

These are the terms and conditions (“the Terms”) which will apply to the studentship between the University and the Sponsor. Each of you and us is a “party” and together the “parties.”

All other terms and conditions, including terms or conditions that you purport to apply under any purchase order, confirmation of order, specification or other document, or by implication through custom, practice or course of dealing, are expressly excluded. Your attention is particularly drawn to the provisions of clause 7.

1. Definitions

The following definitions apply to the Contract unless stated otherwise in the Research Letter:

“Academic Publication” means the publication of an abstract, article or paper in a journal or electronic repository (except where the Thesis (or part thereof) is placed in the University’s electronic repository as part of the admission for higher degree status of the Student), or its presentation at a conference or seminar; and in clause 6 “to Publish” and “Publication” are to be construed as references to Academic Publication;

“Background IPR” means all IPR (i) owned by or licensed to a party or (ii) devised or discovered by a party during the Research Period and not arising directly from performance of the Research;

“Contract” means the Terms together with the Research Letter;

“Foreground IPR” means all IPR in the Research Results;

“Intellectual Property Rights, IPR” means all patents, copyrights, trade marks, service marks, registered designs, database rights, rights in designs, rights in confidential information (including know-how and trade secrets), applications for any of the above, and any other similar rights recognised from time to time in any jurisdiction together with all rights of action in relation to infringement of any of the above;

“Research” means the programme of research to be undertaken by the Student, as more particularly described in the Research Letter;

“Research Letter” means the letter we issue to you appended to and incorporating these Terms, together with any schedules referred to in and attached to the letter;

“Research Period” means the period set out in the Research Letter;

“Research Results” means all technical and other information arising directly from the performance of the Research (including all data, results and experiments and any development, discovery, invention or materials arising directly from performance of the Research including the Thesis);

“the Sponsor, you, your” means the sponsor as set out in the Research Letter;

“Sponsor Supervisor” means the Sponsor’s member of staff (if any) named in the Research Letter with responsibility for overseeing the Student’s performance of the Research within the Sponsor’s organisation, or his/her replacement;

“the Student” means the individual registered as a student of the University who shall undertake the Research;

“Thesis” means the thesis or dissertation written, examined and published prior to grant of post graduate

degree qualification in accordance with the University’s regulations;

“University, BU, we, us, our” means Bournemouth University Higher Education Corporation of Poole House, Fern Barrow, Poole, BH12 5BB;

“University Supervisor” means the academic member of staff at the University with responsibility for overseeing the Student’s performance of the Research named in the Research Letter or his/her replacement.

Defined Terms All terms referred to or defined in the Research Letter shall have the same meaning in these Terms and vice versa.

2. Research

2.1 Description of Research The University shall conduct the Research as described in the Research Letter.

2.2 Research The Research shall be delivered with reasonable skill and care. Where individuals to be involved in delivering the Research are named in the Research Letter, the University shall use reasonable endeavours to ensure that they are so involved. The University may substitute those identified for others of equal or similar skills but shall consult the Sponsor before doing so.

2.3 Research Period The Research Period set out in the Research Letter is intended for planning and estimating purposes only and time shall not be of the essence of the contract; the University and the Sponsor will each use reasonable endeavours to carry out respective obligations in accordance with the timetable.

2.4 Changes to Research Either party may request changes to the Research. Requests for changes must be sufficiently detailed to enable the other party to assess the impact of the requested change on the cost, timetable or any other aspect of the Contract. The parties each agree to work together to consider and, if appropriate, agree any changes. Until a change is agreed in writing and signed by both parties, the parties will continue to act in accordance with the latest agreed version of the Contract.

2.5 Research Management The parties shall each name a contact that shall be responsible for managing all issues relating to the performance of the Contract.

3. Contributions by the Sponsor

3.1 Funding The Sponsor shall make payments to the University on the dates, and in the amounts, specified in the Research Letter. All funding amounts shall be paid in Pounds Sterling unless otherwise specified in the Research Letter.

