

NEWCASTLE UNIVERSITY

GENERAL CONDITIONS OF CONTRACT FOR PROFESSIONAL SERVICES 2010

1. DEFINITIONS

“Confidential Information” shall mean in relation to the University, the fact of and the terms of the Contract, and all other information and trade secrets relating to that University’s business or students which come into the possession of the Consultant pursuant to this Contract, whether orally, or in documentary, electronic or other form, including all (if any) such information held by the Consultant as of the commencement of the Contract.

The “Consultant” shall mean the company, firm or person to whom the Purchase Order is issued and with whom Newcastle University has contracted to provide the Services and where the context so permits his legal successors in title, servants, agents, sub-contractors and permitted assigns.

The “Contract” shall mean these Conditions, the Purchase Order, Newcastle University’s enquiry documentation, the Consultant’s tender (where agreed by the University) and any other document which Newcastle University and the Consultant have expressly agreed in writing shall be incorporated into the Contract.

The “Contract Price” shall mean the amount payable for the Services calculated by reference to the rates and/or fixed prices set out in the Contract as applicable.

The “FOIA” shall mean the Freedom of Information Act 2000 and any subordinate legislation (as defined under the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such act and regulations and (where applicable) the Environmental Information Regulations 2004;

An “Insolvency Event” means each and any of the following in relation to the Consultant:-

- (a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Consultant (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Consultant or any of its assets; (iii) the enforcement of any security over any assets of Consultant; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of the Consultant;
- (b) the Consultant is unable to pay its debts as they fall due or is insolvent; or
- (c) the Consultant enters into a composition or arrangement with its creditors or any class of them.

The “Intellectual Property Rights” shall mean any and all patents, trade marks, business names, copyright, moral rights, database rights, rights in designs, rights in inventions, and any and all other intellectual property rights, whether or not registered or capable of registration and whether subsisting anywhere in the world and including all applications and rights to apply for any of them together with all or any associated goodwill;

The “Purchase Order” shall mean the document to which these Conditions are annexed setting out the University’s requirements for the Contract.

The “Services” shall mean the professional services which the Consultant has agreed to provide to the University as set out in the Purchase Order.

“University” shall mean The University of Newcastle upon Tyne trading as Newcastle University.

2. PRECEDENCE OF DOCUMENTS

2.1 In the event of any conflict between these Conditions and any other Contract documents, these Conditions shall apply to the extent of the conflict or inconsistency.

2.2 The Contract constitutes the entire agreement between the parties relating to its subject matter. The Contract supersedes and cancels any and all prior understandings, commitments, negotiations, representations or agreements whatsoever oral or written express or implied between the parties and its or his respective predecessors relating to the subject matter hereof except that this clause 2.2 does not affect the liability of either party for fraudulent misrepresentation.

2.3 An amendment to the Contract is ineffective unless it is in writing, expressly purports to amend the Contract and is executed by both parties.

2.4 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the University or subject to which the Purchase Order is accepted or purported to be accepted by the Consultant.

3. ASSIGNMENT AND SUB-LETTING

The Consultant shall not, without the prior written consent of the University, assign, pledge, transfer, charge, dispose of or deal in any other manner with the Contract or the benefits or obligations thereof or any part thereof or sub-contract the whole or any part of the Contract. Any sub-contracting shall not relieve the Consultant of his obligations under the Contract.

4. CONSULTANT’S OBLIGATIONS

4.1 The Consultant shall carry out and complete the Services to the reasonable satisfaction of the University and in any case in accordance with the terms of the Contract using the degree of skill, care, diligence, prudence and foresight which would be reasonably and ordinarily expected of a highly skilled and experienced person having experience in the provision of services of a similar type and nature to the Services.

4.2 The Consultant shall complete the Services by the date and in accordance with any programme specified in the Contract. The Consultant acknowledges that time is of the essence in respect of the provision of the Services.

