

UNIVERSITY OF PLYMOUTH ENTERPRISE LIMITED
GENERAL CONDITIONS OF SALE OF GOODS AND SERVICES (Version 3 – 25 February 2019)

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of Liability).

1 INTERPRETATION

1.1 **Definitions:** In these Conditions, the following definitions apply:

Background IPR: has the meaning set out in clause 11.1.

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.1.

Conditions: these terms and conditions of sale, including Schedule 1, as amended from time to time in accordance with clause 17.7. **Contract:** the contract between UoPEL and the Customer for the supply of Goods and/or Services including these Conditions and the Order.

Customer: the person, company, firm, authority or other entity who purchases the Goods and/or Services from UoPEL as identified in the Order.

Customer Default: has the meaning set out in clause 9.2.

Data Protection Legislation: shall be as defined in Schedule 1.

Deliverables: the deliverables set out in the Order.

Delivery Location: has the meaning set out in clause 4.1.

Disclosing Party: has the meaning set out in clause 12.

Due Date: has the meaning set out in clause 10.7.

Force Majeure Event: has the meaning given to it in clause 16.1.

Foreground IPR: has the meaning set out in clause 11.3.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in writing by way of a quotation issued by UoPEL accepted by the Customer, the Customer's purchase order form accepted by UoPEL or in other written form accepted by both parties, as the case may be.

Receiving Party: has the meaning set out in clause 12.

Services: the services, including the Deliverables and any UoPEL Materials, supplied by UoPEL to the Customer as set out in the Order.

University: the University of Plymouth, a higher education corporation of Drake Circus, Plymouth, Devon, PL4 8AA.

UoPEL: University of Plymouth Enterprise Limited registered in England and Wales with company number 03707827 having its registered office at New Cooperage Building, University of Plymouth, Finance and Sustainability, Royal William Yard, Plymouth, Devon, England, PL4 8AA.

UoPEL Materials: all materials, equipment (including any remotely operated vehicles), documents and other property of UoPEL and/or the University and as described in the Order.

VAT: has the meaning set out in clause 10.6.

1.2 **Construction:** In these Conditions, the following rules apply:

1.2.1 a reference to a party includes its successors or permitted assigns;

1.2.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.3 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.4 a reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF CONTRACT

2.1 The Order shall be deemed to be accepted either:

2.1.1 when UoPEL receives a valid and authorised copy of an Order back from the Customer; or

2.1.2 when UoPEL issues written acceptance of the Order, in the event that the content of such an Order has been altered in any way by the Customer, or is no longer valid,

at which point and on which date the Contract shall come into existence ("**Commencement Date**").

- 2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of UoPEL or any other person which is not set out in the Contract.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by UoPEL and any descriptions of the Goods or illustrations or any published descriptions of the Services are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described. They shall not form part of the Contract or have any contractual force unless attached to any quotation issued by UoPEL.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by UoPEL shall only remain valid for a period of 60 days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified in the Order.
- 2.7 If there is a conflict between these Conditions and any special conditions contained in the Order, the Order shall prevail.

3 GOODS

- 3.1 The Goods are described in the Order.
- 3.2 To the extent that the Goods are to be manufactured in accordance with the Customer's instructions, the Customer shall indemnify UoPEL against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by UoPEL in connection with the actual or alleged infringement of a third party's Intellectual Property Rights arising out of or related to UoPEL's use of, or reliance on, the Customer's instructions. This clause 3.2 shall survive termination of the Contract.
- 3.3 UoPEL reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements (no such amendment to affect the validity of the Contract).

4 DELIVERY OF GOODS

- 4.1 UoPEL shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after UoPEL notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. UoPEL shall not be liable for any failure of, or delay in, delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide UoPEL with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 The Customer shall pay, or advise and pay UoPEL for, any applicable import duties. The Customer is responsible for compliance with all applicable import duties, regulations or restrictions and shall advise UoPEL in writing in advance of any such import duties, regulations or restrictions. The Customer shall indemnify UoPEL against all losses incurred by UoPEL, in respect of Goods that do not comply with the import duties, regulations or restrictions if the Customer has not informed UoPEL in writing in advance of such import duties, regulations or restrictions or has not paid them itself on or before the due date.
- 4.5 The Customer shall notify the carrier and UoPEL of any claims for any damage to or any loss of the Goods in transit within 7 days of receipt of the Goods.
- 4.6 If UoPEL fails to deliver the Goods at all, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. UoPEL shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide UoPEL with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.7 If the Customer fails to accept or take delivery of the Goods within 5 Business Days of UoPEL notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by UoPEL's failure to comply with its obligations under the Contract in respect of the Goods UoPEL shall store the Goods until delivery takes place, and may charge the Customer for all related costs and expenses (including insurance).
- 4.8 If 5 Business Days after UoPEL notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, UoPEL may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.9 UoPEL may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 QUALITY OF GOODS

