undertaking" includes, for the purposes of the Regulation, all enterprises having at least one of the following relationships with each other:

a) one enterprise has a majority of the shareholders' or members' voting rights in another enterprise;

b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;

c) one enterprise has the right to exercise a dominant influence on another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

d) one enterprise which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

The monetary value of the SIR Contribution is [£ ], which under the EU exchange rate on the date of issue of the Award Letter is [€ ].

For the purposes of the De Minimis Aid Regulation, the Company must retain a copy of this Agreement together with any related documentation (including the Application) for a period of three years from the end of the Project and produce it on any request by the UK public authorities or the European Commission.

The Company acknowledges and hereby agrees that its signature of this Agreement constitutes its awareness of and adherence to the De Minimis Aid Regulation.

1. **NOTICES**
   1. Any notice to be given under this Agreement shall be sent by recorded delivery first class post to the addresses given below or such alternative addresses as the relevant Party may intimate in writing to the others for that purpose.
   2. Notices given to the University should be marked for the attention of [insert details].
   3. Notices given to the Company should be marked for the attention of [insert details].
2. **GENERAL**
   1. Except as otherwise expressly provided in this Agreement none of the terms and conditions of this Agreement shall be enforceable by any person who is not a Party to it.
   2. Each provision of this Agreement shall be construed separately and, save as otherwise expressly provided herein, none of the provisions hereof shall limit or govern the extent, application or construction of any other of them and, notwithstanding that any provision of this Agreement may prove to be unenforceable by law, the remaining provisions of this Agreement shall continue in full force and effect.
   3. No waiver by either Party of any of the requirements hereof or of any of its rights hereunder shall be effective unless given in writing and signed by or on behalf of that Party and no forbearance, delay or indulgence by either Party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that Party nor shall any waiver by either Party of any of the requirements hereof or any of its rights hereunder release the other from full performance of its obligations stated herein.
   4. This Agreement constitutes the entire understanding between the Parties and supersedes and extinguishes all (if any) prior drafts, agreements, understandings, undertakings, representations, warranties and/or arrangements of any nature whatsoever (whether or not in writing) between the Parties in connection therewith.
   5. Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the Parties and nothing in this Agreement shall be deemed to constitute one of the Parties as the agent of the other.
   6. The Parties shall procure that in carrying out the Project they will comply with all applicable laws, regulations and statutes relating to anti-bribery including the Bribery Act 2010.
3. **APPLICABLE LAW**

This Agreement shall in all respects be construed and interpreted in accordance with, and governed by, the Law of Scotland, and the Parties prorogate the jurisdiction of the Scottish Courts.

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| --- | --- |
| Signed for and on behalf of [insert details] |  |
| at............................................................... |  |
| on............................................................. | Witness: …………………………………. |
| by….......................................................... | Name: ……………………………………. |
| .................................................................  (Signature) | Address: ………………………………….  …………………………………………….  ……………………………………………. |
| Position ................................................... |
|  |  |
| Signed for and on behalf of [insert details] |  |
| at............................................................... |  |
| on............................................................. | Witness: …………………………………. |
| by….......................................................... | Name: ……………………………………. |
| .................................................................  (Signature) | Address:………………………………….  …………………………………………….  ……………………………………………. |
| Position ................................................... |

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING SCOTTISH INSTITUTE FOR REMANUFACTURE PROJECT AGREEMENT BETWEEN [insert details] AND [insert details]

#### THE APPLICATION

### [Please attach the application form]