

## Standard terms and conditions for the supply of services

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

<b>Applicable Laws</b>	all applicable laws, statutes, regulations from time to time in force in England and Wales.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Business Hours</b>	the period from 9.00 am to 5.00 pm on any Business Day.
<b>Change of Control</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010.
<b>Charges</b>	the charges payable by the University for the supply of the Services in accordance with clause 6 (Charges and payment).
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 13.8.
<b>Confidential Information</b>	shall mean the existence and terms of this Contract, and all other information and trade secrets relating to the University's business or students which come into the possession of, or are otherwise made available to, the Supplier pursuant to this Contract, whether orally, or in documentary, electronic or other form, including all (if any) such information held by the Supplier as of the commencement of this Contract.
<b>Contract</b>	the contract between the University and the Supplier for the supply of Services in accordance with these Conditions.

**Contract Start Date**

has the meaning given in clause 2.3.

**Deliverables**

all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**EIR**

the Environmental Information Regulations 2004.

**FOIA**

the Freedom of Information Act 2000.

**Intellectual Property Rights**

patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order**

the University's order for the Services, as set out in the University's purchase order form or other written acceptance of the Supplier's quotation for the supply of the Goods to the University, as the case may be.

<b>Services</b>	the services, including any Deliverables, to be provided by the Supplier under the Contract, as set out in the Specification.
<b>Specification</b>	the description or specification setting out the scope of the Services agreed in writing by the University and the Supplier.
<b>Supplier</b>	the company or entity from whom the University purchases the Services set out in the Order.
<b>University</b>	means the University of Newcastle Upon Tyne trading as Newcastle University as set out in the Order.
<b>University Materials</b>	all materials, equipment and tools, drawings, specifications and data supplied by the University to the Supplier.
<b>University Policies</b>	the University's mandatory policies as amended by notification to the Supplier from time to time.

## 1.2 Interpretation:

1.2.1 A reference to legislation or a legislative provision:

1.2.1.1 is a reference to it as amended, extended or re-enacted from time to time; and

1.2.1.2 will include all subordinate legislation made from time to time under that legislation or legislative provision.

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

1.2.3 A reference to **writing** or **written** excludes fax but not email.

## 2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

- 2.2 The Order constitutes an offer by the University to purchase Services in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
- 2.3.1 the Supplier issuing written acceptance of the Order; or
  - 2.3.2 any act by the Supplier consistent with fulfilling the Order,
- at which point and on which date the Contract shall come into existence (**Contract Start Date**).
- 2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.
3. **Supply of Services**
- 3.1 The Supplier shall from the Contract Start Date and for the duration of the Contract (set out in the Order) provide the Services to the University in accordance with the terms of the Contract.
- 3.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the University notifies to the Supplier.
- 3.3 In providing the Services, the Supplier shall:
- 3.3.1 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 3.3.2 comply with all lawful and reasonable directions of the University relating to its supply of the Services and performance of the Services (including the University Policies); and
  - 3.3.3 provide all equipment, tools and vehicles and such other items as are required to provide the Services; and
  - 3.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that the University expressly or impliedly makes known to the Supplier.

3.4 The Supplier shall notify the University in writing immediately upon the occurrence of a Change in Control of the Supplier.

4. **University remedies**

4.1 If the Supplier fails to perform the Services by the applicable dates, the University shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

4.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

4.1.2 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

4.1.3 to recover from the Supplier any costs incurred by the University in obtaining substitute services from a third party;

4.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and

4.1.5 to claim damages for any additional costs, loss or expenses incurred by the University which are in any way attributable to the Supplier's failure to meet such dates.

4.2 If the Supplier has supplied Services that do not comply with the requirements of clause 3.3.4 then, without limiting or affecting other rights or remedies available to it, the University shall have one or more of the following rights:

4.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

4.2.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;

4.2.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);

4.2.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

4.2.5 to recover from the Supplier any expenditure incurred by the University in obtaining substitute services or deliverables from a third party; and

4.2.6 to claim damages for any additional costs, loss or expenses incurred by the University arising from the Supplier's failure to comply with clause 3.3.4.

4.3 These Conditions shall extend to any substituted or remedial services provided by the Supplier.

4.4 The University's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## 5. **University's obligations**

The University will provide the Supplier with reasonable access at reasonable times to the University's premises for the purpose of providing the Services.

