

STANDARD TERMS FOR SERVICES ("Terms and Conditions")

1. DEFINITIONS

1.1. In the Terms and Conditions, unless the context otherwise require or permits:-

"UoS" means the University of Strathclyde, incorporated by Royal Charter, a charitable body registered in Scotland with registration number SC015263 and having its Principal Office at 16 Richmond Street, Glasgow G1 1XQ;

"UoS' Tools" means:- i) any and all tools, techniques and processes identified, developed, created, acquired, improved, utilised and/or first reduced to practice or writing by UoS in the course of performing the Services and all IPR and Know-how therein and thereto; and ii) all preparatory work including concepts, sketches, visual presentations and other alternate or preliminary designs, information, data, materials and documents developed by UoS and which may or may not be shared with and or delivered to Client for consideration, and all IPR and Know-how therein and thereto;

"Background" means any IPR, Know-how, information, data, software and materials:- i) belonging to a Party prior to the Effective Date; or ii) generated by any of the Parties independently of the Services, that are provided by that Party to the other for use in the Services;

"Client" means the person, company or other legal entity to which the Invoice is addressed

"Confidential Information" means each Party's confidential information disclosed by that Party to the other for use in the Services and identified as confidential before or at the time of disclosure or which may reasonably be supposed to be confidential from the nature of the information and the manner of its disclosure;

"Deliverable" means:- i) each deliverable to be delivered by UoS to the Client, if any; and ii) any and all technical information, data and test results and findings generated by UoS in the course of performing the Services, but in each case, excluding the UoS' Tools and UoS' Background;

"Effective Date" means the date UoS commences work on the Services

"Foreground" means all IPR and Know-how first identified, created or first reduced to practice or writing by UoS in the performance of the Services, including the Deliverables and all IPR therein, but excluding the UoS' Tools and UoS' Background;

"Invoice" means the invoice(s) issued in association with the Services and the Terms and Conditions;

"IPR" 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 technical information (including 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);

"Parties" means the Client and UoS and "Party" shall be construed accordingly;

"Price" means the price payable by the Client to UoS as set out in the Invoice;

"Quotation" means the quotation, or where no quotation has been issued, the Invoice; and

"Services" means the services provided by UoS to the Client.

1.2. Words importing any gender include every gender, words importing the singular include the plural and vice versa, and words importing persons include firms, companies and corporations and vice versa.

1.3. The headings in these terms and conditions are not to affect the interpretation.

1.4. Where the word 'including' is used in these terms and conditions, it shall be understood as meaning 'including without limitation'.

2. TERMS AND CONDITIONS

The Terms and Conditions and, if applicable, the Quotation make up the whole agreement between the Parties and supersede any previous agreement between the Parties relating to the same subject matter. Any term and/or condition submitted, proposed or stipulated by the Client including any purchase order issued by the Client and any term and/or condition set out or referred to therein will be null and void. The Terms and Conditions will be deemed accepted by the Client upon the first of the following to occur: i) the Client returning a counter-signed copy of the Quotation, if applicable, to UoS; (ii) the Client making, signing or delivering to UoS any other letter, form or other writing or instrument acknowledging acceptance; ii) the Client sending to UoS a purchase order in respect of all or part of the Services covered by the Quotation; and iii) the Client paying for all or part of the Services. If there is any conflict or inconsistency between the Terms and Conditions and the Quotation, the Terms and Conditions shall take precedence

3. TERM

The Terms and Conditions shall commence on the Effective Date and, unless terminated earlier in accordance with its terms, shall continue thereafter until the date on which UoS has provided all of the Deliverables or otherwise completed the Services when it shall automatically expire.

4. THE SERVICES

In consideration of the Client i) paying UoS the Price and ii) complying with the obligations of the Client under the Terms and Conditions, UoS will provide the Services to the Client.

5. PAYMENT

5.1. Unless stated otherwise in the Quotation, if applicable, UoS shall be entitled to invoice the Client for the Price on completion of the Services. The Client shall pay the Invoice within 30 days of receipt.

5.2. All amounts in the Invoice are stated exclusive of VAT and/or any other applicable taxes or levy, which may be charged and payable in addition at the rate in force at the date that the relevant amount becomes payable.

6. IPR

6.1. No licence to use any IPR or any other rights in or to any IPR is granted or implied by the Terms and Conditions except the rights expressly granted in the Terms and Conditions.

6.2. All Background shall remain (as between the Parties) the property of the Party introducing such Background to the Services.

6.3. Each Party hereby grants to the other a royalty-free, non-exclusive, non-transferable licence to use its Background for the purpose of carrying out the Services, but for no other purpose.

6.4. All UoS' Tools are and shall remain the exclusive property of UoS.

6.5. UoS hereby grants to Client a royalty-free, non-exclusive, non-transferable, worldwide licence to use the UoS' Tools solely to the extent necessary with the Deliverables for the Services. Client may

not directly or indirectly, in any form or manner, decompile, reverse engineer, create derivative works or otherwise disassemble or modify any UoS' Tools.

6.6. Subject to payment of the Price by the Client to UoS, the Foreground shall belong to the Client and UoS shall ensure that all of its right, title and interest in the Foreground is assigned to the Client, and shall do, or procure the doing of, all such acts and things, and the signature of all such documents, at the cost of the Client, as the Client may reasonably require in order fully and effectively to vest such rights in the Client.

6.7. The Client hereby grants UoS a royalty free, non-exclusive, perpetual, irrevocable licence to use the Foreground for non-commercial academic purposes.

