Terms and Conditions

Appendix A – Terms and Conditions for Consultancy

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

The Definitions **"Commencement Date", "Completion Date", and "Price"** 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.

"Business Day" shall mean a day other than a Saturday, Sunday or public holiday or University closure day, on which clearing banks are open for non-automated commercial business in England.

"Data Protection Legislation" shall mean i) the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time; ii) the DPA to the extent that it relates to processing of personal data and privacy; iii) all applicable Laws about the processing of personal data and privacy.

"**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, 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.

"Material(s)" shall mean any material (whether physical or electronic) supplied by the Client to University for the Work.

"**NSI Act**" shall mean the National Security and Investment Act 2021, as amended or replaced from time to time.

"**NSI Notice or Order**" shall mean a notice or order from the United Kingdom Secretary of State under the NSI Act in relation to an entity or asset connected with this Contract.

"**Party**" shall mean the Client or the University and together they are the "**Parties**".

"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.

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.

c) The Client acknowledges and agrees that no signature other than that of an authorised representative of the University shall make this Contract binding on the University.

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 date of invoice . All sums due are exclusive of Value Added Tax, import/export duties and any other 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-authorised by the Client and be reimbursed by the Client unless otherwise agreed in writing.

c) Where any payment due has not been received by the University 30 days after the date of an invoice, the University shall (without prejudice to its rights howsoever arising) be entitled to charge interest on the amount outstanding from the date of the invoice at a rate per annum equal to 4% above Barclays Bank PLC base rate for the time being in force.

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 University 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 Unit 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.

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) The Client warrants that it has full power and authority under its constitution and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to supply the Material(s) to the University and to allow the University to undertake the Work. In the event the Materials do not belong to the Client, the Client warrants that it has obtained the necessary permission of that third party to supply the Material and to request the University to undertake the Work. The Client will show the University evidence of that permission on request.

c) 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 Material(s), information, trade secrets, and/or relevant drawings, data, models, samples, or other matter ("Confidential Information") submitted by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") for the purpose of the Work and in connection with and or as consequence of the Contract 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 Confidential Information 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.

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

d) The obligations of confidentiality set out in this Clause 7 shall survive for a period of 5 years after the Completion Date.

8. Termination

a) 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.

b) The University reserves the right to terminate this Contract if, during the term of this Contract,

(i) any key facilities and/or equipment used in the Work break down or become unusable through no fault of the University, and no replacement facility or equipment is available within a reasonable time and after consultation with the Client.

c) If a tool or facility necessary for the delivery of Work requires repair and the cost of such repair has been mutually agreed between the Parties to be prohibitive, each Party has the right to terminate the Contract with a written notice to the other Party.

d) In the event of termination under 8b or 8c, the University shall be paid for any portion of the Work that has been performed up to the termination.

9. Data Protection

Each Party shall ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including, the Data Protection Legislation as applicable. The Parties acknowledge it is not expected that in the course of the Work it will be necessary to share personal data. However, if it does become necessary, the Parties will ensure that a personal data sharing agreement is executed between the Parties, and any further ethical approvals which are required are granted, before such data is shared.

10. United Kingdom National Security Investment Act 2021

a) The Parties shall comply with the NSI Act. Where a Party notifies the relevant UK government department, body or agency, of any trigger event occurring which may fall in scope of the reporting regime under the NSI Act, it shall notify the other Party, in advance. A Party making such disclosure (whether mandatory or voluntary) shall not be in breach of Clause 7.

b) If any Party receives an NSI Notice or Order they shall notify the other Party in writing as soon as reasonably practicable and, to the extent they are legally able to do so, shall include details of the NSI Notice or Order in such notice.

c) Each Party shall (i) comply with all directly applicable provisions of any NSI Notice or Order and (ii) on request of the other Party provide reasonable assistance to such other Party in connection with compliance with any NSI Notice or Order.

d) Where compliance with an NSI Notice or Order necessitates amendment of this Contract (including without limitation the withdrawal of a Party or termination of part of the Contract), the Parties shall in good faith negotiate an appropriate amendment. If the Parties fail to agree such an amendment within the time period stated in the relevant NSI Notice or Order (or where no time period for compliance is stated in the relevant NSI Notice or Order within 28 days of the date of the relevant NSI Notice or Order) this Contract shall terminate automatically.

