

## STUDENTSHIP AGREEMENT

between

Fraunhofer UK Research Limited

and

The University of Strathclyde

## STUDENTSHIP AGREEMENT

Between

Fraunhofer UK Research Limited, a company incorporated in Scotland with liability limited by guarantee, having Company number SC419797 and its registered office at 347 Cathedral Street, Glasgow G1 2TB ("Fraunhofer")

and

The University of Strathclyde, incorporated by Royal Charter, a charitable body registered in Scotland with registration number SCO15263 and having its Principal Office at 16 Richmond Street, Glasgow, G1 1XQ (the "University");

## WHEREAS

A Fraunhofer and the University have agreed the terms of a Co-operation Agreement that allows for a separate agreement to be reached for collaboration activities;

and,

A Fraunhofer wishes to sponsor a number of studentships based in the University;

and,

B The Parties (as defined hereafter) agree the sponsored studentships shall be carried out on the terms and conditions set out below.

## WHEREBY IT IS AGREED AS FOLLOWS

### DEFINITIONS AND INTERPRETATION

In this Agreement, unless the context otherwise require or permits:-

"Background IP" means all Intellectual Property, information, Know-how, data, software and materials belonging to a Party that are provided by that Party to the other for use in the Project (whether before or after the date of this Agreement), but not Intellectual Property in the Foreground IP.

"Confidential Information" means each Party's confidential information that is any Background IP disclosed by that Party to the other for use in the Project and identified as confidential before or at the time of disclosure, and the information in any Deliverables in which that Party owns or jointly owns the Intellectual Property therein.

"Disclosing Party" shall mean either of the Parties that discloses Confidential Information to a Recipient.

"Effective Date" shall mean the last date of signing hereof.

"Foreground IP" means all Intellectual Property, information, Know-how, data, software and materials identified, created or first reduced to practice or writing in the course of the Project including for the avoidance of doubt any deliverables.

"Intellectual Property" means any patents, trade marks, registered designs, copyright, unregistered design right, database right or semi-conductor topography right, 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 unpatented technical information (including, without limitation, 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.

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

"Permitted Person/Persons" shall mean a Recipient's or other Party's directors, officers, employees and members who have a need to access the Confidential Information for the Project and who are bound by confidentiality obligations consistent with this Agreement and at least as onerous.

"Project" shall be defined in Annex 1 to this Agreement.

"Recipient" shall mean any Party that obtains any Confidential Information from a Disclosing Party, either directly or indirectly.

## CONDUCT OF THE STUDENTSHIPS

Annex 1 to this Agreement "Studentship Details" is a template which will be completed for each individual studentship.

The total cost for each studentship shall be determined at the outset following consultation between nominated representatives of Fraunhofer and the University.

If Fraunhofer agrees to pay a sum in excess of 50% of the total studentship costs then the University agrees to assign all its Foreground IP to Fraunhofer, at no additional cost, on the understanding that if Fraunhofer derives commercial benefit, it agrees to pay a return to the University on fair and reasonable terms to be agreed on a case-by-case basis.

Where ownership of such Foreground IP resides with Fraunhofer, Fraunhofer hereby grants to the University an irrevocable, non-transferable, non-exclusive licence to use such Foreground IP for the University's own non-commercial activities such as teaching and internal research.

If Fraunhofer agrees to pay a sum of 50% or less of the total studentship costs then ownership of Foreground IP generated by the University remains the property of the University. Where ownership of such Foreground IP resides with the University, the

University undertakes to negotiate a licence to such Foreground IP with Fraunhofer on fair and reasonable terms on a case by case basis.

Background IP remains the property of the introducing Party. Each Party grants to the other Party a non-exclusive, royalty-free licence to use its Background IP for the purposes of carrying out the Project. The Party owing the Background IP undertakes, subject to pre-existing commitments, to grant a licence to the other Party to its Background IP, on fair and reasonable terms in the event that the other Party requires such access in order to exploit the Foreground IP.

## PAYMENT

Payment of Fraunhofer's agreed contribution to studentship costs for each studentship, will be made annually in advance together with any VAT, which shall be payable by Fraunhofer, where applicable. The University will issue an invoice at the commencement of each studentship project and a further invoice on the commencement of subsequent project years. Fraunhofer agrees to pay invoices within 30 (thirty) days of receipt.

## CONFIDENTIALITY

The Recipient agrees to:-

- (i) hold the Disclosing Party's Confidential Information in strict confidence, safeguarding it with at least the same care the Recipient uses to safeguard its own confidential information and in any event no less than a reasonable level of care, and not to disclose the Confidential Information to any person or entity (other than a Permitted Person) without the prior written consent of the Disclosing Party;
- (ii) not to use, at any time following the Effective Date, any Confidential Information of the Disclosing Party for its own benefit or for the benefit of any other person or entity or for any purpose other than the Project, and if a business relationship is entered into with the Disclosing Party, only to the extent and for such purposes authorised by the Disclosing Party; and
- (iii) to limit the disclosure of Confidential Information to Permitted Persons provided that the Recipient shall retain full liability for the acts or omissions of any person to whom the Confidential Information is disclosed under this clause 3(iii) which would have constituted a breach of the terms of this Agreement had such person been a party to it. The Recipient will bind such Permitted Persons to keep such Confidential Information confidential both during and after their current period of employment or appointment and will take appropriate steps to enforce the obligations of Permitted Persons in relation thereto.