In the event of late payment the University reserves the right to suspend our obligations under the Contract and to charge interest on amounts overdue in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and its subordinate legislation (as amended from time to time) until the actual date of payment (both before and after judgment).

3.2 Taxes Fees, including expenses, are exclusive of any taxes. You will be responsible for paying any taxes

arising from the Contract for which you are legally liable, such as VAT at the applicable rate.

3.3 Equipment/Facilities The Sponsor shall provide the Student with such materials, equipment and facilities as may be specified in the Research Letter;

3.4 Sponsor Supervisor The Sponsor shall ensure that where a Sponsor Supervisor is named in the Research Letter, they shall be in place throughout the Research Period and that any replacement is promptly notified in writing to the University.

3.5 Compliance Throughout the Research Period and when the Student and/or University Supervisor are on the Sponsor's premises, the Sponsor shall comply with all relevant legislation (including all non-discrimination legislation and all other applicable regulations) and its legal obligations in respect of ensuring the workplace health and safety of the Student (and where relevant the University Supervisor) pursuant to applicable law and the Sponsor shall indemnify the University against all losses, liabilities, claims, costs and expenses suffered by the University arising from the Sponsor's failure to do so.

For the avoidance of doubt, the parties acknowledge and agree that the Student is not an employee of the Sponsor.

4. Reporting

4.1 Final Report The University shall send to the Sponsor a final report within six months of submission of the Thesis to the University for examination. For this purpose, a copy of the Thesis submitted by the Student for a higher degree shall with the addition of any commentary by the Supervisors be deemed to constitute the final report.

4.2 Thesis The University shall provide to the Sponsor Supervisor a copy of the Thesis proposed to be submitted by the Student to the University for examination for a higher degree at least thirty (30) days prior to the date for such proposed submission.

The University shall notify the Sponsor Supervisor when the Student has submitted their Thesis to the University for examination for a higher degree (including the date of such submission).

5. Intellectual Property

5.1 Background IPR Title to all Background IPR shall remain with the party providing it. Where freely licensable, each party grants the other a royalty free, non transferrable, non exclusive licence to use its Background IPR that it introduces into the Research for:

- (i) carrying out the Research;
- (ii) inclusion in the Thesis subject to clause 6.2(a); and
- (iii) inclusion in any Publication subject to clause 6.2(b).

Where either party provides any Background IPR for use in relation to the performance of the Research which is not freely licensable they must ensure that the third party owner of the Background IPR grants, a non-exclusive licence to use the Background IPR for the purpose of performing the Research.

If either party wishes to use any particular Background IPR for any other purpose than that authorised in this clause 5.1 (for example, so as to facilitate meaningful use by it of the Research Results in accordance with clauses 5.2 below), that party shall give notice to the other party that it would like to be granted a non-exclusive licence to that Background IPR for that purpose and the parties shall promptly enter into good faith negotiations with a view to exploring whether a licence could be granted and on what terms. To avoid doubt, neither party shall be under any obligation to grant such a licence.

5.2 Foreground IPR Title to all Foreground IPR shall vest in the University and the Sponsor hereby assigns to the University to the fullest extent possible all of its rights and interest in such Foreground IPR. To the extent that it is not possible to vest all Foreground IPR in the University by virtue of the Sponsor's assignment herein, the Sponsor shall do such further acts and things as requested by the University (at the University's expense) to perfect the vesting of Foreground IPR in the University.

The University grants to the Sponsor a royalty free irrevocable non-exclusive licence to use the Foreground IPR for:

- (i) carrying out the Research;
- (ii) any internal research and development purpose, subject to clause 6.1; or
- (iii) such other purpose as may be identified in the Research Letter, subject to clause 6.1.

5.3 Exploitation If at any time the Sponsor wishes to use any Foreground IPR for any purpose other than that authorised pursuant to clause 5.2 above, the Sponsor shall give notice to the University that it wishes to do so and the University shall promptly enter into good faith negotiations with the Sponsor for the grant of a licence to the Sponsor for such purpose. To avoid doubt, the University shall be under no obligation to grant such a licence.