e) Where compliance with an NSI Notice or Order cannot be achieved by amending this Contract, this Contract shall terminate automatically (i) as required by the relevant NSI Notice or Order or (ii) in the absence of specific provision for termination in the relevant NSI Notice or Order, with immediate effect.

f) In the event of termination under Clause 10 d) or Clause 10 e), the Client shall pay the University all outstanding sums due to the University for all work done up to that date.

g) Notwithstanding any other provision of this Contract, any Party that fails to make a mandatory notification as required by the NSI Act shall reimburse all costs and losses incurred by the other Party as a result of such failure (including without limitation all costs and losses associated with related NSI Notices and Orders and the amendment and termination of this Contract).

11. Export Control

The Parties recognise that communication or transfer of technology and/or information may be subject to specific government export approval. Each Party will assist the other Party with all applicable export control laws and regulations including, without limitation, those of the United Kingdom and U.S (collectively "Export Control Regulations"). The Parties do not anticipate the need to disclose to each other technology and/or information, whether in a tangible or intangible form, that is subject to Export Control Regulations. Should one Party believe it is necessary to disclose technology and/or information that is controlled under Export Control Regulations ("Export Controlled" technology and/or information), the disclosing Party shall notify the recipient and Party provide specific identifying references as to the part of the regulations under which the technology and/or information is qualified as Export Controlled. No transfer of Export Controlled technology and/or information will occur without the prior written consent of the recipient Party. Neither Party is obligated to accept Export Controlled Confidential Information. The recipient Party will incur no liability if it elects not to accept Export Controlled technology and/or information.

12. Compliance with the Law

Each Party will comply with all applicable laws relating to anti-bribery and anti-corruption and shall not do anything which will cause or lead the other Party to be in breach of such applicable laws.

13. Third Party Rights

Any person or entity who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

14. No Partnership

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

15. Governing Law

a) This agreement shall be governed by the Laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.
b) Any dispute arising out of or in connection with this Contract shall be referred, in the first instance, for internal dispute resolution between the Parties in good faith. If the Parties are unable to reach agreement on any issue concerning this Contract within fourteen (14) days

after one party has notified the other of that issue, they will refer the matter to Director Enterprise & Knowledge Exchange in the case of the University, and to a Director in the case of the Client in an attempt to resolve the issue within fourteen (14) Business Days after the referral. In the event the matter is not resolved within fourteen (14) Business Days the matter may be referred to the University's President or Vice President Research & Enterprise and the Client's Chief Executive Officer who shall seek to resolve the matter within fourteen (14) days.

c) Either Party may bring proceedings in accordance with Clause 15a) if the matter has not been resolved within a thirty (30) Business Day period, and either Party may apply to the court for an injunction whether or not any issue has been escalated under this clause.

d) Each Party shall bear its own costs in relation to any dispute.

16. Force Majeure

Neither party shall be liable to the other for any breach of this Contract caused directly or indirectly by anything outside its reasonable control including (without limitation to the generality of the foregoing) war, hostilities, government action, breakdown, delay in transportation, any form of labour dispute, fire, flood or act of God.

17. Invalidity

The invalidity or unenforceability for any reason or any term or condition, sub-clause or paragraph of this Contract or any part hereof shall not prejudice or affect the validity or enforceability of the remainder.

18. Counterparts

Each Party hereby agrees to the signature of this Contract either using an electronic signature through electronic signature platform or by otherwise affixing an electronic signature, or in hard copy. This Contract may be executed in any number of counterparts. Once it has been executed and each Party has executed at least one counterpart, each counterpart will constitute a duplicate original copy of this Contract. All the counterparts together will constitute a single agreement.

The transmission of an executed counterpart of this Contract (including just a signature page) by e-mail will take effect as the delivery of an executed original counterpart of this Contract. Executed copies of the signature pages transmitted electronically e.g. in Tagged Image Format Files (TIFF) or Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment.