

Company Contact

Name of Client

Full Address of Client Company

**Date UCC Ref:**

Dear Company Contact

Thank you for contacting University College Cork in relation to its Consultancy Services. As per your recent discussions, this is to confirm that our Consultant (Name of Consultant) will carry out the Services as set out in the Statement of Work attached to this Agreement at Schedule 1.

This Agreement consists of this letter, the Services and Fees as set out in the Statement of Work in Schedule 1 and the General Terms & Conditions in Schedule 2, both of which we have attached to this letter. We ask that you kindly complete the Purchase Order details in the SOW, so that we can invoice you for this work.

Please could you confirm your acceptance of this Agreement by signing this letter and returning it to my colleague Rachel O’Leary, Head of UCC Consulting at Rachel.oleary@ucc.ie.

We look forward to working with you on this project.

Yours sincerely

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of **UNIVERSITY COLLEGE CORK – NATIONAL UNIVERSITY OF IRELAND, CORK** |  | **SIGNED** for and on behalf of **(Name of Client).** |
| **By:**  |  |  | **By:** |  |
| **Name:**  | Dr Sally Cudmore |  | **Name:** |  |
| **Title:**  | Director of Innovation |  | **Title:** |  |
| **Date:**  |  |  | **Date:** |  |
|  |  |  |  |

**Schedule 1 - Statement of Work**

|  |  |
| --- | --- |
| **Services Description** |  |
| Title |  |
| Consultant |  |
| Services (Description) |  |
| Deliverable Items |  |
| Dependencies |  |
| **Intellectual Property (IP)** |  |
| Client Background IP |  |
| UCC Background IP |  |
| **Delivery Schedule** |  |
| Start Date |  |
| End Date |  |
| **Fees**  |  |
| The following fees for the Deliverable Items as set out above are payable to UCC, payment in accordance with the General Terms and Conditions |
| Fees |  |
| VAT and other Taxes |  |
| Expenses | To be agreed with client beforehand |
| Total  |  |
| **Purchase Order, Terms & Conditions** |
| The client hereby instructs UCC to supply the Services as detailed above in accordance with the letter and General Terms and Conditions attached herein |
| Purchase Order (PO) Number |  |
| Invoice Contact Name & Email |  |
| UCC Vat Number | IE0006286E |
| Client Vat Number (if exempt please provide detail) |  |
| Client Company Registration Number |  |

**Schedule 2 – General Terms & Conditions**

**1. CONSULTANCY SERVICES**

1.1 **Services.** In consideration of the payment of the Fees by the Client to UCC, UCC shall provide the Services to the Client from the Start Date, all in accordance with the provisions of this Agreement.

1.2 **Consultant.** The Services will be performed by UCC through the Consultant. UCC may, at any time throughout the term of this Agreement, substitute any Consultant with an alternative Consultant with similar qualifications and experience on the same terms as set out in the Agreement. Unless otherwise agreed by the Parties in writing, a change in the named Consultant will not incur a change in the Fees.

1.3 **Timetable.** Where Schedule 1 states that Services are to be performed within a specific timeframe, then UCC shall use reasonable efforts to perform the Services by the relevant date. Where Schedule 1 does not require that Services are to be performed within a specific timeframe, then UCC shall nonetheless use reasonable efforts to perform the Services in a timely manner. Time for performance of the Services shall not be of the essence.

1.4 **Delays.** If UCC foresees any potential delays in the completion of the Services, UCC will notify the Client as soon as is reasonably practicable and take reasonable steps to mitigate any delay to the End Date.

1.5 **Independent contractors.** The relationship of UCC to the Client shall be that of independent contractor. This Agreement is not intended to, and does not, create any contract of employment or other legal relationship between the Client and any Consultant.

2. **FEES**

2.1 **Invoices.** UCC shall provide the Client with invoices for the Fees due to UCC in accordance with the payment milestones set out in Schedule 1.

2.2 **Payment.** The Client shall pay all valid invoices within thirty (30) days of receipt.

2.3 **Expenses.** Unless otherwise stated in Schedule 1 the Fees are exclusive of all expenses reasonably incurred by UCC in the performance of the Services and UCC shall invoice the Client for the reimbursement of the same in addition to the Fees.