6. Confidentiality and Publication

6.1 Restriction on Disclosure of Confidential Information The parties agree to treat Confidential Information in confidence and to use it only for the Research, subject to the provisions of clause 6.2(a) and 6.2(b) below.

In this Contract "Confidential Information" shall mean all written information marked "confidential" (or oral disclosures, or information obtained as a result of any demonstration or being allowed access to any premises where the other party may carry on business provided that any non written disclosures are confirmed in writing within 30 days and marked confidential) and disclosed by one party to the other party whether before or during the term of this Contract in relation either to the Research, including but not limited to information relating to that party's IPR and business affairs, but shall not include any part of such information which:

- (i) is in or comes into the public domain without breach of this Contract; or
- (ii) the other party can show that it was known to it prior to receipt; or
- (iii) the other party can show it to have been independently developed by the other party without recourse to the Confidential Information; or

- (iv) the other party obtains it from another source who is free to disclose it; or
- (v) is contained in these Terms; or
- (vi) is required by the party's insurers or legal advisors; or
- (vii) is required to be disclosed by law.

6.2 Disclosures The Research will form part of the actual carrying out of a primary charitable purpose of the University; that is, the advancement of education through teaching and research. Also, the Research is to enable the Student to obtain their doctorate. It is anticipated that the parties will cooperate in the dissemination of Research Results and that Publications shall, where possible, be made jointly. However, notwithstanding the confidentiality obligations at clause 6.1 above:

(a) **Thesis** This Contract shall not prevent or hinder the Student from submitting for a higher degree of the University all or any part of the Thesis based on the Research Results or from following the University's procedures for examinations and for admission to higher degree status (including placement of the Thesis (or any part thereof and/or abstract thereof) in the Library of the University and in the University's online publications repository) PROVIDED THAT:

- (i) At the Sponsor's request, the University and the Sponsor shall cooperate to anonymise or failing that excise from the Thesis parts of the Thesis which are commercially sensitive (including any confidential Background IPR of the Sponsor) provided that (in the reasonable opinion of the University Supervisor) such excision or anonymisation does not thereby prejudice the academic integrity of the Thesis;
- (ii) where the Sponsor, acting reasonably, has concerns about the commercial implications of public access to the Thesis, the Sponsor may request the restriction of access by the public to the Thesis based on the Research Results for a period not exceeding 3 years following its submission for examination, and the University, subject to and in accordance with their regulations and procedures shall use reasonable endeavours to comply with such request.

Notification of the Sponsor's request pursuant to clause 6.2(a)(i) and/or 6.2(a)(ii) above must be received in writing by the University within fourteen (14) days after a copy of the Thesis proposed to be submitted by the Student to the University for examination is provided to the Sponsor Supervisor pursuant to clause 4.2, failing which the University, the University Supervisor and the Student shall be free to assume that the Sponsor has no objection to the proposed submission.

(b) **Academic Publications** In connection with any Publication of the Research Results by the University and/or the Student, the University and/or the Student may, subject to clause 6.1 above, Publish any Background IPR of the Sponsor relevant to the Research Results provided always that they shall submit to the Sponsor in writing the information that they intend to Publish not less than thirty (30) days in advance of the submission for Publication and the Sponsor may require that submission for Publication

be delayed if in the Sponsor's opinion such delay is necessary for it to arrange to patent or seek similar protection for the Background IPR relevant to the Research Results or is otherwise necessary for the Sponsor's business objectives with respect to the Background IPR. Any such required delay shall not normally exceed three (3) months from the date the proposed Publication is sent to the Sponsor by the University, although the University will comply with a request from the Sponsor for a delay of (up to) six (6) months (maximum) from the date the proposed Publication is sent to the Sponsor if the Sponsor's property rights may otherwise be lost or other business objectives prejudiced.

Notification of the Sponsor's requirement for delay in submission for Publication pursuant to clause 6.2(b) must be received in writing by the University within twenty one (21) days of the proposed Publication being sent to the Sponsor, failing which the University, the University and the Student shall be free to assume that the Sponsor has no objection to the proposed Publication.

