

## EXTERNAL HIRE: SPACE BOOKING AND EQUIPMENT LOAN AND SALE TERMS AND CONDITIONS

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### 1 Interpretation

#### 1.1 In these Terms:

**“The University”** means Falmouth University whose registered office is at Falmouth Campus, Woodlane, Falmouth, Cornwall TR11 4RH;

**“Business Day”** means a day, other than a Sunday or public holiday in England, when banks in London are open for business. The general opening hours for which are 08:30 to 22:00 Monday to Fridays and 09:00 to 17:00 on Saturday. Hours may vary especially during summer months, please check when booking;

**“Contract”** means the contract between the University and the Hirer for the hire of the Equipment in accordance with these Terms;

**“Equipment”** means the equipment, fixtures, lighting and other materials (including any parts, accessories, manuals and instructions provided for it, as well as any substitutions, replacements or renewals of such equipment) which the University is to supply in accordance with these Terms, as set out in the quotation provided by the University to the Hirer;

**“Facilities”** means the Darkrooms, Digital Suites, Studios and Workshops which the University is to supply in accordance with these Terms, as set out in the quotation provided by the University to the Hirer;

**“Force Majeure Event”** means any circumstance not within a party’s reasonable control including, without limitation:

- (a) Acts of God, flood, drought, earthquake or other natural disaster;
- (b) Epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations
- (d) nuclear, chemical or biological contamination or sonic boom
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility service.

**“Hire Period”** means the period of hire as set out in Clause 4;

**“Hirer”** means the individual, company or firm which hires the Equipment or Facilities from the University in accordance with these Terms;

**“Software”** as defined in Clause 12.1;

**“Terms”** means the University’s standard UK Terms and Conditions of Hire set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Hirer and the University.

**1.2** Clause headings shall not affect the interpretation of these Terms.

**1.3** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors and permitted assigns.

**1.4** A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

**1.5** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

**1.6** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

**1.7** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

**1.8** A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

**1.9** A reference to **writing** or **written** includes fax and email.

**1.10** Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

**1.11** References to clauses are to the clauses of these Terms.

**1.12** Any words following the terms ‘including’, ‘include’, ‘in particular’, ‘for example’ or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 Basis of the Hire**

**2.1** The University shall, subject to their availability, hire the Equipment and or Facilities to the Hirer in accordance with the University’s Terms which shall govern the Contract between the parties to the exclusion of any other terms.

**2.2** No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Hirer and the University.

**2.3** Any advice or recommendation given by the University or its employees, agents or representatives to the Hirer or its employees, agents or representatives as to the storage, application and use of the Equipment or Facilities if followed is acted on entirely at the Hirer’s own risk and accordingly the University shall not be liable for any such advice or recommendation.

**2.4** Proof of identity and address are required for all hires.

**2.5 Credit Check.** The University reserves the right to make a credit check to ensure the Hirer can meet all charges when they fall due. This check will be made before the University confirms the Space Booking, Equipment Loan or Sale with the Hirer. Should the Hirer's credit rating, at any point, give cause for concern, the University reserves the right to request full or part payment at any time in advance of the commencement of the Space Booking, Equipment Loan or Sale. In this circumstance, a staged payment plan may be agreed and written into the Agreement.

### **3 Orders**

**3.1** Any order submitted by the Hirer to hire the Equipment and or Facilities constitutes an offer by the Hirer to hire the Equipment or Facilities in accordance with these Terms. The Hirer shall be responsible to the University for ensuring the accuracy of any order (including any applicable specification) submitted by the Hirer.

**3.2** The order shall only be deemed to be accepted when the University indicates its acceptance of the order, at which point the Contract shall come into existence.

**3.3** A quotation for the hire of the Equipment and or Facilities given by the University shall not constitute an offer and will only be valid for a period of 30 days from its issue date or any other date as indicated in the quotation by the University.

**3.4** The description of the Equipment and or Facilities and any specification for it shall be as set out in the University's quotation.