7. CONFIDENTIALITY

7.1. Except to the extent strictly necessary for the purposes of discharging its obligations and/or exercising its rights under the Terms and Conditions, neither Party will use, publish or disclose any Confidential Information disclosed to it by the other Party without the prior written consent of that other Party.

7.2. The foregoing obligations relating to confidentiality shall not apply to information which is within or subsequently enters the public domain through no fault of the Party receiving such information under the Terms and Conditions.

7.3. Notwithstanding any other provision of the Terms and Conditions, where either Party is in receipt of a valid information request pursuant to the Freedom of Information (Scotland) Act 2002 or any analogous regulations in respect of Confidential Information relating to the Terms and Conditions or to the Services (the "Request") it shall make an analysis as to 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 considers that disclosure is legally required and makes the requested disclosure, no liability shall attach thereto.

8. LIABILITY

8.1. UoS shall use reasonable endeavours to deliver the Services timeously and to ensure the accuracy of the work performed by it and any information given by it but accepts no responsibility for any use by the Client of any of the Deliverables, Foreground, UoS' Tools or UoS' Background, nor for any reliance placed by the Client on any of the foregoing, nor for any advice or information given in connection with the Services.

8.2. Nothing in the Terms and Conditions limits or excludes either Party's liability for:- i) death or personal injury; or ii) any fraud or any sort of liability that by law cannot be limited or excluded.

8.3. Subject to clause 8.3, UoS' maximum aggregate liability under the Terms and Conditions, whether in contract, delict (including negligence) or otherwise, will in no circumstances exceed the Price.

8.4. Subject to clause 8.3, UoS shall not be liable (whether in contract, delict or otherwise) for any loss of profit, or any indirect or consequential loss arising under or in connection with the Terms and Conditions.

8.5. Each of the Parties acknowledges that, in entering into the Terms and Conditions, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in the Terms and Conditions, and any conditions, warranties or other terms implied by statute or common law are excluded from the Terms and Conditions to the fullest extent permitted by law.

9. TERMINATION

9.1. Either Party may terminate the Terms and Conditions at any time by notice in writing to the other Party ("Other Party"), such notice to take effect as specified in the notice:

9.1.1. if the Other Party is in material breach of the Terms and Conditions and, in the case of a material breach that is capable of remedy, that breach has not been remedied within 30 days of the Other Party receiving notice specifying the breach and requiring its remedy; or

9.1.2. if: (A) the Other Party becomes insolvent or unable to pay its debts as and when they become due, (B) 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), (C) a liquidator, administrator, administrative receiver, receiver or trustee is appointed in respect of the whole or any part of the Other Party's assets or business, (D) the Other Party makes any composition with its creditors, (E) the Other Party ceases to continue its business, or (F) the Other Party takes or suffers any action similar or analogous to any of the foregoing in any jurisdiction.

9.2. The Services and the licences granted by UoS under the Terms and Conditions shall terminate automatically on termination or expiry of the Terms and Conditions (howsoever occurring) and the Client shall return to UoS all UoS' Tools and UoS' Background within thirty (30) days of such termination or expiry.

9.3. In the event of early termination of the Terms and Conditions, UoS shall be reimbursed by the Client for all expenses properly incurred in providing the Services, including expenses falling due for payment after the date of termination which arise from commitments reasonably and necessarily incurred by UoS for the performance of the Services. UoS shall be entitled to invoice for such costs and expenses at any time following termination of the Terms and Conditions.

10. GENERAL

10.1. Neither Party shall be deemed to be in breach of the Terms and Conditions if that Party is unable to carry out any provision of the Terms and Conditions (other than payment provisions) for any reason beyond its reasonable control.

10.2. The Client shall not be entitled to assign, sub-contract, sub-license or otherwise transfer any or all of its rights and/or obligations under the Terms and Conditions without the prior written consent of UoS.

10.3. Any formal legal notice to be given under the Terms and Conditions shall be in writing and shall be sent by first class recorded delivery post as follows:-

10.3.1. where given by UoS, to the address and, where applicable, marked for the attention of the individual, to which the Invoice or, if applicable, the Quotation is addressed; and

10.3.2. where given by the Client to Director, Research & Knowledge Exchange Services, University of Strathclyde, 50 George Street, Glasgow G1 1QE; or

10.3.3. in either case, to such alternative address and/or individual(s) as the relevant recipient Party may have intimated in writing to the other for that purpose.

10.4. All notices shall be deemed effective upon the earlier of: i) receipt by the Party to which notice is given; and ii) the third day following mailing.

10.5. Except as otherwise expressly provided in the Terms and Conditions none of the terms and conditions of the Terms and Conditions shall be enforceable by any person who is not a Party to it.

10.6. Each provision of the Terms and Conditions 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 the Terms and Conditions may prove to be unenforceable by law, the remaining provisions shall continue in full force and effect.

10.7. A waiver of any right under the Terms and Conditions 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 Terms and Conditions 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.

10.8. Nothing in the Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the Parties and nothing in the Terms and Conditions shall be deemed to constitute one of the Parties as the agent of the other.

10.9. Those provisions of the Terms and Conditions which by their nature or implication are required to survive expiry or termination of the Terms and Conditions (including the provisions of clauses 1, 3 and 6 to 11) shall so survive and continue in full force and effect, together with any other provisions of the Terms and Conditions necessary to give effect to such provisions.

10.10. The Terms and Conditions shall be construed and interpreted in accordance with, and governed by, the Law of Scotland, and the Parties agree that the Scottish Courts shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with the Terms and Conditions or its subject matter or formation (including non-contractual disputes or claims).

10.11. No variation of these terms and conditions shall be valid unless it is in writing and signed on behalf of each Party by an authorised signatory.