

UPEL SERVICES TERMS AND CONDITIONS

The Customer desires to commission UPEL as an independent contractor to perform services, and UPEL is willing to perform such services for the Customer, on terms set forth below.

In these Terms and Condition the following capitalised terms shall have the following meanings:

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| "Customer" | means the person, firm or company to whom a Proposal is made by UPEL; |
| "Effective Date" | means the date of signature by the Customer of the Proposal, agreeing to be bound by the Proposal and the terms and conditions herein; |
| "Party" | means UPEL or the Customer and "Parties" is to UPEL and the Customer; |
| "Price" | means the fees detailed in the Proposal; |
| "Proposal" | means the letter and enclosures detailing UPEL's proposal for Services; |
| "Services" | means the consulting services which are the subject of the Proposal; |
| "UPEL" | means the University of Portsmouth Enterprise Limited, a wholly owned trading subsidiary of the University of Portsmouth. |

In consideration of the mutual promises contained herein, the Parties agree as follows:

1. SERVICES AND CONSIDERATION

- 1.1 The Customer agrees to pay to UPEL the Price as consideration and upon the payment terms set forth in the UPEL Proposal, for the performance by UPEL of the Services.
- 1.2 Insofar as it is within its control, the Customer shall take all steps necessary to enable UPEL to perform its obligations and exercise its rights under the Agreement without interruption or hindrance in such a way as to facilitate the services of UPEL hereunder and provide or assist in the provision of such information, data, materials and reports necessary to carry out the Services.

2. MANAGEMENT OF THE SERVICES

The management of the Services shall be the responsibility of UPEL who in particular shall be responsible for:

- 2.1 The determination of how the Services are to be carried out, including where and by whom the Services are to be performed.
- 2.2 The management of all personnel, including the sole right to issue instructions to such personnel.
- 2.3 UPEL shall have discretion as to the attendance and withdrawal of specific personnel from time to time, such discretion to be used in the best interests of the completion of the Services.

3. LIABILITY

- 3.1 Whilst the UPEL will use all reasonable skill, care and diligence, in accordance with the best technical knowledge and practice, to ensure the accuracy of the work performed and any information given in connection with the Services, UPEL makes no warranty, express or implied, as to accuracy and will not be held responsible for any use which may be made of the results of the Services, nor for any reliance which may be placed on such work or results nor for advice or information given in connection with the same. The Customer shall indemnify UPEL against all actions and liabilities of whatever nature or description (including expenses incurred in connection therewith) in any way arising out of any use of, or anything done or omitted to be done in reliance upon the Services or the results thereof by the Customer (or any third party with which the Customer shares or uses the results), except insofar as such action claim or liability arises out of negligence on the part of UPEL.
- 3.2 In the event of any legal liability being established against the Customer or UPEL, the Parties agree that the maximum sum payable, whether as damages or otherwise, in respect of any claim or claims shall be the sum of £1,000,000 in aggregate. For the avoidance of doubt, neither Party seeks to exclude or restrict any legal liability it may have for: (a) death or personal injury resulting from negligence; or (b) fraud or fraudulent misrepresentation; or (c) any liability that cannot be limited or excluded by law.
- 3.3 Neither Party shall be liable to the other for any loss, whether in contract, tort (including negligence), misrepresentation or otherwise, for (a) any consequential or indirect loss, or (b) for any loss of profits, interest, business revenue, anticipated savings or business goodwill, or (c) any punitive or exemplary damages, or (d) for any losses that could be, and that the Party in question should reasonably be expected to, mitigate; even if a Party is advised in advance of the likelihood of such losses being incurred.
- 3.4 UPEL makes no representation or warranty that advice or information given by any of its employees, agents or consultants who work on the Services or that the content or use of any materials, works or information provided by UPEL in connection with the Services will not constitute or result in infringement of third party rights.
- 3.5 **Non-performance:** UPEL shall not be liable under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond its reasonable control, including without limitation any delays or failures by the Customer to give adequate instructions, information or to supply Materials. The liability of UPEL howsoever arising in respect of or attributable to any non-observance or non-performance of the Services or any error or omission shall be limited to the Price.

4. EXPLOITATION OF EXPERTISE

Nothing in this Agreement shall prevent UPEL from carrying out or rendering any service or providing advice or information on any subject including the type of services described in the Proposal, to any other person or organisation, nor prevent UPEL from exploiting its expertise as it sees fit provided the execution of this Agreement is not affected by the rendering of such service.