To avoid doubt, this clause 6.2(b) shall not apply in respect of submission or examination of the Thesis (or any part thereof) based on Research Results for higher degrees of the University or in respect of admission to higher degree status of the Student.

6.3 Publicity Unless otherwise agreed in the Research Letter, the University may acknowledge the contribution of the Sponsor in any Publication.

7. Limitation of Liability

7.1 No Warranty It is acknowledged that the Research is concerned with experimental research and may entail the use of experimental materials whose properties and safety have not been established. Accordingly, specific results cannot be guaranteed and any materials or information provided under this Contract are provided "as is" and without any express or implied warranties, representations and undertakings. In particular, but without limitation, the University gives no warranty that:

- (i) the Research Results (or any Intellectual Property Rights therein) are or will be of satisfactory quality or fit for any particular purpose; or
- (ii) the Research Results (or any Intellectual Property Rights therein) will not constitute or result in infringement of third party rights.

7.2 Implementation We will not have any control over how you implement the Research Results in your systems, working processes or products and therefore we shall have no liability, whether in contract, tort (including without limitation negligence), breach of statutory duty or otherwise in relation to the use of the Research Results by you or any other person, or the consequences of such use, and you shall indemnify us and our employees, students, agents and representatives against all such liability and claims arising from such use. You acknowledge and accept that this indemnity is reasonable as we do not control your interpretation and implementation of the Research Results.

7.3 Limitation of Liability Nothing in the Contract will be taken to limit or exclude our liability for:

- (i) death or personal injury caused by our negligence or the negligence of our employees acting in the course of their employment;
- (ii) liability for fraudulent misrepresentation; and
- (iii) any other liability which by law we cannot exclude or limit.

7.4 We will not be liable to you in contract, tort (including without limitation negligence) breach of statutory duty or otherwise for any loss or damage which you may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by us, our students, our servants or our agents in a sum which is greater than the Research funding actually received by us under the Contract.

7.5 We will not be liable to you in contract, tort (including without limitation negligence), breach of statutory duty or otherwise for any loss of profits and/or loss of production and/or loss of expectation and/or loss of opportunity or any indirect or consequential (including, but not limited to, economic) loss of any kind which you may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by us, our staff, our students, our sub-contractors, our consultants or our agents.

7.6 Claims The Sponsor undertakes to make no claim against any employee, student, agent or appointee of the University in connection with this Contract. This undertaking is intended to give protection to individual researchers and staff; it does not prejudice any right which the Sponsor may have to claim against the University.

8. Suspension and Replacement

8.1 Suspension The University shall be entitled to suspend the Research in any of the following circumstances:

- (i) the Student applies to suspend their award on the basis of maternity or paternity leave;
- (ii) the Student is absent for more than thirteen weeks in a twelve month period due to illness; or
- (iii) the Student applies to suspend their award on the basis of any other exceptional circumstances as determined in the absolute discretion of the University.

The Research may be suspended for a period of up to twelve months. During any period of suspension any fees payable shall not be due until the Research has resumed. The Research Period shall in that case be extended by a period equivalent to the suspension period and the Sponsor shall continue to make its contributions as described at clause 3 for such extended period.

8.2 Replacement Should either the Student or the University Supervisor leave the University before the end of the Research Period, the University will use reasonable endeavours to secure a replacement reasonably acceptable to the Sponsor as soon as reasonably practicable and in any event within six (6) months. If a replacement cannot reasonably be found or if no proposed replacements are reasonably acceptable to the Sponsor within the afore-mentioned time-frame,

either party may terminate by notice in writing to the other party this Contract in accordance with clause 9.5 below.

9. Term and Termination

9.1 Duration The provisions of this Contract shall apply as from the commencement of the Research Period. If this Contract is entered into after the commencement of the Research Period it will apply retrospectively as from the commencement of the Research Period.