### **4 Hire Period**

**4.1** The Hire Period commences upon collection of the Equipment and or on the handing over of the Facilities by the University as specified in Clause 7 below. Some hires will be subject to a minimum period of hire the details of which will be detailed on the External Hire Rate Cards.

**4.2** The Hire Period terminates on the day of return of all the Equipment and or Facilities to the University location from which the Equipment was collected or for facilities where they were handed over at the time of hire, as set out in the quotation or as otherwise agreed in writing between the parties, unless terminated earlier in accordance with these Terms.

**4.3** If the parties agree to extend the Hire Period, an additional charge in respect of such extended hire shall be agreed and shall be payable by the Hirer to the University in accordance with Clauses 5 and 6 below.

### **5 Hire Charges**

**5.1** Payment for hire of the Equipment and or Facilities shall be the University's quoted or previously agreed rate.

**5.2** All rates quoted are valid for 30 days only, unless agreed otherwise in writing, after which they may be altered by the University without giving notice to the Hirer.

**5.3** The University reserves the right by giving notice to the Hirer at any time before delivery of the Equipment, to increase the rate of the hire of the Equipment and or Facilities to reflect any increase in costs to the University which is due to any factor beyond the control of the University (such as, without limitation, alteration of duties, significant increase in the cost of labour, materials or other costs), any change in delivery dates, quantities or specifications for

the Equipment and or Facilities which is requested by the Hirer, or any delay caused by any instructions of the Hirer or failure of the Hirer to give the University adequate information or instructions.

**5.4** Any amounts payable under the Contract are exclusive of any applicable Value Added Tax ('VAT') and any other applicable taxes and duties or similar which the Hirer shall be additionally liable to pay to the University.

**5.5** Late returns are subject to an additional charge of a full day's hire charge for each day or part day that passes until the complete return of the hired facilities or equipment has been made.

**5.6** Discount Structure: the following discount hire charge structure applies to the cost net before VAT for the hire of equipment and facilities by graduates only of the University. For those graduates within one year of their graduation 40% discount; for those within the second year of their graduation 20% discount; and for those in the third or subsequent years of graduation 10% discount.

## **6 Terms of Payment**

**6.1** Subject to any special terms agreed in writing between the Hirer and the University, the University shall invoice the Hirer on or at any time after delivery of the Equipment and or Facilities.

**6.2** Unless agreed otherwise the Hirer shall pay at the point in time of equipment collection or space collection, whichever is the earlier, the full charges for the Hire Period without any set-off, counterclaim, deductions or withholding on the terms agreed in writing between the parties, and the University shall be entitled to recover payment. The time of payment shall be of the essence of the Contract. Receipt for the payment shall be issued only on request.

**6.3** If the Hirer fails to make any payment on the due date then, without limiting any other right to remedy available to the University, the University may:

**6.3.1** terminate the Contract or suspend any further deliveries or access to Equipment and or Facilities to the Hirer; and or

**6.3.2** charge the Hirer interest (both before and after any judgment) on the amount paid at the rate of 5% per annum above the base rate of the Bank of England from time to time, until payment in full is made (part of a month being treated as a full month for the purpose of calculating interest).

## **7 Delivery**

**7.1** Delivery of the Equipment shall be made by the Hirer or its agent collecting the Equipment from the University's premises during the business hours published on the External Hire Rate Cards or as may be agreed between the parties.

**7.2** Delivery of Facilities shall be made by the University handing the same over to the Hirer or its Agent at the University premises.

**7.3** The hire sheet must be signed by the Hirer or its authorised representative. By so signing, the Hirer accepts that the Equipment and or Facilities are of satisfactory quality and fit for their purpose.

**7.4** Any damage to the Equipment and or Facilities on delivery must be noted by the Hirer or its authorised representative on the hire sheet. If the Hirer does not notify the University accordingly, the Hirer shall not be entitled to reject the Equipment and or Facilities and the University shall have no liability for any defect or failure (save as regards any latent defects not reasonably apparent on inspection).