No disclosure of Confidential Information shall be made to an affiliate of the Recipient (other than a Permitted Person) or to any third party without the prior written consent of the Disclosing Party.

For the avoidance of doubt, disclosed Confidential Information shall remain the property of the Disclosing Party and the Recipient shall have no rights in the Confidential Information disclosed to it by the Disclosing Party. No licence is granted hereunder to the Recipient and no licence shall be deemed to have arisen. The Recipient further agrees not to copy all or any part of the Confidential Information or any documentation related thereto and further, not to modify, adapt, translate, reverse engineer, decompile, disassemble, or otherwise attempt to discover any additional information with respect to the Confidential Information.

Any sample or material which may be supplied by the Disclosing Party to the Recipient shall be treated as Confidential Information under the terms of this Agreement and shall be used only for purposes of evaluation or testing or any other purpose as specified by the Disclosing Party. The Recipient shall not analyse, chemically or otherwise, the sample or material to determine the identity and/or properties of components used to prepare the sample or material. To the extent that such sample or material has not been destroyed or used during such evaluation or testing and unless there is no other agreement between the Disclosing Party or the Recipient to keep samples or material, any sample or material shall be returned to the Disclosing Party forthwith upon the request of the Disclosing Party, and in any event by no later than the date of termination of this Agreement.

Except as expressly stated in this Agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information. Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.

The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further agreement in relation to the Project, or the development or supply of any product or service to which the Confidential Information relates.

This Agreement shall not apply to any Confidential Information which:-

at the date of this Agreement is in the public domain or subsequently comes into the public domain through no fault of the Recipient and not in breach of this Agreement (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information);

was already known, in the possession of or available to the Recipient on a non-confidential basis on the date of disclosure, provided that such prior knowledge can be substantiated and evidenced to the satisfaction of the Disclosing Party;

properly and lawfully becomes available to the Recipient from a third party who lawfully acquired it and is under no obligation restricting its disclosure;

was independently developed by the Recipient (or any of its Permitted Persons) without access to the Confidential Information;

is required to be disclosed by law (in this case the Recipient will provide the Disclosing Party with immediate written notice of such requirement or obligation to enable the Disclosing Party to seek appropriate protective relief and/or to take steps to resist or narrow the scope of any required disclosure);

the Parties agree in writing is not confidential or may be disclosed;

is disclosed to a Party's professional advisers in the course of seeking professional advice.

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 (the "Request"), it shall notify the other Party of the Request without delay and thereafter analyse 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 (acting reasonably) considers that disclosure is legally required and makes the requested disclosure, no liability shall attach to that Party in relation to such disclosure.

The Recipient agrees that its obligations hereunder are necessary and reasonable to protect the Disclosing Party's business interests and that the unauthorised disclosure or use of the Disclosing Party's Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. The Recipient further acknowledges and agrees that in the event of any actual or threatened breach of this Agreement, the Disclosing Party may have no adequate remedy at law and accordingly, that the Disclosing Party will have the right to seek an immediate interdict enjoining any breach or threatened breach of this Agreement, without the necessity of proving actual damage, as well as the right to pursue any and all other rights and remedies available at law or in equity for such breach or threatened breach. In no circumstances will either Party be liable to the other under this Agreement for any indirect or consequential loss.

Upon the Disclosing Party's request, the Recipient will forthwith return to the Disclosing Party or destroy all material embodying Confidential Information in its possession or under its control, including all copies thereof and upon the Disclosing Party's request thereafter certify in writing to the Disclosing Party that it has complied with the requirements of this clause.

If the Recipient develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Disclosing Party's Confidential Information, the Recipient shall, at the request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Disclosing Party's Confidential Information has not been used or disclosed.

## PUBLICATION

Regardless of whether Foreground IP in any studentship project is owned by either Fraunhofer or the University, the Parties recognise that the University will be expected to publish Foreground IP and otherwise disclose such Foreground IP in accordance with academic practice. In the instance of each studentship the University agrees to provide drafts of proposed publications to Fraunhofer prior to publication. Fraunhofer shall have a period of 30 (thirty) days from receipt to review the proposed publication and

may within that time request that publication be delayed in order to protect the commercial exploitation of such Foreground IP. Consent to publish may be given subject to the exclusion of certain information to protect commercially sensitive information, but will not be unreasonably restrictive as to content nor involve more than the minimum delay to protect commercial interests, such delay not to exceed 12 months from the date of submission of the draft publication to Fraunhofer.