5. CONFIDENTIALITY

- 5.1 "Confidential Information" means any proprietary information, technical data, trade secrets or know-how, including, but not limited to, research and product plans, products, services, lists of collaborators and corporate partners (including, but not limited to, collaborators of the Customer), markets, developments, inventions, processes, formulas, technology, marketing, finances or other business information disclosed by the Customer, in writing, orally or otherwise.
- 5.2 Subject to the exclusion in Clause 6.3 UPEL will not, during or subsequent to the term of this Agreement, use Confidential Information for any purpose whatsoever other than for the performance of the Services on behalf of the Customer, or disclose Confidential Information to any third party. UPEL agrees that Confidential Information shall remain the sole property of the Customer. UPEL further agrees to take all reasonable precautions to prevent any unauthorised disclosure of Confidential Information. Notwithstanding the above, UPEL's obligation under this clause 5.2 relating to Confidential Information shall not apply to information which:

- a) is known to UPEL before the Effective Date, and not impressed already with any obligation of confidentiality to the Customer; or
 - b) is or becomes publicly known without the fault of UPEL; or
 - c) is obtained by UPEL from a third party in circumstances where UPEL has no reason to believe that there has been a breach of an obligation of confidentiality owed to the Customer; or
 - d) is independently developed by UPEL; or
 - e) is approved for release in writing by an authorised representative of the Customer; or
 - f) UPEL is specifically required to disclose by law or pursuant to an order of any Court of competent jurisdiction.
- 5.3 Upon the termination of this Agreement, or upon the Customer's earlier request, subject to the exclusion in Clause 6.3 UPEL will deliver on request to the Customer all of the Customer's property and materials relating to Confidential Information which is in UPEL's possession or control.
- 5.4 The obligations of UPEL under this clause 5 shall continue in full force and effect for five (5) years after termination of UPEL's performance of the Services.

6. INTELLECTUAL PROPERTY

- 6.1 UPEL agrees that all intellectual property ("IP") generated, compiled or assimilated by UPEL in performing the Services, solely or in collaboration with others and during the term of this Agreement shall be the sole property of the Customer.
- 6.2 For the avoidance of doubt, all background information, intellectual property (whether or not registered or capable of registration) and know-how used in connection with the Project shall remain the property of the Party introducing the same.
- 6.3 The Customer shall grant to UPEL a royalty-free non-exclusive licence to use the IP generated by performance of the Services for the purposes of any funded or unfunded non-commercial academic research, teaching and/or publication.
- 6.4 The provisions of this clause shall survive termination of this Agreement.

7. REPORTS

- 7.1 UPEL agrees that it will from time to time during the term of this Agreement or any extension thereof keep the Customer advised as to its progress in performing the Services hereunder and that UPEL will, as requested by the Customer, prepare written summary reports with respect thereto. It is understood that the time required in the preparation of such written reports shall be considered time devoted to the performance of the Services by UPEL. Reports prepared by UPEL shall be the sole property of the Customer in accordance with clause 6.
- 7.2 Where the Services comprises in whole or in part an investigation for and/or a report to the Customer relating to an objective of the Customer, the Customer acknowledges and accepts that UPEL offers no warranty express or implied that such investigation and/or report will provide the Customer with a complete or partial resolution of that objective.

8. CONFLICTING OBLIGATIONS

UPEL represents that UPEL has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude UPEL from complying with the provisions hereof, and further represents that UPEL will not enter into any such conflicting agreement during the term of this Agreement.

9. TERM AND TERMINATION

- 9.1 This Agreement will commence on the Effective Date and will continue until final completion of the Services or termination as provided below.
- 9.2 Either Party may terminate this Agreement for good reason upon giving thirty (30) days prior written notice thereof to the other Party.
- 9.3 Either Party may terminate this Agreement immediately and without prior notice if the other Party is in breach of any material provision of this Agreement.
- 9.4 Upon termination of this Agreement, all rights and duties of the Parties hereunder shall cease except:
- a) in the event that this Agreement is terminated by the Customer, the Customer shall be obliged to pay, within thirty (30) days after receipt of UPEL's final statement, all amounts owing to UPEL for unpaid Services, related expenses and any uncancellable commitments of UPEL, if any, in accordance with the provisions of clause 1 hereof; and
 - b) Clauses 3 (Liability), 4 (Exploitation of Expertise), 5 (Confidentiality), 6 (Intellectual Property) and 10.10 (No Partnership) and 10.11 (Publicity) shall survive termination or expiry of this Agreement.