## **8 Risk and Property**

**8.1** Risk of damage, loss, theft or destruction of the Equipment and or Facilities shall pass to the Hirer on collection of the Equipment and or handover of the Facilities. The Equipment and Facilities shall remain at the sole risk of the Hirer during the Hire Period and any further term during which the Equipment and or Facilities are in the possession, custody or control of the Hirer until such time as the Equipment is redelivered and or Facilities are handed back to the University.

**8.2** Ownership of the Equipment and Facilities shall at all times remain with the University and the Hirer shall have no right, title or interest in or to the Equipment and Facilities (save the right to possession and use of the Equipment and or Facilities subject to these Terms).

**8.3** The Hirer agrees to indemnify the University, its employees, students servant or agents against all actions, proceedings, claims, damages, awards or costs in respect of loss, damage, death or personal injury during the period of hire or before or after that time unless such death or injury occurs as a result of the negligence or breach of duty of the University, its employees, students servant or agents.

**8.4.** The Hirer will be required to demonstrate valid and sufficient insurance cover before the release of any equipment, goods or facilities from the University to the Hirer. All equipment, goods or facilities hired to the Hirer must be insured by the Hirer against all risks to full replacement value and must be covered by a public liability insurance policy with a minimum limit of liability of £5 million including damage to the premises/facilities and its contents . It shall produce documentary evidence of the cover when booking.

**8.5.** The University requires the Hirer to be insured against physical loss or damage of equipment to its full new replacement value.

**8.6.** The Hirer must inform the University before utilising any hired equipment within a hazardous environment, or taken outside the UK.

**8.7.** Risk in all hired equipment will pass onto the Hirer when leaving the possession and control of the University. Risk in hired equipment does not pass back to the University until the Goods are returned and in the possession of the University.

## **9 Hirer's Use of the Equipment and Facilities**

**9.1** The Hirer shall not make any modifications to the Equipment and/or Facilities, dismantle the Equipment and/or Facilities nor remove from the Equipment and/or Facilities any notice, bar code or serial number without the prior written consent of the University.

**9.2** The Hirer shall not permit the Equipment and/or Facilities to be used in any hazardous or dangerous manner.

**9.3** It is the Hirer's responsibility to ensure that the Equipment and/or Facilities are kept and operated in a suitable environment and is used only in a proper manner for the purpose for which it was intended and designed by a competent individual or people without risk to University's policies and/or reputation; nor contrary to any health and safety legislation or any other law, and operated in a proper manner by trained competent staff in accordance with any operating instructions.

**9.4** The Hirer must apply for any licences, authorisations or permits necessary regarding possession and use of the Equipment in any jurisdiction.

**9.5** The Hirer shall during the term of the Contract:

**9.5.1** maintain at its own expense the Equipment and Facilities in good and substantial repair in order to keep it in as good an operating condition as it was at the commencement of the Hire Period (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment and/or Facilities;

**9.5.2** permit the University or its duly authorised representative to inspect the Equipment and/or Facilities at all reasonable times and for such purpose to enter upon the Hirer's premises or any premises at which the Equipment or Facilities may be located, and shall grant reasonable access and facilities for such inspection;

**9.5.3** maintain operating and maintenance records of the Equipment and/or Facilities and make copies of such records readily available to the University, together with such additional information as the University may reasonably require;

**9.5.4** not, without the prior written consent of the University, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment and/or Facilities or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

**9.5.5** not, without the prior written consent of the University, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Hirer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the University against all losses, costs or expenses incurred as a result of such affixation or removal;

**9.5.6** not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the University in the Equipment and/or Facilities and, where the Equipment has become affixed to any land or building, the Hirer must take all necessary steps to ensure that the University may enter such land or building and recover the Equipment both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the

University of any rights such person may have or acquire in the Equipment and a right for the University to enter onto such land or building to remove the Equipment;

**9.5.7** not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Hirer shall notify the University and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the University on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