2.4 **Currency and VAT.** All amounts stated are to be paid in Euro and are exclusive of Value Added Tax which, subject to the provision of a valid Value Added Tax invoice, shall be paid by the Client in addition.

2.5 **Late Fees.** All amounts that are not paid by the Client when due will accrue interest from the date due until paid at a rate per annum of two percent (2%) plus EURIBOR (at the three month rate, reckoned at three monthly intervals in each case for the three months next succeeding the day of reckoning, and first reckoned on the due date for payment for the first three months). All such interest shall accrue from day to day and shall be compounded quarterly.

3. **INTELLECTUAL PROPERTY**

3.1 **Foreground IP.** All Foreground IP shall be the sole property of the Client. At the request and expense of the Client, UCC shall execute such documents as may be necessary to transfer title to Foreground IP to the Client. All Foreground IP shall be treated as Confidential Information belonging to the Client.

3.2 **Grant.** In consideration of the performance by UCC of its obligations under this Agreement, the Client grants and agrees to grant UCC a perpetual, non-exclusive, royalty-free, non-transferable, non-sub licensable licence to use all Foreground Intellectual Property for the purpose of research and teaching.

3.3 **Background IP.** All Background IP which is intended to be used within the Services shall be listed at Schedule 1. The Client hereby grants UCC a royalty-free, non-exclusive licence to use the Background IP for the purposes of carrying out the Services and no other purpose.

4. **PUBLICATION**

4.1 **Confidentiality Notice.** UCC shall submit to the Client, in writing, details of any proposed Publication for academic, research and teaching purposes, containing information in relation to the Services that UCC or any of its Personnel intends to Publish, at least 60 days before the date of the proposed submission for Publication. The Client may, by giving written notice to UCC (a “Confidentiality Notice”) prevent the Publication of any of the Client's Confidential Information. The Client shall give that Confidentiality Notice within 30 days of the Client receiving details of the proposed Publication. If UCC does not receive a Confidentiality Notice within that period, it or any of its Personnel may proceed with the proposed Publication. For the purposes of this Clause 4.1 the recipient for Notices will be the Consultant.

4.2 **Right to publish.** Any of UCC personnel (whether or not involved in the provision of the Services) may, provided a Confidentiality Notice under Clause 4.1 has not been given, Publish for academic, research and teaching purposes, any information relating to the Services (unless it is the Client’s Confidential Information).

4.3 **Duration of obligations.** The obligations of UCC under this Clause 4 shall automatically cease on the second anniversary of the expiry of the Term.

5. **CONFIDENTIALITY**

5.1 **Confidentiality obligations**. Each Party (the “Receiving Party”) undertakes from the Start Date:

(a) to maintain as secret and confidential all Confidential Information obtained directly or indirectly from the other Party (the “Disclosing Party”) in the course of or in anticipation of this Agreement and to respect the Disclosing Party’s rights therein;

(b) to use such Confidential Information only for the purposes of this Agreement;

(c) to disclose such Confidential Information only to those of its employees, contractors and sub-licensees pursuant to this Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement; and

 (d) to ensure that all those to whom disclosure of or access to such Confidential Information has been given, including its officers, directors, employees and professional advisers, comply with the provisions of this Agreement, and the Receiving Party shall be liable to the Disclosing Party for any breach of this Agreement by any of the foregoing.

5.2 **Exceptions to obligations.** The provisions of Clause 5.1 shall not apply to Confidential Information which the Receiving Party can demonstrate by reasonable, written evidence:

(a) was, prior to its receipt by the Receiving Party from the Disclosing Party, in the possession of the Receiving Party and at its free disposal; or

(b) is subsequently disclosed to the Receiving Party without any obligations of confidence by a third party who has not derived it directly or indirectly from the Disclosing Party; or

(c) is independently developed by the Receiving Party by individuals who have not had any direct or indirect access to the Disclosing Party’s Confidential Information; or

(d) is or becomes generally available to the public through no act or default of the Receiving Party or its agents, employees, or Affiliates.

