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**1 Definitions**

1.1 In these Conditions the following expressions shall have the following meanings:

‘Background’ means information, techniques, methodologies, Know-how, software, data and materials (regardless of the form or medium in which they are disclosed or stored) together with all Intellectual Property rights owned by or licensed to the Parties, that are provided by one Party to the other for use in the Programme (whether before or after the date of this Agreement), except any Results

‘Action Plan’ means an agreement between the Customer and the University for the supply by the University of Services.

‘Contract’ means the contract for the supply of Services formed by the signing of the Action Plan, which howsoever formed will be deemed subject to these Conditions.

‘Customer’ means the person(s), firm(s) or Company(s) placing an order with the University.

‘Intellectual Property’ means all patents, methodologies, registered designs, trademarks and service marks (whether registered or not), copyright, database rights, plant breeders rights, design right, know-how, information and all similar property recognised from time to time including that subsisting (in any part of the world) in inventions, designs, performances, computer programs, semiconductor topographies, confidential information, business names, goodwill and the styles of presentation of goods or services and in applications for protection of them in any jurisdiction, together with all rights of action in relation to the infringement of any of them.

‘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;

‘Programme(s)’ means the programmes of work agreed between the parties and specified on the acknowledgement of order of the University.

‘Results’ means all information, results, software and other Intellectual Property identified or first reduced to practice or writing in the course of and for the purpose of the Programme.

‘Services’ means the services set out in the Action Plan and which are to be supplied to the Customer by the University under these Conditions.

‘University’ means University of Liverpool and also (where the context so permits) its assigns and any sub-contractors.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 Words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.

**2 Formation of Contract**

2.1 All Services supplied by the University are supplied subject to these Conditions and in addition to any conditions specified in the Action Plan these Conditions shall be the sole terms and conditions of any supply by the University to the Customer. The terms contained herein will prevail and terms and conditions on the Customer's order form or other similar document shall not be binding on the University and the placing of an order for the Services by the Customer shall indicate unqualified acceptance of these Conditions.

2.2 No representative, agent or sales person has the University's authority to vary, amend or waive any of these Conditions on behalf of the University and no amendment or addition to any of these Conditions shall be deemed to have been accepted unless accepted in writing by the University.

**3 Orders and Performance**

All times, dates or periods given for performance of the Services are estimates only. The time of performance of the Services or any aspect thereof shall not be of the essence of the contract. The University will use all reasonable endeavours to meet any such date but it shall not be binding on the University and the University shall not incur any liability whatsoever for any loss or damage resulting from delay howsoever caused.

**4 Price**

4.3 The University's charges for carrying out the Programmes are as stated in the Action Plan. All sums referred to herein or in the Action Plan are payable are exclusive of VAT at the applicable rate unless otherwise stated. Where applicable, VAT shall be payable by the payer to the payee only upon receipt of a valid VAT invoice thereof.

4.4 The University reserves the right to adjust the price of the Services, (notwithstanding that the University may have provided a fixed quotation for the total charges for completing the Services); to take account of any variation in the University's costs in carrying out the Services including, without limitation, increases in employment costs, alteration of duties, unforeseen complications and lack of or inaccuracy, in information provided by or on behalf of the Customer.

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**5 Payment**

5.5 The Customer shall pay for the Services within 30 days of the date of the University's invoice.

5.6 In its obligations to pay the price of the Services, the Customer shall not be entitled to exercise any set-off lien or any other similar right or claim.

5.7 If the Customer fails to make any payment by the due date, the University may, without prejudice to its other rights and remedies:-

5.3.1 charge the Customer interest in respect of the sum overdue in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 from the due date for payment to the date of actual payment (both dates inclusive) and the reimbursement of all expenses (including legal fees) incurred with respect to collection of overdue Charges; and/or

 5.3.2 suspend any further performance of the Services.

5.4 Time of payment shall be of the essence of the Contract.

* 1. The Customer shall maintain its records of the Services and payments made hereunder for audit purposes until 31 December 2021, and allow the University and/or its appointed third party auditors access to its premises during business hours to inspect such records.

**6. Warranties**

6.1 The University makes no representation and gives no warranty to the Customer that any advice or information given by it or any of its employees or students who work on the Services, or the content or use of any results, materials, works or information provided in connection with the Services, will not constitute or result in any infringement of third-party rights.

6.2 In carrying out the Programme the University may use information provided to it by third parties. The University will use all reasonable endeavours to ensure the reliability of any third party sources but the University accepts no liability for the accuracy of this information which the third parties provide.