**9.5.8** not use the Equipment and/or Facilities for any unlawful purpose;

**9.5.9** ensure that at all times the Equipment remains identifiable as being the University's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment; and

**9.5.10** not do or permit to be done anything which could invalidate the insurances referred to in Clause 14 below.

## **10 Redelivery and Storage**

**10.1** The Equipment and/or Facilities must be returned by the Hirer to the University at the end of the Hire Period or on termination of the Contract for any reason (whichever is earliest) at the Hirer's own risk and expense in good condition and state of repair either:

**10.1.1** by the Hirer handing over the Facilities to the University and/or returning the Equipment to the University's premises; or

**10.1.2** by the University taking possession of the Facilities and/or, at the expense of the hirer, collecting the Equipment from a location agreed between the parties.

**10.2** Prior to its return the Hirer must erase all recorded content whether audio, data or video from the Equipment. The University accepts no responsibility for data recorded on to any internal or external storage media (e.g., SD Cards) if supplied as part of equipment hire. It is the responsibility of the hirer to ensure all data recorded has been transferred on to other storage device(s) owned by the hirer, and erased from University owned storage media and then to reset equipment to its default operating settings prior to returning the equipment.

**10.3** The University is entitled to retake possession of the Equipment and/or Facilities in the event of the Hirer's failure to return it and to exercise its full rights for retaking possession including entry onto land or premises for that purpose.

## **11 Warranties and Liability**

**11.1** The University warrants that the Equipment and/or Facilities shall substantially conform to its specification (as made available by the University), be of satisfactory quality and fit for any purpose held out by the University.

**11.2** It is the responsibility of the hirer to inspect the equipment at the time of issue to determine that it is in full operating order and note any existing faults. Once the hirer has collected the equipment it is deemed that it is suitable for the purpose of hire.

**11.3** The University shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow instructions (whether oral or in writing), misuse, or alteration or repair of the Equipment and/or Facilities without the University's approval.

**11.4** The University shall be under no liability in respect of any parts, materials or equipment in respect of which the Hirer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the University.

**11.5** If for any reason the University is unable to provide the Equipment and/or Facilities under the Contract, the University shall bear no responsibility to the Hirer for any loss including consequential loss arising thereon.

**11.6** Subject as expressly provided in these Terms, all warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**11.7** Except in respect of any liability which cannot be excluded or limited by law including liability for death or personal injury caused by the University's negligence, The University shall not be liable to the Hirer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term or any duty at common law or under the express term of the Contract, for loss of profit or for any indirect special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the University, its employees or agents or otherwise) which arise out of or in connection with the supply of the Equipment and/or Facilities (including any delay in supplying or any failure to supply the Equipment and/or Facilities in accordance with the Contract or at all) or their use by the Hirer, and the entire liability of the University under or connection with the Contract shall not exceed the total hire payments payable by the Hirer to the University under the Contract.

## **12 Software**

**12.1** Whilst the University shall endeavour to provide the required version of any software in relation to the Equipment ("**Software**"), it is the Hirer's entire responsibility to ensure any equipment, system and/or network compatibility unless otherwise agreed in writing in advance.

**12.2** Any Software is provided as part of the Equipment. Such Software is provided on an "as is" basis and the University does not warrant or guarantee that the Hirer's use of the Software will be uninterrupted or error-free.

**12.3** Except as expressly set out in these Terms or as permitted by any local law, the Hirer undertakes:

**12.3.1** not to copy the Software, except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security;

**12.3.2** not to rent, lease, sub-license, loan, translate, merge, adapt, vary, alter or modify, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;



**12.3.3** not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such things, except to the extent that (by virtue of sections 50B and 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are necessary to decompile the Software to obtain the information necessary to create an independent program that can be operated with the Software or with another program (“Permitted Objective”), and provided that the information obtained by the Hirer during such activities:

**(a)** is used only for the Permitted Objective;

**(b)** is not disclosed or communicated without the University’s prior written consent to any third party to whom it is not necessary to disclose or communicate it in order to achieve the Permitted Objective; and

**(c)** is not used to create any software that is substantially similar in its expression to the Software;

**12.3.4** to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;

**12.3.5** to include our copyright notice on all entire and partial copies of the Software in any form;

**12.3.6** not to provide, or otherwise make available, the Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person without prior written consent from the University; and

**12.3.7** to comply with all applicable technology control or export laws and regulations.

### **13 Loss or Damage to Equipment and/or Facilities**

**13.1** The Hirer has responsibility for the safe keeping of the Equipment and /or Facilities throughout the Hire Period.