5.3 **Disclosure in accordance with legal obligations.** To the extent that the Receiving Party is required to disclose any of the Disclosing Party’s Confidential Information by order of a court or other public body that has jurisdiction over it or under other legal obligations, such as under a bona fide freedom of information request, it may do so, provided that, before making such a disclosure the Receiving Party shall, unless the circumstances prohibit:

(a) inform the Disclosing Party of the proposed disclosure as soon as possible, in any event, no later than five (5) working days after becoming aware of the proposed disclosure; and

(b) permit the Disclosing Party to make representations (written or otherwise) in respect of the disclosure and/or confidential treatment of the Confidential Information.

5.4 **Duration of obligations.** The obligations of confidentiality and non-use set out in this Clause 5 shall survive termination of this Agreement for any reason for a period of five (5) years from the date of termination.

6. **WARRANTIES**

6.1 **No implied warranties, etc.** Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

6.2 **Performance of the Services.** UCC shall use reasonable endeavours to perform the Services and shall use reasonable care and skill in the performance of the Services.

6.3 **No other warranties**. The Client acknowledges that this Agreement provides for the performance of consultancy and that specific results cannot be guaranteed. UCC expressly does not warrant that any result or objective, whether stated in this Agreement or not, shall be achieved, be achievable or be attained at all or by a given End Date or any other date, nor does UCC give any warranty that the content or use of any results, Intellectual Property, reports, information or other materials provided in connection with this Agreement will not constitute or result in any infringement of third-party rights.

**7. LIABILITY AND INDEMNITY**

**7.1 Liability of the Parties.**

(a) To the extent that UCC has any liability in contract, tort (including negligence), or otherwise under or in connection with this Agreement, including any liability for breach of warranty, its liability shall be limited in accordance with the following provisions of this Clause 7.1.

(b) The aggregate liability of UCC shall be limited to a sum equal to the total Fees paid to UCC by the Client under this Agreement.

(c) Save in the cases of (a) breach of confidentiality or (b) breach of Clause 9.10 (Use of Name, Publicity) for which this restriction here at 7.1(c) shall not apply, in no circumstances shall either Party be liable for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the other Party or its Affiliates that is (i) of an indirect, special or consequential nature; or (ii) any loss of profits, revenue, business opportunity or goodwill.

(d) Nothing in this Agreement excludes or limits any person’s liability to the extent that it may not be so excluded or limited under applicable law, including any such liability for death or personal injury caused by that person’s negligence, or liability for fraud or fraudulent misrepresentation.

**7.2 Indemnity.** The Client shall indemnify UCC against all third-party Claims which may be asserted against or suffered by UCC and which relate to:

(a) the use of any results, materials or other items generated or supplied in the course of the Services (the “Deliverable Items”); or

(b) the manufacture, distribution, sale, supply or use of any products or services which incorporate any Deliverable Items,

 by or on behalf of the Client or its Affiliates or subsequently by any third party, including claims based on product liability laws.

**8. TERM AND TERMINATION**

**8.1 Commencement and termination by expiry**. This Agreement shall come into force on the Start Date and, unless terminated earlier in accordance with this Clause 8, shall terminate on the End Date or on expiry upon completion of the Services whichever it earlier.

**8.2 No replacement Consultant available.** If a Consultant becomes unavailable and UCC is unable to provide a suitable replacement to perform the Services, then either Party may terminate this Agreement by written notice to the other Party, such termination to take effect as specified in the notice.

**8.3 Early termination.** Without prejudice to any other rights of remedies, either Party may terminate this Agreement, at any time, on written notice to the other Party (the ”Other Party”):

(a) if the Other Party is in material breach of its obligations under this Agreement and, where the breach is capable of remedy within thirty (30) days, the Other Party has not remedied the breach within thirty (30) days of receiving written notice which specifies the breach and requires the breach to be remedied; or

(b) if: (i) the Other Party becomes insolvent or unable to pay its debts as and when they become due; (ii) an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (iii) a liquidator, examiner, receiver, receiver manager, or trustee is appointed in respect of the whole or any part of the Other Party’s assets or business; (iv) the Other Party makes any composition with its creditors; (v) the Other Party ceases to continue its business; or (vi) as a result of debt and/or maladministration the Other Party takes or suffers any similar or analogous action.