## 6. **Charges and payment**

6.1 In consideration for the provision of the Services, the University shall pay the Supplier the Charges in accordance with this clause 6

6.2 All amounts payable by the University exclude amounts in respect of value added tax (VAT) which the University shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

6.3 The Supplier will invoice the University on or at any time on completion of the Services as specified in the Order plus VAT at the prevailing rate (if applicable). The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the University's order number (if applicable), the Supplier's VAT registration number (if applicable) any supporting documents that the University may reasonably require.

6.4 The University shall pay each correctly rendered invoice which is properly due and submitted by the Supplier within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

6.5 All amounts payable by the University under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the University, the University shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 6.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services and shall allow the University to inspect such records at all reasonable times on request.
- 6.7 If the University fails to make any payment due to the Supplier under the Contract by the due date for payment, then the University will pay interest on the overdue sum from the due date until payment of the over-due sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%.
- 6.8 The University may at any time, without notice to the Supplier, set off any liability of the Supplier to the University against any liability of the University to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the University may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the University of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## 7. **Intellectual property rights**

- 7.1 The Supplier and its licensors shall retain ownership of all Intellectual Property Rights or arising out of or in connection with the Services (other than Intellectual Property Rights in any University Materials). The University and its licensors shall retain ownership of all Intellectual Property Rights in the University Materials.
- 7.2 The Supplier grants to the University, or shall procure the direct grant to the University of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual, irrevocable licence, together with a right to grant sub-licences, to copy and modify the Deliverables (excluding University Materials) for the purpose of receiving and using the Services and the Deliverables.
- 7.3 The University grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the University to the Supplier for the term of the Contract for the purpose of providing the Services to the University.

**8. Indemnity**

8.1 The Supplier shall indemnify the University against all liabilities, costs, expenses, damages and losses suffered or incurred by the University arising out of or in connection with any claim brought against the University for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services and the Deliverables by the University and its licensees and sub-licensees.

8.2 This clause 8 shall survive termination of the Contract.

**9. Insurance**

9.1 During the term of the Contract, the Supplier shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent person in connection with the risks associated with the Contract.

9.2 The Supplier will produce to the University on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

**10. Limitation of liability**

10.1 References to liability in this clause 10 include every kind of liability arising under or in connection with this Contract including but not limited to liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise.

10.2 Nothing in the Contract limits liability for:

10.2.1 death or personal injury caused by negligence;

10.2.2 fraud or fraudulent misrepresentation;

10.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

10.2.4 defective products under the Consumer Protection Act 1987; and

10.2.5 any other liability which by law cannot be limited.

10.3 Subject to clause 10.2:

10.3.1 the Supplier's total liability to the University for all loss or damage howsoever arising in connection with the Order will not exceed one hundred and fifty percent (150%) of Charges for any one event or series of connected events; and



- 10.3.2 the University's total liability to the Supplier for all loss or damage howsoever arising under or in connection with the Order shall not exceed the sums actually paid to the Supplier for the Services under the Order.
- 10.4 Subject to clause 10.2 neither party shall in any circumstances be liable for any special, indirect or consequential loss arising under or in connection with the Framework Agreement.
- 10.5 This clause 10 shall survive termination of the Contract.
11. **Compliance with relevant laws and policies**
- 11.1 In performing its obligations under the Contract, the Supplier shall:
- 11.1.1 comply with all applicable laws, statutes, regulations from time to time in force; and
- 11.1.2 comply with the University Policies.
- 11.2 Breach of clause 11.1 shall constitute an irremediable material breach of the Contract.
12. **Termination**
- 12.1 Without affecting any other right or remedy available to it, the University may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Supplier if:
- 12.1.1 there is a Change of Control of the Supplier;
- 12.1.2 the Supplier's financial position deteriorates to such an extent that in the University's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- 12.1.3 the Supplier is in breach of its compliance obligations under clause 9, clause 11, clause 13.2 or clause 13.5; or
- 12.1.4 the University reasonably believes that a termination ground in in any Applicable Laws relating to the procurement of supplies, services and works applies.
- 12.2 Without limiting or affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.2.1 the other party commits a material breach of any term of this Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

- 12.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 12.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 12.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.3 On termination or expiry of the Contract for whatever reason:
- 12.3.1 the Supplier shall immediately deliver to the University all Deliverables whether or not then complete, and return all University Materials. If the Supplier fails to do so, then the University may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and
  - 12.3.2 any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 12.4 Termination or expiry of the Contract shall not affect any of the 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 Contract which existed at or before the date of termination or expiry.
- 12.5 Where the Contract has been entered into pursuant to a framework or other master or long-term supply agreement between the parties, this Contract may be terminated in

accordance with any provision as to its termination set out in any such framework agreement or other master or long-term supply agreement.