**13.2** The Hirer must immediately inform the University of any failure of, damage to or loss of the Equipment and/or Facilities.

**13.3** The Hirer shall not carry out any repairs to the Equipment and/or Facilities arising out of misuse or mishandling of the Equipment and/or Facilities without first obtaining the University’s authority to do so.

**13.4** The Hirer shall indemnify the University in full for the costs of any repairs.

**13.5** The Hirer shall indemnify the University in full for the replacement of any lost or damaged Equipment and /or Facilities or Equipment and/or Facilities which in the view of the University is uneconomic to repair in the value of new replacement equipment and/or Facilities and for any consequential loss to the University arising out of the loss or damage of the Equipment and/or Facilities.

**13.6** During any period in respect of which the Hirer has not already paid to the University any hire charges for Equipment and/or Facilities which is lost or damaged, until such lost or damaged Equipment and/or Facilities is replaced or repaired the Hirer shall compensate the

University in full for the loss of use of the lost or damaged Equipment and/or Facilities at a rate equivalent to the hire charges currently made by the University for such equipment.

**13.7** The Hirer acknowledges that the University shall not be responsible for any loss of or damage to the Equipment and/or Facilities arising out of or in connection with any negligence, misuse or mishandling of the Equipment and/or Facilities, or otherwise caused by the Hirer or its officers, employees, agents and contractors, and the Hirer undertakes to indemnify the University on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with the terms of the Contract.

#### **14 Insurance**

**14.1** The Hirer shall keep insured for the Hire Period all Equipment and/or Facilities with reputable insurers approved by the University for:

**14.1.1** all loss, damage, destruction by fire, theft, accident and such other risks to the Equipment and/or Facilities to a value not less than its full replacement value; and

**14.1.2** any third party or public liability risks in connection with the Equipment and or Facilities for a minimum of £5,000,000.

**14.2** The Hirer shall on demand provide the University with the insurance certificates and details of the above policies.

**14.3** The Hirer shall ensure that the insurance policies referred to above name the University as additional named assured for all rights and interests under the policies, without the University being liable to pay premiums for the policies.

#### **15 Termination**

**15.1** The University reserves the right to cancel the booking at any time without notice and without assigning any reason but will endeavour to give as much notice as possible. The University will not be liable for the provision of alternative Facilities or Equipment or be liable for any compensatory payment. In such circumstances, the University shall refund any monies paid in respect of the hire arrangement so cancelled but shall not be responsible for any loss or expenditure whatsoever in relation to the hire arrangement which the Hirer may have incurred or be liable to pay. The University reserves the right to refuse any application for hire as it may deem fit, or withdraw permission for any hire arrangement at any time.

**15.2** If the Facilities and or Equipment hired are not fully available for the duration of the booking or if the booked activity is prevented from taking place due to circumstances that were not informed to the Hirer prior to commencement of the hire arrangement, the University shall refund the monies paid for that booking

**15.3.** If the Hirer, after the acceptance of a confirmed booking,

**15.3.1.** Cancels their booking 10 or more working days before the date of the booking, the full fee and deposit shall be refunded to the Hirer.

**15.3.2.** If less than 10 working days' notice is given, only 50% of session fee shall be returned. –

**15.3.3.** If less than 5 working days' notice is given by the Hirer, there shall be no refund of the session fee.

The University can, at its own discretion, overrule these in exceptional circumstances.

**15.4.** The applicant shall complete all relevant paperwork in a true and accurate way. False information may lead to an application being terminated.