- 5.1 UoPEL warrants that on delivery the Goods shall:

- 5.1.1 conform in all material respects with their description and any applicable specification set out in the Order; and
- 5.1.2 be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
 - 5.2.1 the Customer gives notice in writing within 2 weeks of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.2.2 UoPEL is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Customer (if asked to do so by UoPEL) returns such Goods to UoPEL's place of business at the Customer's cost,UoPEL shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full or in part as appropriate.
- 5.3 UoPEL shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
 - 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow UoPEL's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 5.3.3 the defect arises as a result of UoPEL following any drawing, design or specification supplied by the Customer;
 - 5.3.4 the Customer alters or repairs such Goods without the written consent of UoPEL;
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; and/or
 - 5.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, UoPEL shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by UoPEL under clause 5.2.

6 TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until UoPEL has received payment in full (in cash or cleared funds) for:
 - 6.2.1 the Goods; and
 - 6.2.2 any other goods that UoPEL has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1 hold the Goods on a fiduciary basis as UoPEL's bailee;
 - 6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as UoPEL's property;
 - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on UoPEL's behalf from the date of delivery;
 - 6.3.5 notify UoPEL immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4; and
 - 6.3.6 give UoPEL such information relating to the Goods as UoPEL may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4, or UoPEL reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy UoPEL may have, UoPEL may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7 SUPPLY OF SERVICES

- 7.1 UoPEL shall provide the Services, including any Deliverables and any UoPEL Materials, to the Customer in accordance with the Order in all material respects.
- 7.2 UoPEL shall use reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 UoPEL shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and UoPEL shall notify the Customer in any such event.
- 7.4 UoPEL warrants to the Customer that the Services will be provided using reasonable care and skill.

8 HIRE OF GOODS OR FACILITIES

- 8.1 Should the Services include the provision of UoPEL Materials (that are physical goods, equipment, materials, or otherwise) by UoPEL on a hired basis, or the hire of UoPEL facilities of UoPEL or the University, the terms of this clause 8 shall apply.
- 8.2 In the event that the Services under the Contract include the hire by the Customer of equipment or facilities of UoPEL or the University, the Customer agrees to comply with all procedures, policies and reasonable instructions of UoPEL or the University in relation to the use of such equipment and facilities, and with any additional terms and conditions relating to the same notified to the Customer in writing in advance.
- 8.3 Unless agreed otherwise in writing, UoPEL shall be responsible for arranging the transportation, delivery and insurance of hired UoPEL Materials being provided to the Customer under the Contract until completion of delivery, when risk shall transfer to the Customer in accordance with clause 6.1 above. For the avoidance of doubt, the costs of such transportation and insurance may be included in UoPEL's charges.
- 8.4 Unless agreed otherwise in writing, the Customer shall be responsible for arranging and shall be responsible for the transportation, packing, delivery, insurance, costs, customs and duties of returning the hired UoPEL Materials to the University. Risk in the UoPEL Materials will pass back to the University or UoPEL, on acceptance of the delivery of the UoPEL Materials by UoPEL, providing that such acceptance does not waive or remove any liability of the Customer for any damage caused to the UoPEL Materials. The Customer shall ensure that the UoPEL Materials are packaged in at least as comparable methods as the UoPEL Materials were delivered to the Customer in, and shall arrange such methods or transportation and insurance as shall be reasonably appropriate given the value of the UoPEL Materials and for the avoidance of doubt, such transportation and insurance must be sufficient to cover the replacement value of the UoPEL Materials.