**8.4 Consequences of termination.** On termination of this Agreement for any reason other than termination by the Client under Clause 8.3 above, the Client shall pay to UCC:

(a) any payment which was due to UCC prior to the date of termination but which was not paid prior to termination; and

(b) a proportion of the next payment (if any) falling due after the date of termination reflecting UCC work prior to the date of termination and any non-cancellable commitments entered into by UCC.

**9. GENERAL**

**9.1 Force majeure.** Neither Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement that result from circumstances beyond the reasonable control of that Party, including labour disputes involving that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

**9.2 Amendments.** This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

**9.3 Sub-contracting.** Subject to the written authorisation of the Client, UCC may sub-contract any part of the Services. UCC shall be responsible for the work of any sub-contractor and for such sub-contractor's compliance with the provisions of this Agreement.

**9.4 Assignment.** Neither Party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party.

**9.5 Sole and Entire agreement.** The express terms of this Agreement, which includes the Engagement Letter to Client, the Services and Fees as set out in the Statement of work at Schedule 1 and the General Terms and Conditions at Schedule 2, constitute the sole and entire agreement between the Parties in relation to the Services and supersedes all prior written and oral arrangements, understandings, representations, warranties and agreements between them in that regard (if any). Each Party acknowledges that it is not relying on, and will not seek to rely on any arrangement, understanding, representation, warranty, agreement, term or condition which is not expressly set out in this Agreement.

**9.6 Waiver.** No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

**9.7 Interpretation:** In this Agreement:

(a) the headings are used for convenience only and shall not affect its interpretation;

(b) references to persons shall include incorporated and unincorporated persons; references to the singular include the plural and vice versa; and references to the masculine include the feminine and vice versa;

(c) references to Clauses and Schedules mean clauses of, and schedules to, this Agreement;

(d) references in this Agreement to termination shall include termination by expiry; and

(e) where the word “including” is used it shall be understood as meaning “including without limitation”.

**9.8 Survival of obligations.** The provisions of Clauses 4 (Publication), 5 (Confidentiality) 7 (Liability and Indemnity), 9.7 – 9.15 (General) shall survive termination of this Agreement, howsoever arising and continue to bind each party in accordance with their respective terms.

**9.9 Further action**. Each Party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

**9.10 Use of Name, publicity.** Neither party will publicly use or give approval for the public use by any third party or funding agency, the other party's name, logos, trademarks, or other marks without that party's written consent. For the avoidance of doubt these restrictions shall include any public announcements, press releases, social media posting or sharing, product advertisements, endorsements, mass mailings or publishing of the methods and results of the of the Services for commercial or academic purposes, including publication on a Party’s website.

**9.11 Law and jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Republic of Ireland and each Party agrees to submit to the exclusive jurisdiction of the courts of the Republic of Ireland.

**9.12 Dispute Resolution.** In the event of a dispute between the Parties under this Agreement, the matter shall be referred in writing in the first instance to the Director of Innovation and CEO or equivalent, with a view to it being resolved in good faith. If a dispute cannot be resolved within 20 Days, or such a longer period as agreed between the Parties, the Parties shall refer the dispute to a single mediator to be appointed in accordance with the mediation procedures of the Centre for Effective Dispute Resolution. The cost of such mediator shall be borne equally between the Parties. If the dispute cannot be resolved within 40 Days thereafter, or such a longer time as agreed between the Parties, either of the Parties may refer the matter to the court and the provisions of 9.11 will apply. For the avoidance of doubt, however, nothing in this Agreement shall prevent or delay a Party from seeking an interim injunction.

**9.13 Export Control.** Each party shall adhere to all applicable export laws and regulations administered by Ireland and the EU and shall not export, re-export, resell, transfer, or disclose, directly or indirectly, any technical data or products received from the other to any proscribed person, entity, or country, or foreign national thereof, unless properly authorized by the appropriate authority. The Client warrants that it has advised UCC of any US export control rules that may apply to the Services and the extent to which such rules restrict the use of any materials to be provided by the Client to UCC in connection with the Services.