**15.5** Without affecting any other right or remedy available to it, the University may terminate the Contract with immediate effect by giving notice to the Hirer if:

**15.5.1** the Hirer commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so;

**15.5.2** the Hirer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

**15.5.3** the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

**15.5.4** the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Hirer with one or more other companies or the solvent reconstruction of the Hirer;

**15.5.5** a petition is filed, a notice is given, a moratorium applied for, a resolution is passed, or an order is made, for or in connection with the winding up of the Hirer other than for the sole purpose of a scheme for a solvent amalgamation of the Hirer with one or more other companies or the solvent reconstruction of the Hirer;

**15.5.6** an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Hirer;

**15.5.7** the holder of a qualifying floating charge over the assets of the Hirer has become entitled to appoint or has appointed an administrative receiver;

**15.5.8** a person becomes entitled to appoint a receiver over all or any of the assets of the Hirer or a receiver is appointed over all or any of the assets of the Hirer;

**15.5.9** a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Hirer's assets and such attachment or process is not discharged within 14 days;

**15.5.10** any event occurs, or proceeding is taken, with respect to the Hirer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 15.5.3 to Clause 15.5.9 (inclusive); or

**15.5.11** the Hirer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**15.6** This Contract shall automatically terminate if, due to the Hirer's default, the Equipment and/or Facilities is, in the University's reasonable opinion damaged beyond repair, lost, stolen, seized or confiscated.

**15.7** The Hirer may only terminate the Contract with the agreement in writing of the University and on terms that the Hirer shall indemnify the University in full against all loss (including loss of profit), costs (including the cost of all labour and materials), damages, charges and expenses incurred by the University as a result of cancellation.

## **16 Health and Safety**

**16.1** The Hirer must comply with all laws relating to the premises and the occupation and use of the premises by the Hirer including but not limited to Health and Safety legislation. The Hirer must also comply with specific health and safety measures relating to the use of particular facilities, items of equipment or materials which the University will draw to the Hirers attention when they book and/or take control of the same. Hirers are responsible for undertaking their own risk assessments for their activities.

**16.2.** The Hirer is responsible for the effective supervision of the arrangements and activities in the premises during the period of hire. The University will not be responsible for any claims which may arise as a result of negligence on the part of the Hirer or their supervisors. Hirers are required to prevent disorderly behaviour so as to ensure that no nuisance or annoyance arises to other hirers, to the occupiers of adjoining premises or neighbouring residents and shall behave reasonably at all times.

**16.3.** The University's fire, emergency and evacuation procedures shall be discussed with the Hirer and it is the Hirer's responsibility to ensure that the whole party are aware of procedures. The Hirer shall be required to take any precautions necessary to ensure the safety of those attending the period of hire, including ensuring the means of escape from fire are not blocked or impeded. In the event of a fire, the Hirer should follow directions on the fire evacuation notice found in each room i.e. activate your nearest alarm, call the fire brigade on 999, evacuate all your party to a safe place, assemble and check your register and await the fire brigade. Immediately thereafter you should contact the designated contact(s), confirmed upon booking.

**16.4.** It is the Hirer's responsibility to ensure that there is someone present who is suitably qualified to deliver first aid in the event of an emergency. It is the responsibility of the Organiser to identify the level of first aid provision required for the individual activity. The provision of the first aiders for out-of-hours activities will depend on the associated risks. The University will not provide first aiders to out of hours activities.

**16.5.** Where the requirement for first aiders is identified, they must hold the First Aid at Work Certificate and have their certificate available for inspection. In addition, the Hirer should ensure that first aiders are trained to deal with injuries that could arise from any hazards likely

to be encountered during the activity. Where identified as necessary a standard first aid kit must contain sufficient supplies. In the absence of trained first aiders, all users of the University premises must nominate an Appointed Person/s to take charge of the First Aid arrangements, including looking after the facilities and equipment and calling the emergency service when required (no training required). It should be remembered that appointed persons are not first aiders and should not attempt to give first aid for which they have not been trained. In the event of an emergency, you should telephone 999 for an ambulance and report immediately thereafter to the designated contact(s), confirmed upon booking.