### **13. General**

**13.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving 7 days written notice to the other party.

### **13.2 Equal Opportunities and the Equality Act 2010**

**13.2.1** The University is committed to a comprehensive policy of equal opportunities and to meeting its responsibilities under the Equality Act 2010 (the 'EA') and the Code of Practice on Racial Equality in Employment 2005.

**13.2.2** The Supplier shall in performing the Contract comply with the provisions of section 149 of the EA as if the Supplier were a body within the meaning of Schedule 19 of the EA.

**13.2.3** The Supplier shall comply with the provisions of section 41 of the EA in all dealings with sub-contractors.

**13.2.4** The Supplier shall comply with all of its legal obligations regarding the prevention of discrimination, victimisation or harassment because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, and the promotion of equality.

**13.2.5** The Supplier shall, when required, answer queries raised by the University on matters referred to in this clause 13.2 and breach of statutory obligations will entitle the University to immediately terminate the Contract.

**13.2.6** The Supplier shall establish, maintain and enforce its own policies and procedures, to ensure compliance with the requirements of the EA.

**13.2.7** The Supplier shall establish, maintain and enforce its own policies and procedures, to ensure compliance with the requirements of the EA.

### **13.3 Assignment and other dealings.**

13.3.1 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 this Contract.

13.3.2 The Supplier may not at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under this Contract without the prior written consent of the University.

#### 13.4 **Audit**

13.4.1 The Supplier shall allow the University (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify that the Charges and any other sums charged to the University under this Contract are accurate.

13.4.2 Subject to the Supplier's confidentiality obligations, the Supplier shall provide the University (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.

13.4.3 The University shall provide at least 5 Business Days' notice of its intention to conduct an audit and any audit shall be conducted during Business Hours.

13.4.4 The University and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

#### 13.5 **Corrupt Gifts**

13.5.1 The Supplier shall, and shall procure that their employees, officer, agents, sub-contractors, or anyone else acting on their behalf shall:

13.5.1.1 not commit any act or omission which causes or could cause it or the University to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;

13.5.1.2 not, offer or give, or agree to give either directly or indirectly, to any employee or representative of the University, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to

the obtaining or execution of this or any other contract with the University, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such other contract;

13.5.1.3 keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with the Contract and the steps it takes to comply with this clause 13.5.1, and permit the University to inspect those records as reasonably required;

13.5.1.4 promptly notify the University of:

13.5.1.4.1 any request or demand for any financial or other advantage received by it; and

13.5.1.4.2 any financial or other advantage it gives or intends to give whether directly or indirectly in connection with the Contract; and

13.5.1.5 promptly notify the University of any breach of this clause 13.5.1.

13.5.2 The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

13.5.3 The University may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of this clause 13.5.

## 13.6 **Confidentiality and Freedom of Information.**

13.6.1 The party will, subject to clauses 13.6.2 and 13.6.3:

13.6.1.1 keep all Confidential Information secret, safe and secure;

13.6.1.2 not use or disclose the Confidential Information except for the purposes of performing its obligations under this Contract.

13.6.2 The provisions of clause 13.6.1 shall not apply to Confidential Information to the extent that it is or was:

13.6.2.1 already in the possession of the Supplier free of any duty of confidentiality on the date of its disclosure;

13.6.2.2 in the public domain other than as a result of a breach of clause 13.6.1;  
or

13.6.2.3 required to be disclosed by regulatory or legal requirement.

13.6.3 Notwithstanding the provisions of clauses 13.6.1 and 13.6.2 the University is committed to meeting its responsibilities under the FOIA and EIR and the Supplier acknowledges that the University is subject to the requirements of the FOIA and EIR and shall assist and cooperate with the University (at no expense to the University) to enable the University to comply with the University's responsibilities under the FOIA and EIR.

13.7 **Entire agreement.** The 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.

13.8 **Variation.** No variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the University.

13.9 **Waiver.**

13.9.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

13.9.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.10 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 13.10 the parties shall negotiate in good faith to agree a replacement

provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**13.11 Notices.**

13.11.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

13.11.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

13.11.1.2 sent by email to:

13.11.1.2.1 the email address for the Supplier set out in the Order; and

13.11.1.2.2 the email address for the University set out in the Order.

13.11.2 Any notice shall be deemed to have been received:

13.11.2.1 if delivered by hand, at the time the notice is left at the proper address;

13.11.2.2 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

13.11.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when Business Hours resume.

13.11.3 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.

**13.12 Third party rights.** 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.

**13.13 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

**13.14 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.