**9.14 Data Protection**.

a) Each Party agrees that it will take all necessary steps to ensure that all Personal Data is removed from any information disclosed by it, is Anonymised or otherwise made inaccessible to the other Party prior to disclosure.

b) To the extent that any Personal Data cannot be Anonymised or otherwise made inaccessible this must be expressly stated in writing and in advance. The Parties shall thereafter be obliged to enter into a separate data processing or data sharing agreement prior to disclosure.

c) Each Party undertakes not to reverse the Anonymisation process to re-identify a data subject in respect of any data disclosed by the other Party.

d) Notwithstanding the above, the Parties agree that for the purposes of executing this Agreement, Personal Data of the Parties’ employees may be shared by the Parties which may include individual employee names, business telephone number, postal address and email address subject to the disclosing Party having its employee’s prior consent to do so.

**9.15 Counterparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Transmission of the executed signature page of a counterpart of the Agreement (by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement, each Party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.

**9.16 Notices**. Any notice to be given under this Agreement shall be in writing and shall be sent by post to the addresses as set out below, or such other address as that Party may from time to time notify to the other Party in accordance with this Clause 9.16. Notices sent as described shall be deemed to have been received three (3) working days after the day of posting.

For UCC:

Director of Innovation,

Address: Room 2.44, Western Gateway Building, Western Road, Cork, Ireland

Email: s.cudmore@ucc.ie

For Client:

Name:

Address:

Email:

**10. DEFINITIONS**

**10.1 Defined Terms**: In this Agreement, the following words shall have the following meanings:

“Affiliate” In relation to a Party, means any entity or person that Controls, is Controlled by, or is under common Control with that Party.

“Anonymised” or “Anonymisation” Means the process of irreversibly and effectively anonymising Personal Data to the extent that a Data Subject is not identified or identifiable having regard to all methods reasonably likely to be used to identify the data subject, directly or indirectly.

“Background IP” Any Intellectual Property owned or controlled by the Client prior to the Start Date, and listed for use in the provision of the Services and listed as Schedule 1;

“Data Subject” Has the meaning assigned to it under GDPR.

“Day(s)” Shall mean Calendar days;

“Claims” All demands, claims and liability (whether criminal or civil, in contract, tort (including negligence) or otherwise) for losses, damages, legal costs and other expenses of any nature whatsoever and all costs and expenses (including legal costs) incurred in connection therewith.

“Confidential Information” All technical or commercial information that:

(i) in respect of information provided in documentary form or by way of a model or in other tangible form, at the time of provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence;

(iii) in respect of information that is imparted orally, any information that the Disclosing Party or its representatives informed the Receiving Party at the time of disclosure was imparted in confidence; and

(iii) any copy of any of the foregoing.

“Consultant” The individual(s) identified in Schedule 1 who will perform the Services on behalf of UCC or such other persons as may be appointed in accordance with Clause 1.2.

“Control” Direct or indirect beneficial ownership of 50% (or, outside a Party’s home territory, such lesser percentage as is the maximum, permitted level of foreign investment) or more of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that Party, as the case may be.

“Deliverable Items” Shall mean the items which UCC shall provide to the Client as described in Schedule 1

“End Date” The end date as set out in Schedule 1.

“Fees” The fees to be paid to UCC by the Client as set out in Schedule 1.

“Foreground IP” All Intellectual Property generated by UCC in the performance of the Services.

“GDPR” Means the Regulation (EU) 2016/679 (General Data Protection Regulation).

“Intellectual Property” All intellectual property of any description including copyright, trademarks, database rights, design rights, patents, utility

models, and applications for, and the right to apply for any of the foregoing items.

“Parties” UCC and the Client, and “Party” shall mean either of them.

 “Personal Data” Has the meaning assigned to it under GDPR.

“Publication or Publish” Publication means the publication for academic, research and teaching purposes, of an abstract, article or paper in a journal or an electronic repository, or its presentation at a conference or seminar; and words "Publish" and "Publication" and other cognate terms are to be construed accordingly;

“Services” The consultancy services to be provided by UCC for the Client as more fully described in Schedule 1.

“Start Date” The start date as set out in Schedule 1.