9 CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall:
- 9.1.1 ensure that the terms of the Order are complete and accurate;
- 9.1.2 co-operate with UoPEL in all matters relating to the Services;
- 9.1.3 provide UoPEL, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by UoPEL to provide the Services;
- 9.1.4 provide UoPEL with such information and materials as UoPEL may reasonably require to supply the Services, and ensure that such information is complete and accurate;
- 9.1.5 prepare the Customer's premises for the supply of the Services;
- 9.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 9.1.7 keep and maintain all UoPEL Materials at the Customer's premises in safe custody at its own risk, maintain UoPEL Materials in good condition until returned to UoPEL, notify UoPEL of any damage caused to any UoPEL Materials, repair such damage if the repair is approved by UoPEL in writing, and not dispose of or use UoPEL Materials other than in accordance with UoPEL's written instructions or authorisation; and
- 9.1.8 keep and maintain adequate insurance policies with reputable insurance companies to cover the UoPEL Materials with effect from their delivery by UoPEL to the Delivery Location, including at least equipment insurance for the full value of any equipment, a public liability insurance policy, a professional indemnity insurance policy and an employer's liability insurance policy. On the written request of UoPEL, the Customer shall provide UoPEL with a copy of each insurance policy. On the renewal of each policy, the Customer shall promptly send to UoPEL a copy of the receipt of the premium paid by the Customer.
- 9.2 If UoPEL's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 9.2.1 UoPEL shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays UoPEL's performance of any of its obligations;
- 9.2.2 UoPEL shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from UoPEL's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- 9.2.3 the Customer shall reimburse UoPEL on written demand for any costs or losses sustained or incurred by UoPEL arising directly or indirectly from the Customer Default.

10 CHARGES AND PAYMENT

- 10.1 **Goods:** The price for Goods shall be the price set out in the applicable Order. The price shall be payable in accordance with clause 10.5. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport, shipping and import duties payable in respect of the Goods, which shall be paid by the Customer when it pays for the Goods, as set out in the Order or as agreed between the parties.
- 10.2 **Services:** The charges for Services shall be set out in the applicable Order and shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both and shall be payable in accordance with clause 10.5 and as follows:
- 10.2.1 **Time and Materials:** Where Services are provided on a time and materials basis, unless otherwise agreed

in writing by the parties, the charges payable for the Services shall be calculated in accordance with the agreed daily fee rates as set out in each Order. The daily fee rates for each individual person, unless otherwise agreed in writing between the parties, are calculated on the basis of a seven and a half hour day from 9.00 am to 5.30 pm worked on Business Days. Each invoice sent by UoPEL shall set out the time spent by each individual whom it engages on the Services.

- 10.2.2 **Fixed Price:** In respect of Services which are provided for a fixed price, the Customer shall pay the total price (without deduction or set-off) as set out in an Order, in accordance with the payment details in the Order. UoPEL shall invoice the Customer for the charges that are then payable.
- 10.2.3 **Expenses:** UoPEL shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom UoPEL engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by UoPEL for the performance of the Services, and for the cost of any materials.
- 10.3 **Charges and Prices:** UoPEL reserves the right to:
- 10.3.1 increase its daily fee rates for the charges for the Services. UoPEL will give the Customer written notice of any such increase at least 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify UoPEL in writing within 2 weeks of the date of UoPEL's notice and each party shall have the right without limiting its other rights or remedies to terminate the Contract by giving at least 2 weeks' prior written notice to the other party (subject, in the case of such notice from UoPEL, to receiving notice of objection from the Customer in accordance with this clause 10.3.1) before the charge increase; and
- 10.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to UoPEL that is due to:
- 10.3.2.1 any factor beyond the control of UoPEL (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 10.3.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered or any specification of the Goods as set out in the Order; or
- 10.3.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give UoPEL adequate or accurate information or instructions in respect of the Goods.
- 10.4 **Invoices:** In respect of Goods, UoPEL shall invoice the Customer, at UoPEL's option, before delivery if credit cannot be approved, or on or at any time after completion of delivery. In respect of Services, UoPEL shall invoice the Customer on the basis set out in the Order.
- 10.5 **Payment:** The Customer shall pay each invoice submitted by UoPEL:
- 10.5.1 within 30 days of the date of the invoice; and
- 10.5.2 in full and in cleared funds in Pounds Sterling or the currency as set out in the Order to a bank account nominated in writing by UoPEL, and time for payment shall be of the essence of the Contract.
- 10.6 **VAT:** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by UoPEL to the Customer, the Customer shall, on receipt of a valid VAT invoice from UoPEL, pay to UoPEL such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 10.7 **Interest on late payment:** Without limiting any other right or remedy of UoPEL, if the Customer fails to make any payment due to UoPEL under the Contract by the due date for payment ("**Due Date**"), UoPEL shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current HSBC Bank plc's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 10.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against UoPEL in order to justify withholding payment of any such amount in whole or in part. UoPEL may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by UoPEL to the Customer.
- 11 INTELLECTUAL PROPERTY RIGHTS**
- 11.1 Unless otherwise expressly set out in the Contract, neither the Customer nor UoPEL shall acquire any right, title or interest in the other's Intellectual Property Rights that exist prior to or independently of the Contract ("**Background IPR**").
- 11.2 The Customer, UoPEL and/or the University shall licence such Background IPR for the term of this Contract on a non-exclusive, royalty-free basis to the Customer and/or UoPEL as is necessary for the parties to perform their obligations and rights under the Contract only.
- 11.3 All Intellectual Property Rights arising out of the Services ("**Foreground IPR**") shall be owned by the Customer if the Services are fully funded by the Customer, or by UoPEL if the Services are funded in whole or in part by UoPEL or the University, unless otherwise agreed in the Order. In the absence of any specific statement regarding the Foreground IPR, it shall be owned by the Customer.