9.2 Expiry Unless the parties agree otherwise (or unless the termination provisions specified in clauses 8.2, 9.3, 9.4 or 9.5 take effect) this Contract shall expire on the earlier of, the date of the award of the research degree to the Student in respect of the Research and the 5 year anniversary of the commencement of the Research Period, subject to any extension pursuant to clause 8 above.

9.3 Termination for Material Breach or Insolvency Without prejudice to any other right or remedy, either the Sponsor or the University may terminate the Contract at any time by notice in writing to the other:

- (i) if the other is in material breach of the Contract and the breach is not remedied within 60 days of the other receiving notice of it; or
- (ii) if the party becomes insolvent, or if an order is made or a resolution is passed for the winding up of the party (other than for the purpose of a solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other's assets or business, or if the other makes any composition with its creditors or takes or suffers any similar or analogous action in any other jurisdiction.

9.4 Lack of Academic Progress If the University believes that there is a lack of academic progress with the Research the University shall be entitled to terminate this Contract on 90 days' written notice.

9.5 Student Termination In the event the Student terminates their award or otherwise chooses to leave the Research and the University cannot replace the Student in accordance with clause 8.2 the University may terminate this Contract on 30 days written notice to the Sponsor.

9.6 Payment of Outstanding Sums In the event of termination the Sponsor shall pay all sums due and owing up to the point of termination as well as all sums unavoidably committed to by the University prior to the notice of termination.

9.7 Return of Property The University shall retain title to any equipment or materials purchased with funds provided by the Sponsor but shall return equipment and materials provided by the Sponsor.

9.8 Termination of Licences In the case of termination by the University under clauses 9.3 (i) or 9.3 (ii) then all IPR licences granted by the University under clause 5 shall also terminate.

9.9 Survival Clauses 5, 6 and 7 shall survive termination or expiry of this Contract and any other clauses which by implication survive shall survive.

10. General

10.1 Variation No variation of the Contract shall be valid unless it is in writing and signed by both parties.

10.2 Precedence In the event of and only to the extent of any conflict between these Terms, the Research Letter and/or any schedules referred to in, and attached to, the Research Letter, the conflict shall be resolved in accordance with the following order of precedence:

- (i) Research Letter without the schedules attached and referred to in the Research Letter;
- (ii) any schedule attached and referred to in the Research Letter (and if more than one in order of attachment);
- (iii) the Terms.

10.3 Notices Notices must be in writing, in the English language and be served either personally or sent by prepaid registered post to the address of the other party given in the Contract or to any other address as the parties may have notified for the purpose during the period of the Contract. Any notice sent by prepaid registered post will be deemed to have been delivered 48 hours after sending. Any notice served personally will be deemed to have been delivered on the first working day following its dispatch. A notice required to be given under this Contract shall not be validly served if sent by email or facsimile.

10.4 Agent No party shall act or describe itself as the agent of the other, nor shall it make any commitments on the other's behalf.

10.5 Waiver The delay by a party in enforcing any of the terms or conditions of the Contract will not affect or restrict a party's rights and remedies arising under the Contract. No waiver of any term or condition of the Contract will be effective unless made in writing and signed by the party so waiving.

10.6 Severance If any court of 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 to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

10.7 Assignment Neither party to this Contract shall assign or transfer any of their rights or obligations under this Contract without the prior written consent of the other party.

10.8 Third Party Rights Except as expressly provided in clause 7.6 of this Contract, nothing in this Contract shall confer on any third party any benefit or the right to enforce any term of this Contract.

10.9 Resolving Disputes Should any dispute arise between the parties, the parties will in the first instance attempt to resolve the dispute in good faith by senior level negotiations. Where both parties agree that it may be beneficial the parties will seek to resolve the dispute through mediation.

10.10 Governing Law The interpretation, construction and effect of this Contract shall be construed in all respects in accordance with English law and subject to clause 10.9 above, the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.

10.11 English Language The Contract is drafted in the English language. If any part of the Contract is translated into any other language, the English language text shall prevail.