6.3 The University will use reasonable endeavours to carry out the Programme in accordance with accepted scientific and/or academic principles and standards. The University does not undertake that any work will lead to any particular result, nor does it guarantee a successful outcome for the Customer from the Programme. Furthermore, the parties recognise that this Agreement provides for the carrying out of work and that the results or background intellectual property may contain experimental materials, data or processes whose properties and safety may not have been established.

6.4 All advice, information and goods supplied by the University under the Programme will be supplied in good faith but the University:

a. gives no guarantee or warranty as to any advice or information it supplies; and

b. accepts no liability or other responsibility:

* for any loss or expense (including loss of profit) which the Customer may sustain as a result of relying upon or acting upon such advice or information; or
* for any damages or other loss (including loss of profit) which may arise from carrying out the Programme, whether due to omission, default, negligence or otherwise; or
* in respect of any claim by any third party relating to any action of the Customer in or arising from the Programme.

6.5 The express undertakings and warranties given by the parties in this Contract or the Action Plan are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

**7 Defective Services**

7.1 In substitution for all rights which the Customer would or might have but for these Conditions, the University undertakes that if the Programme (or any aspect thereof) is performed in a defective or erroneous manner then it will, at its own discretion, either credit to the Customer the price paid by the Customer for the defective or erroneous services or re-perform (save as to the time of performance) the Services concerned.

7.2 In order to exercise its rights under this condition the Customer shall inform the University within seven days of the date when such defect or error appeared in the Programme setting out full details in writing of the defect or error concerned.

7.3 Nothing herein shall impose any liability upon the University, in respect of any defect in the Programme arising out of the acts, omissions, negligence or default of the Customer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the

Customer to comply with any recommendations of the University and any errors, omissions or other defects in any drawing designs or specifications provided by or on behalf of the Customer or by a third party.

7.4 The Customer shall indemnify the University in respect of any costs, claims, demands or expenses incurred by the University and or for which it may be liable to any third party including infringement of any third party rights, such as intellectual property rights due to or arising from the acts, omissions or defaults of the Customer.

**8. Consequential Loss**

Subject to clause 9.2, the liability of the University to the Customer for any breach of this Contract or the Action Plan, any negligence or arising in any other way out of the subject matter of this Contract or the Action Plan, the Services and the Results of the Services, will not extend to any indirect damages or losses, or any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity, whether direct or indirect, 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.

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**9. Limitation Of Liability**

9.1 Subject to clause 9.2, the aggregate liability of the University to the Customer for all and any breaches of this Contract or the Action Plan, any negligence or arising in any other way out of the subject matter of this Contract or the Action Plan, the Services and the Results of the Services, will not exceed in total the maximum sum equal to the total price payable by the Customer to the University or one hundred thousand pounds (£100,000) whichever is the greater.

9.2 Nothing in this Contract or the Action Plan limits or excludes either party's liability for:

9.2.1 death or personal injury resulting from negligence;

9.2.2 any fraud or for any sort of liability that, by law, cannot be limited or excluded; or

9.2.3 any loss or damage caused by a deliberate breach of this Contract or the Action Plan.

**10 Additional Services and Costs**

If at the request of the Customer, the University agrees to provide services not included within the Programme, the Customer shall be liable to pay the University such additional charges as the University may reasonably determine.

**11 Representations**

No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any party’s agents or employees shall be construed to enlarge, vary or override in any way any of these Conditions.

**12 Cancellation**

Save as provided elsewhere in these Conditions the Customer shall not be entitled to cancel the performance of the Programme without the agreement in writing of the University and upon the payment to the University of such amount as may be necessary to indemnify the University against any demonstrable loss incurred by it resulting from the said cancellation.

**13 Termination**

13.1 Either party may terminate the University's appointment and the parties respective obligations in respect of the Programme (save for these rights which accrued before such termination) by written notice of not less than thirty days, if the other party:

a. defaults on its obligations under these Conditions and fails to remedy the default within the notice period; or

b. becomes insolvent or has a receiver or manager of its assets appointed or goes into liquidation or makes a composition with its creditors.

13.2 If the University continues to supply any service to the Customer after the termination of the University's appointment this shall not be construed as a waiver of the termination of or as a renewal of the University's appointment.

13.3 The University may immediately terminate this Contract and the Action Plan should its funding be terminated under the ERDF or Interreg IVB NWE Programme for whatever reason. The University shall give prompt notice of such termination, and shall pro rata reimburse the Customer of any unspent fees paid by the Customer after the effective date of termination.