- 11.4 If the Foreground IPR is owned by the Customer, the Customer hereby grants a non-exclusive, royalty-free, perpetual licence back to UoPEL and the University for the exclusive purposes of research, education and training.
- 11.5 Either party may commercialise the Foreground IPR, which may include academic publishing by UoPEL, subject to obtaining the other party's written consent (such consent not to be unreasonably withheld or delayed).
- 11.6 All UoPEL Materials are the exclusive property of UoPEL.

12 CONFIDENTIALITY

A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain (except to the extent that disclosure by the Receiving Party of any such information is required by law or the order of a court or regulatory body of competent jurisdiction). The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 12 shall survive termination of the Contract.

13 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 13.1 Nothing in these Conditions shall limit or exclude either party's liability for:
 - 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 13.1.2 fraud or fraudulent misrepresentation; and
 - 13.1.3 any other liability which cannot be excluded or limited under applicable law.
- 13.2 Subject to clause 13.1:
 - 13.2.1 UoPEL shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 13.2.2 UoPEL's total liability to the Customer in respect of claims based on events in any calendar year arising out of or in connection with the Contract or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall be limited to the greater of 100% of the total price of the Goods or 100% of the total charges for the Services paid or payable by the Customer in respect of the calendar year in which the liability arises.
- 13.3 This clause 13 shall survive termination of the Contract.

14 TERMINATION

- 14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:
 - 14.1.1 shall have committed a material breach of the Contract and such breach is irremediable or shall have remained unremedied for 14 days following the service of written notice calling upon it to remedy the same;
 - 14.1.2 ceases to carry on its business;
 - 14.1.3 has a receiver, administrative receiver, liquidator, administrator or similar officer appointed over all or any part of its assets or undertaking who is not discharged within 30 days of such appointment; and/or
 - 14.1.4 shall go into liquidation otherwise than for the purposes of good faith amalgamation or reconstruction.
- 14.2 Without limiting its other rights or remedies, UoPEL may terminate the Contract by giving the Customer 1 month's written notice.
- 14.3 Without limiting its other rights or remedies, UoPEL shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and UoPEL if:
 - 14.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 14.3.2 the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4, or UoPEL reasonably believes that the Customer is about to become subject to any of them.

15 CONSEQUENCES OF TERMINATION

- 15.1 On termination of the Contract for any reason:
 - 15.1.1 the Customer shall immediately pay to UoPEL all of UoPEL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, UoPEL shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 15.1.2 the Customer shall return all of the UoPEL Materials, and also any Deliverables which have not been fully paid for. If the Customer fails to do so, then UoPEL may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
 - 15.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination

or expiry; and

15.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16 FORCE MAJEURE

16.1 For the purposes of the Contract, a **Force Majeure Event** means an event beyond the reasonable control of UoPEL including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

16.2 UoPEL shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

16.3 If the Force Majeure Event prevents UoPEL from providing any of the Services and/or Goods for more than 3 months, UoPEL shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

17 GENERAL

17.1 Assignment and subcontracting.

17.1.1 UoPEL may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party, including to the University.

17.1.2 The Customer shall not, without the prior written consent of UoPEL, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 Notices.