**16.6.** The Hirer shall immediately inform the University of any emergency, accident or serious incident that occurs on the University premises. This shall be done in person and may require the applicant to immediately inform the designated contact(s), confirmed upon booking. All accidents to be reported the next working day by email to the University. The Hirer shall be responsible for reporting any accident that arises from activities that it organises. If an accident has occurred whilst utilizing the University's equipment and facilities inform the designated contact(s), confirmed upon booking, and do not move or touch the equipment or facilities until a University representative has examined it.

**16.7.** Hirers are responsible for carrying out their own recruitment and vetting checks for adults working with children and vulnerable adults as appropriate and must have in place appropriate policies relating to child protection (where required).

**16.8.** Hirers providing services to children, whether students or others, must have policies and procedures in place to ensure children's safety, and must provide evidence of these to the University as required, i.e. Safeguarding Policy and Use of Mobile Phone Policy, CRB/ISA checks. In any event they should comply as a minimum with the University's Safeguarding Policy and Procedures:

[https://www.falmouth.ac.uk/sites/default/files/download/safeguarding\\_policy\\_and\\_procedure\\_201516\\_final.pdf](https://www.falmouth.ac.uk/sites/default/files/download/safeguarding_policy_and_procedure_201516_final.pdf)

**16.9.** Hirers must comply with all environmental Health, General Data Protection Regulations, Human Rights, Trading and any other relevant legislation in force.

## **17 Consequences of Termination**

**17.1** Upon termination of the Contract, however caused:

**17.1.1** The University's consent to the Hirer's possession of the Equipment shall terminate and the University may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Equipment and/or Facilities and for this purpose may enter the Hirer's premises or any premises at which the Equipment is located; and

**17.1.2** without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to the University on demand:

**(a)** all hire charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to Clause 6; and

**(b)** any costs and expenses incurred by the University in recovering the Equipment and/or possession of Facilities and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

**17.2** Upon termination of the Contract pursuant to Clause 25.1, any other repudiation of the Contract by the Hirer which is accepted by the University or pursuant to clause 25.2, without prejudice to any other rights or remedies of the University, the Hirer shall pay to the University on demand a sum equal to the whole of the hire payments that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Hire Period.

**17.3** The sums payable pursuant to Clause 25.2 shall be agreed compensation for the University's loss and shall be payable in addition to the sums payable pursuant to Clause 25.1.2.

**17.4** Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## **18 Confidential Information**

**18.1** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 26.2.

**18.2** Each party may disclose the other party's confidential information:

**18.2.1** to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 26; and

**18.2.2** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**18.3** No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **19 Assignment and Other Dealings**

**19.1** The University may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over, or deal in any other manner with any of its rights and obligations under the Contract.

**19.2** The Hirer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over, or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the University.

## **20 Export**

**20.1** The Hirer must provide the University with prior notification of its intention to take the Equipment outside the United Kingdom.

**20.2** Subject to Clause 28.1, the Hirer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Equipment as are required from time to time and, if required by the University, the Hirer shall make those licences and consents available to the University prior to the relevant shipment. The Hirer shall be responsible for any delays or breaches of this Contract caused by its failure or delay in obtaining any such licences or consents.

**20.3** The University may, at its sole discretion, provide such information as the Hirer requests to assist in obtaining any licences or consents required under Clause 28.2. The University shall not be held liable for any inaccuracy or error in such information provided, nor shall any such inaccuracies or errors excuse the Hirer from its obligations or liabilities under Clause 28.2.

## **21 Data Protection**

**21.1** For the purposes of these Terms, “Data Protection Legislation” means:

**(a)** unless and until the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) is no longer directly applicable in the UK, the GDPR, the Data Protection Act 2018 and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then

**(b)** any successor legislation to the GDPR or the Data Protection Act 2018, and “**data controller**”, “**data processor**”, “**personal data**” and “**data subject**” shall each have the meanings as defined in the Data Protection Legislation.