10. Miscellaneous

- 10.1 **Amendment:** This Agreement may be amended, extended or supplemented at any time during the Term by mutual written agreement of the Parties. No variation of this Agreement shall be of contractual effect, unless agreed in writing by an authorised signatory of each and all of the Parties.
- 10.2 **Severance:** If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable illegal or otherwise unenforceable or any indication to the effect is received by any of the Parties from any competent authority the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality.
- 10.3 **Entire Agreement:** The Parties each acknowledge that this Agreement contains the entire agreement between the Parties and that it has not relied upon any oral or written representation made by any other or any Party's employees or agents. **It is expressly agreed and understood by the Parties that this Agreement takes precedence over any Customer purchase order terms and conditions which may accompany any purchase order supplied by the Customer to UPEL for invoice purposes.**
- 10.4 **Costs:** The Parties shall pay their own costs incurred by or in connection with the preparation and execution of this Agreement.
- 10.5 **Headings:** Headings contained in this Agreement are for reference purposes only and should not be incorporated into the Agreement and shall not be deemed to be any indication of the meaning of the conditions to which they relate.
- 10.6 **Law and Jurisdiction:** This Agreement shall be subject to and construed and interpreted in accordance with English Law and any dispute referred to the courts shall be subject to the jurisdiction of the Courts of England and Wales.
- 10.7 **Interpretation:** Except where the context otherwise requires: use of the masculine gender in this Agreement includes the feminine gender; reference to an individual includes a corporation; use of words in the singular includes the plural and vice-versa; a reference to any Act of Parliament or to any Order Regulation Statutory Instrument or the like shall be deemed to include a reference to any amendment or re-enactment of the same.

- 10.8 **No Assignment:** Unless explicitly provided in this Agreement, neither Party may assign its rights or obligations under this Agreement, without the express written permission of the other Party, not to be unreasonably withheld. The Customer hereby permits that UPEL may assign its rights and obligations under the Agreement to the University of Portsmouth.
- 10.9 **Third Parties:** This Agreement does not create any right enforceable by any person who is not a party to it ('Third Party') under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a Third Party which exists or is available apart from that Act.
- 10.10 **No Partnership:** Nothing in this Agreement shall create, imply or evidence any partnership or joint venture between the Parties or the relationship between them of principal and agent or employers and employee.
- 10.11 **Publicity:** No Party shall use the name, crest, logo or registered image of the other in a press release or promotional materials, without prior written consent.
- 10.12 **Notices:** Formal written notices under this Agreement shall be served at the following addresses:
For UPEL to: Mr James Fraser, Company Secretary, University of Portsmouth Enterprise Limited, University House, Winston Churchill Avenue, Portsmouth, PO1 2UP; Fax: +44 (0) 23 9284 3449.
For Company to: to the contact named in the UPEL Proposal.
- 10.13 **Dispute Resolution:** Each Party will use reasonable endeavours to reach a negotiated resolution through open and constructive communications between their senior representatives. Where the Parties agree that a dispute arising out or in connection with this Agreement would be better resolved by the decision of an expert, the Parties will seek to resolve such dispute by an Alternative Dispute Resolution ("ADR") procedure recommended by the Centre for Effective Dispute Resolution ("CEDR"). If the parties fail to settle the dispute following their agreement to involve CEDR or if any Party refuses to submit to ADR, the dispute shall be referred to the English courts.
- 10.14 **Business Ethics:** The Parties recognise a mutual commitment to an ethical business and anti-corruption culture, and each Party hereby agrees: (i) to uphold the highest standards of business ethics in the performance of its responsibilities hereunder and adhere to the general principles of honesty, fairness and integrity in all its dealings; and (ii) not to accept from, give to or offer to the other Party (or its Affiliates) or to other contractors or suppliers or any other associated persons anything of material value which may be regarded as an improper inducement; and (iii) to comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010; and (iv) to embrace, support and enact a set of core principles in the areas of human rights, labour standards and the environment consistent with the aims of the UN Global Compact principles (www.unglobalcompact.org). Any breach of the undertakings in this Clause 10.14 shall constitute a material breach of this Agreement.