## THESIS

Fraunhofer agrees that information relating to or arising from each studentship 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 Fraunhofer regarding the selection of external examiners. External examiners shall be required to sign a confidentiality agreement relating to the dissertation should Fraunhofer make a written request to the University. Should Fraunhofer wish to seek any special requirements in respect of the lodging of the dissertation, it will inform the University in writing within 30 days of receipt of a manuscript of the dissertation.

## LIABILITY

The Parties shall use reasonable endeavours to ensure the accuracy of the work performed in each Project and any information given but the Disclosing Party makes no warranty, expressed or implied, as to accuracy and accepts no responsibility for any use by the Recipient of the Disclosing Party's Intellectual Property, nor for any reliance placed by the Recipient on the Disclosing Party's Intellectual Property.

Each Party will indemnify the other Party and keep it fully and effectively indemnified against each and every claim made against the Disclosing Party as a result of Recipient's use of any of the Disclosing Party's Intellectual Property received under this Agreement.

This indemnity does not apply to the extent that any claim arises as a result of the either Party's negligence or deliberate breach of this Agreement.

Fraunhofer undertakes to make no claim in connection with this Agreement or its subject matter against the Student, the Academic Supervisor or any other employee, student, agent or appointee of the University (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 Fraunhofer might have to claim against the University.

Nothing in this Agreement limits or excludes either Party's liability for

- a. death or personal injury;
- b. any fraud or any sort of liability that by law cannot be limited or excluded; or
- c. any loss or damage caused by a deliberate breach of this Agreement.

The liability of either Party to the other for any breach of this Agreement, or any negligence shall not extend to any indirect or consequential 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.

#### FORCE MAJEURE

No 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 (without limiting the generality of the foregoing) acts of God, legislation, fuel shortages, war, fire, flood, drought, failure of power supply embargo, civil commotion and employee action.

#### TERMINATION

Either Party may terminate this Agreement 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 90 (ninety) days after receipt of notice in writing.

In the event of early termination of an individual studentship project, the University shall use all reasonable endeavours to minimise the costs incurred. Should termination occur part way through a project year, the University shall repay to Fraunhofer all unspent costs, excluding non-cancellable costs necessarily incurred by the University in the legitimate performance of the studentship project. Fraunhofer agrees to bear such non-cancellable costs from sums already paid over to the University.

#### ASSIGNATION

Except as expressly provided for in this Agreement neither Party shall be entitled to:-

assign or transfer any or all of its rights and obligations under this Agreement (or purport to do so); or

sub-licence 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.

#### GENERAL

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, the remaining provisions of this Agreement shall continue in full force and effect.

This Agreement constitutes the entire understanding between the Parties and supersede and extinguish 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.



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 any of the Parties as the agent of another Party.

#### 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.

Signed for and on behalf of the University

at Glasgow

on 12 November 2013

[Signature]

Signature

position Deputy Director  
Research & Knowledge Exchange Services

Witness [Signature]

Name MICHAEL CANNON

Address University of Glasgow  
Research & Knowledge Exchange Services  
26 George Street  
Glasgow  
G1 1QB

Signed for and on behalf of Fraunhofer

at 347 Cathedral St, Glasgow

on 12 November 2013

[Signature]

Signature

position Executive Director

Witness [Signature]

Name LYNDA McLAUGHLIN

Address FRAUNHOFER UK RESEARCH LIMITED  
347 CATHEDRAL STREET  
GLASGOW G1 2TB

## Annex 1

This is the Annex referred to in the Studentship Agreement

Studentship Details  
[to be completed on a case by case basis]

This studentship is governed by the Studentship Agreement in place between the University and Fraunhofer UK Research Ltd., dated

Name of Student \_\_\_\_\_

Student qualifications

\_\_\_\_\_

Project Title

\_\_\_\_\_

Project Start Date \_\_\_\_\_

Project End Date \_\_\_\_\_

Total Student Costs over the Expected Duration of the Studentship, individually stated as fees, stipend and other costs (to be defined).

\_\_\_\_\_

Total Costs Paid by Fraunhofer UK over the Expected Duration of the Studentship [insert financial info] being [more than 50%] [50% or less] than the total studentship costs

\_\_\_\_\_

University Supervisor \_\_\_\_\_

Fraunhofer Supervisor \_\_\_\_\_

Expected use of Fraunhofer labs (% or X weeks in Y) \_\_\_\_\_

Project Details To Be Entered Here

IN WITNESS WHEREOF these presents consisting of this and the preceding page together are executed by the parties hereto as follows:

Signed for and on behalf of the University                      Witness.....

at.....

on..... 2013                      Name.....

.....  
Signature                      Address.....

position                      .....

Signed for and on behalf of Fraunhofer                      Witness.....

at.....

on..... 2013                      Name.....

.....  
Signature                      Address.....

position                      .....

Signed by the Student

Signature -----                      Date: -----