**21.2** Where the University is acting as a data controller when performing its obligations under the Contract, it will only process any personal data as set out in its Privacy Policy (<https://www.falmouth.ac.uk/data-privacy>) as such document may be amended from time to time in its sole discretion.

**21.3** If the University processes any personal data on the Hirer’s behalf when performing its obligations under the Contract, the Hirer acknowledges that the Hirer will be the data controller and the University will be the data processor for the purposes of the Data Protection Legislation. The University may process personal data on the Hirer’s behalf including names and email addresses in order to fulfil its obligations under the Contract. The University will only process such personal data for as long as is necessary to comply with its obligations under the Contract.

**21.4** Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 29 is in addition to, and does not relieve, remove or replace, a party’s obligations under the Data Protection Legislation.

**21.5** Without prejudice to the generality of Clause 29.4, the Hirer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the personal data to the University for the duration and purposes of the Contract.

**21.6** Without prejudice to the generality of Clause 29.4, the University shall, in relation to any personal data processed in connection with the performance by the University of its obligations under the Contract:

**21.6.1** process that personal data only on the Hirer's written instructions unless the University is required by the laws of any member of the European Union or by the laws of the European Union applicable to The University to process personal data ("Applicable Laws"). Where the University is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, The University shall notify the Hirer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit The University from so notifying the Hirer;

**21.6.2** 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;

**21.6.3** ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

**21.6.4** assist the Hirer, at the Hirer'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;

**21.6.5** notify the Hirer without undue delay on becoming aware of a personal data breach;

**21.6.6** at the Hirer's written direction, delete or return personal data and copies thereof to the Hirer on termination of the Contract unless required by Applicable Law to store the personal data; and

**21.6.7** maintain complete and accurate records and information to demonstrate its compliance with this Clause 29.

**21.7** The Hirer consents to the University appointing third-party processors of personal data under the Contract, provided that the University notifies the Hirer of the identity of any such third-party processors prior to their appointment and provided that the University informs the Hirer of any intended changes concerning the addition or replacement of any such third-party processors. The University confirms that it has entered or (as the case may be) will enter with any third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause. As between the Hirer and the University, the University shall remain fully liable for all acts or omissions of any third-party processor appointed by the University.

**21.8** The Hirer consents to the University transferring personal data outside of the European Economic Area for the purposes of the Contract.



**21.9** The University may at any time revise this Clause 29 by replacing it with any applicable controller-to-processor standard clauses or similar terms forming part of an applicable certification scheme.

**21.10** The Hirer shall defend, indemnify and hold the University harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Hirer's failure to comply with this Clause 29.

**22. Force Majeure Event:**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for twelve weeks, the party not affected may terminate this agreement by giving seven days' written notice to the affected party.

**23. General**

**23.1** Notices under these terms shall be in writing addressed to the other parties at their registered office or principal place of business. Notices shall be delivered by hand or by pre-paid first-class post or other next working day delivery service or sent by email to the address notified in writing to the other party. Any notice or communication shall be deemed to have been received:

**23.1.1** if delivered by hand, on signature of a delivery receipt;

**23.1.2** if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

**23.1.3** if sent by email, at the time of transmission, or if this time falls outside of a Business Day or after 5.00 pm on a Business Day, at 9.00 am on the next Business Day after transmission.

**23.2** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall include email.

**23.3** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

**23.4** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other

party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**23.5** Unless it expressly states otherwise, this Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. The rights of the parties to rescind or vary this Contract are not subject to the consent of any other person.

**23.6** No waiver by the University of any breach of the contract by the Hirer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**23.7** If any provision of the contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the contract and the remainder of the provision in question shall not be affected.

**23.8** The Contract and any dispute or claim arising out of or in connection with it shall be governed by the laws of England and Wales, and the Hirer agrees to submit to the exclusive jurisdiction of the English courts.