17.2.1 Any notice required to be given to a party under or in connection with the Contract shall be in writing, in English and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

17.2.2 Any notice shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

17.2.3 This clause 17.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause (and notwithstanding clause 1.2.4), "writing" shall not include e-mails and notice given under the Contract shall not be validly served if sent by e-mail.

17.3 **Waiver.** A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.4 Severance.

17.4.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

17.4.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.5 Legal Requirements.

17.5.1 Both parties shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity practice or conduct had been carried out in the UK.

17.5.2 Each party warrants and undertakes that it shall comply with, and provide reasonable assistance to the other party in relation to its compliance with, the Data Protection Legislation and any other applicable laws, regulations or guidance relating to the use, processing and storage of personal data and privacy from time to time, in so far as such legislation, regulations or guidance relates to the Contract.

17.5.3 In the event that UoPEL is processing personal data (as defined in the Data Protection Legislation) in the provision of Services under the Contract, the provisions of Schedule 1 shall apply, and UoPEL agrees to comply with the same.

17.5.4 Each party acknowledges that UoPEL and the University is subject to the requirements of the Freedom of

Information Act 2000 and/or the Environmental Information Regulations 2004 (“Freedom of Information Legislation”), and the Customer shall assist and co-operate with the University or UoPEL (on request and at each party’s own expense) to enable them to comply with its information disclosure requirements (if any) under the Freedom of Information Legislation and/or any other similar legislation, regulations or guidance controlling, regulating or giving access to information and data from time to time in so far as the same relates to the Contract.

- 17.5.5 In performing its obligations under the Contract, each party shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (including, but not limited to, the Modern Slavery Act 2015), and ensure that each of its sub-contractors and suppliers shall have in place measures to ensure compliance with the same.
- 17.5.6 The Customer shall comply in all respects with the requirements placed on the University by general law relating to equality and diversity, act in accordance with the University’s policy of non-discrimination and not discriminate against any student, employee of either party or other person on the grounds of race, ethnic background, sex, disability, age, religious or political beliefs or otherwise.
- 17.5.7 Without limitation to the remainder of this clause 17, each party shall (and shall procure that all its employees, contractors and agents engaged in performing services under the Contract shall) observe and comply with all other applicable laws, statutes, rules, regulations, secondary legislation, bye-laws, common law, directives, judgements, decisions or orders of any court or tribunal of competent jurisdiction, codes of practice and guidance and other requirements, each having the force of law for the time being.
- 17.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership, joint venture or employment arrangement of any kind between any of the parties or the parties’ employees, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.7 **Third parties.** A person who is not a party to the Contract shall not have any rights under or in connection with it, except for the University.
- 17.8 **Variation.** Except as set out in these Conditions, any variation, including the introduction of any additional and/or special terms and conditions, to the Contract shall only be binding when agreed in writing and signed by UoPEL.
- 17.9 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1 – DATA PROTECTION

Definitions

Applicable Laws means (for so long as and to the extent that they apply to UoPEL) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.DATA PROTECTION

1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Schedule 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and UoPEL is the Processor. The Order sets out the scope, nature and purpose of processing by UoPEL, the duration of the processing and the types of Personal Data and categories of Data Subject.

1.3 Without prejudice to the generality of paragraph 1.1 above, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to UoPEL and/or lawful collection and processing of the Personal Data by UoPEL on behalf of the Customer for the duration and purposes of the Contract.

1.4 Without prejudice to the generality of paragraph 1.1 above, UoPEL shall, in relation to any Personal Data processed in connection with the performance by UoPEL of its obligations under the Contract:

- (a) process that Personal Data only on the documented written instructions of the Customer unless UoPEL is required by Applicable Laws to otherwise process that Personal Data. Where UoPEL is relying on Applicable Laws as the basis for processing Personal Data, UoPEL shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit UoPEL from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) notify the Customer if it believes that the Customer's instructions are in breach of the Data Protection Legislation;
- (h) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (i) maintain complete and accurate records and information to demonstrate its compliance with this Schedule 1 and submit to such reasonable audits and inspections of the Customer to audit compliance with this Schedule 1.

1.5 The Customer hereby confirms its consent to UoPEL sharing all Personal Data obtained under the Contract with the University and UoPEL shall remain fully liable for all acts or omissions of the University in relation to such Personal Data