13.4 The following clauses shall survive the expiry or termination of the Contract and the Action Plan for whatever reason: 5.3, 5.5, 7.4, 9, 13.4, 14, 15 and 19.

**14 Intellectual Property**

14.1 The University shall provide the Customer with reports at times and in the form agreed with the Customer and otherwise as the University shall, in its complete discretion, consider useful to the Customer.

* 1. This Contract does not affect the ownership of any Intellectual Property in any Background or in any materials Know-how or information that are not Results. The Intellectual Property in them will remain the property of the party that contributes them to the Programme. No licence to use any Intellectual Property is granted or implied by this Contract or the Action Plan except the rights expressly granted hereunder.
	2. Each party grants the other where free and reasonably able to do so a royalty-free, non-exclusive licence to use its Background for the purpose of carrying out the Programme, but for no other purpose.
	3. The Customer will own the Intellectual Property in all Results created or developed in the course of the provision of the Programme and it may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting patent applications for any of the Results. The University shall retain free a non-exclusive licence (with right to sub-license to its funding bodies) to any Intellectual Property in reports generated in the Programme or the Services for the purposes of exercising its rights under clause 15.4 below and shall retain a non-exclusive, irrevocable, worldwide, royalty-free right to use, and license other academic institutions to use, the Resulting Intellectual Property so licensed for the purposes of research, teaching and publication purposes. For the avoidance of doubt, if there is more than one person, firm or Company placing an order with the University for Services under this Contract, the respective persons, firms and/or Companies will be joint owners of the Intellectual Property in all Results created or developed in the course of the provision of the Programme. In case of joint ownership, each of the joint owners shall be entitled to use the Results, subject to the provisions of this Contract, as it sees fit, and to grant non-exclusive licences, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners following good faith negotiations between the joint owners. The joint owners shall agree on all protection matters and the division of related cost in advance.

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* 1. Where the Customer requires access to and/ or use of the University’s Background for the purpose of exploiting the Results, the University will licence such Background on fair and reasonable terms, where free and reasonably able to do so.
	2. To the extent that any Intellectual Property in the Results is capable of prospective assignment, the University now assigns said Intellectual Property to the Customer; and to the extent any Intellectual Property in the Results cannot prospectively be assigned, the University will assign said Intellectual Property to the Customer as and when they are created, at the request of the Customer.

**15 Confidentiality and Publicity**

15.1 ‘Confidential Information’ for the purposes of this condition 15, means all information of whatever nature or form disclosed by one party to the other in connection with the Programme or the Services after the effective date of this Contract, and which: (i) if disclosed in tangible form, was marked as “confidential” at the time of such disclosure; or (ii) if disclosed visually or orally, was identified as confidential at the time of disclosure and confirmed as confidential in writing within fourteen (14) days after disclosure.

15.2 Subject to condition 15.3, each party will not disclose to any third party any Confidential Information of the other party nor use it for any purpose except as expressly permitted by this Contract or the Action Plan.

15.3 No Party shall incur any obligation under clause 15.2 with respect to information which:

15.3.1 is known to the receiving party before its receipt from the disclosing party, and not impressed already with any obligation of confidentiality to the disclosing party; or

15.3.2 is or becomes publicly known without the fault of the receiving party; or

15.3.3 is obtained by the receiving party from a third party in circumstances where the receiving party has no reason to believe that there has been a breach of an obligation of confidentiality owed to the disclosing party; or

15.3.4 is independently developed by the receiving party; or

15.3.5 is approved for release in writing by an authorised representative of the disclosing party; or

15.3.6 the receiving party is specifically required to disclose in order to comply with any order of a court of competent jurisdiction or law or regulation (provided, that, in the case of a disclosure under the Freedom of Information Act 2000, none of the exemptions in that Act applies to the Confidential Information).

15.4 Notwithstanding anything to the contrary in this Contract the University may report its activities hereunder to its funding bodies, including but not limited to the European Regional Development Fund, the European Union and representatives of the Interreg IVB NWE Programme.

15.5 The Customer shall not issue any publicity concerning the Services or the Programme without the prior written consent of the University, which will not unreasonably be withheld. Due acknowledgement must be given to funding bodies in respect of any such publicity, together with any required disclaimers which the Customer will be advised of by the University.

**16 Force Majeure**

No party hereto shall incur any liability to the other (except in respect of a payment obligation) in the event that it is delayed in the performance of its obligations under these Conditions solely by Force Majeure where ‘Force Majeure’ shall mean any cause of delay beyond the reasonable control of the party liable to perform unless conclusive evidence to the contrary is provided and shall include but not by way of limitation strikes lockouts riots sabotage act of war or piracy destruction of essential equipment by fire explosion storm flood earthquake or delay caused by failure of power supplies or transport facilities.

**17 Bribery Act**

17.1 The Customer shall, and shall procure that persons associated with the Customer who are working under this Contract, shall:

17.1.1 comply with all applicable laws, statutes, regulations and sanctions relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (or equivalent local legislation) and any guidance provided from time to time;

17.1.2 comply with any University policies and procedures relating to anti-bribery and anti-corruption which are provided;

17.1.3 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

17.1.4 have in place throughout the term of the Programme, its own policies and procedures relating to anti-bribery and anti-corruption, including but not limited to adequate procedures under the Bribery Act 2010 to ensure compliance with the Bribery Act 2010 and will enforce them where appropriate;

17.1.5 promptly report to the University any request or demand for any undue financial or other advantage of any kind received by or on behalf of the Customer in connection with the performance of this Contract; and

17.1.6 immediately notify the University if a foreign public official becomes, or is at the date of this Agreement, an officer or employee of the Customer or acquires a direct or indirect interest in the Sponsor.

17.2 The Customer shall ensure that any person associated with the Customer who is working on the Programme in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this Clause 17. The Customer shall be directly liable to the University for any breach by such persons.

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17.3 For the purpose of this Clause 17, the meaning of “adequate procedures” and “foreign public official” and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 17, a person associated with the Customer includes, but is not limited to, any subcontractor of the Customer.

**18 Compliance with Laws**

18.1 Each party shall comply with all applicable laws and regulations in respect of the Programme and the Services, and in particular shall not:

(a) discriminate directly or indirectly or by way of victimisation or harassment against any person on racial grounds within the meaning of the Race Relations Act 1976 (as amended) or equivalent local legislation ("the 1976 Act") contrary to Part II (Discrimination in the Field of Employment) and/or Part III (Discrimination in Other Fields) of the 1976 Act;

 (b) contravene Part IV (Other Unlawful Acts) of the 1976 Act.

18.2 Each party shall notify the other party immediately of any investigation of or proceedings against said party under the1976 Act and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

18.3 Each party shall indemnify the other party in respect of all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the other party arising out of or in connection with any investigation conducted or any proceedings brought under the 1976 Act due directly or indirectly to any act or omission by said party, its agents, employees or sub-contractors.

18.4 In addition to its obligations under Conditions 18.1 to 18.3 above, each party shall ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Race Relations Act 1976 (as amended), the Sex Discrimination Act 1975 (as amended) and 1986, the Disability Discrimination Act 1995 (as amended) and 2005, the Equality Act 2006, the Employment Equality (Religion or Belief) Regulations 2003 [SI 2003 No 1660] (as amended), the Employment Equality (Sexual Orientation) Regulations 2003 [SI 2003 No 1661] (as amended), the Employment Equality (Sex Discrimination) Regulations 2005, the Employment Equality (Age) Regulations 2006, or any other relevant or equivalent legislation relating to discrimination in the employment of employees for the purpose of providing the Programme. Each party shall take all reasonable steps (at its own expense) to ensure that any employee employed in the provision of or associated with the Programme does not unlawfully discriminate within the meaning of this Condition 18.4 and shall impose on any sub-contractor obligations substantially similar to those imposed on the said party by this Condition 18.4.

18.5 Each party shall, and shall use reasonable endeavours to ensure that its employees or agents and/or sub-contractors shall, at all times, act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998, or equivalent local legislation.

**19 General**

19.1 Notice given under these Conditions shall be sufficiently given if left at or sent by recorded delivery post addressed to the registered office for the time being of the party to be served and any such notice sent by post in accordance with this condition shall be deemed to have been received in the case of hand delivery forthwith upon delivery and in the case of recorded delivery post on signing therefor.

19.2 Waiver by either party of any of the requirements hereof or of any of its rights hereunder shall release the other from full performance of its remaining obligations stated herein.

19.3 Nothing herein shall be deemed to constitute, evidence or compromise a partnership between the parties hereto nor to constitute either party the agent of the other.

19.4 If the whole or any part of any provision of this Contract is void or unenforceable in any jurisdiction, the other provisions of this Contract, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.

19.5 Neither party may assign its rights hereunder in whole or any part thereof to any person, firm or company without prior written authority of the other party.

19.6 This Contract together with the Action Plan, and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) is governed by, and is to be construed in accordance with, English law. The English Courts will have non-exclusive jurisdiction to deal with any dispute which has arisen or may arise out of, or in connection with, this Contract together with the Action Plan.