4.3 The Consultant shall provide the Services in accordance with:-

- a) University policies provided to or made available to the Consultant; and
 - b) all legislation, rules and regulations of any kind applicable to the Services or the Consultant.
- 4.4 The Consultant shall provide to the University all reports that the University reasonably requires in relation to the Services and more specifically all reports relating to the use, performance, administration or management of the Services, fraud, breaches of security and any other matter in which the University considers reasonable.
5. PAYMENT
- 5.1 Subject to the supply of the Services in accordance with the Contract, the University shall pay to the Consultant the Contract Price in the manner and at the times set out in the Contract.
- 5.2 Invoices shall be in such form and accompanied by such information as the University may reasonably require in order to verify the Consultant's entitlement to payment.
- 5.3 The University shall pay to the Consultant within 30 days from the date of receipt of each undisputed correctly and properly submitted invoice the amount shown as due thereon. The invoice must be sent to the address provided on the Purchase Order and must quote the full Purchase Order number.
- 5.4 Where the University disputes an invoice, the University is entitled to withhold the whole or part of the invoice to the extent of the amount in dispute, and shall pay the balance (if any) that is undisputed; the University shall promptly notify the Consultant of its reasons for withholding any amount under this clause 5.4.
- 5.5 The Consultant is not discharged from performance of its obligations under the Contract by reason only that some or all of the Contract Price is withheld under clause 5.4.
- 5.6 If any payment under the Contract is overdue interest at the rate of [5%] above the base rate from time to time of Barclays Bank Plc shall accrue on the unpaid amount from the date that that payment becomes due until the date of payment.
- 5.7 The provisions of clause 5.6 provide a substantial contractual remedy for late payment of a debt under the Contract, and are fair and reasonable, because:-
- (a) the interest rate is greater than the interest rate available to the Consultant in respect of cash on deposit which is immediately available; and
 - (b) the other provisions of the Contract reflect, and take into account, the overall relationship between the parties, and so it would be inappropriate for a higher interest rate to apply.
- 5.8 The provisions of clause 5.6 are in lieu of statutory interest, which shall not accrue accordingly.

- 5.9 The University may set off against the Contract Price any sums owed to it by the Consultant, in connection with the Contract or any other agreement entered into by the parties.
- 5.10 The Contract Price is deemed to exclude VAT.
- 5.11 To the extent that VAT is properly chargeable on the supply to the University of the Services provided by the Consultant under the Contract, the University shall pay such VAT in addition to payments otherwise due, upon receipt of a valid VAT invoice.

6. RECORDS AND AUDIT

In support of sums claimed, the Consultant shall keep detailed records of the time expended and expenditure incurred in carrying out the Services and shall on request permit the duly authorised representatives of the University reasonable access to such records, supporting documentation and information to verify invoices submitted by the Consultant. This obligation shall continue for a period of 2 years after the expiry or termination of the Services.

7. OWNERSHIP OF DOCUMENTS AND DESIGNS

- 7.1 The Consultant hereby assigns to the University free from all charges and other encumbrances all right, title and interest in and to the Intellectual Property Rights, subsisting in or relating to the information, reports, specification, software, drawing and other results of the Services (“the Deliverables”), together with all rights of action arising or accrued in relation to those Intellectual Property Rights, including the right to take proceedings and to seek and recover damages, the right to obtain delivery-up of all infringing copies and all other remedies for past infringement.
- 7.2 The Consultant shall clearly identify any inventions, works or materials over which the Consultant or any third party has pre-existing Intellectual Property Rights which are proposed to be included in the Deliverables and in such cases the Consultant shall not include those inventions, works or materials in the Deliverables without the prior written consent of the University. The Consultant shall grant or use his best endeavours to obtain the grant of an irrevocable royalty free, perpetual, transferable non-exclusive licence to the University to use such pre-existing Intellectual Property Rights as shall be necessary for the use of the Deliverables.
- 7.3 The Consultant hereby waives and shall procure that any relevant third party shall waive (to the extent that such rights may be waived) all moral rights which now or in the future may subsist anywhere in the world in the Deliverables.
- 7.4 The Consultant represents, warrants and undertakes that neither the Deliverables nor the provision or receipt of the Services shall infringe any third party Intellectual Property Rights.

8. CONFIDENTIALITY AND FREEDOM OF INFORMATION ACT (2000)

- 8.1 Except to the extent required by law the Consultant shall not disclose to another party the existence of the Contract or the Contract Price or any other terms and conditions of the Contract.
- 8.2 The Consultant undertakes to the University in relation to any Confidential Information:-

- (a) to keep confidential all Confidential Information;
- (b) not to disclose Confidential Information without the other's prior written consent to any other person except those of its employees who have a need to know the Confidential Information;
- (c) not to use Confidential Information except for the purposes of performing its obligations under the Contract (and in particular not use Confidential Information to obtain a commercial, trading or any other advantage); and
- (d) to keep separate from all other information all Confidential Information in its possession or control.

8.3 The provisions of clause 8.2 shall not apply to Confidential Information to the extent that it is or was:

- (a) already in the possession of the other free of any duty of confidentiality on the date of its disclosure;
- (b) in the public domain other than as a result of a breach of clause 8.2;
- (c) required to be disclosed:-
 - i. pursuant to applicable law or regulation or requirement of a competent authority, or the rules of any recognised exchange on which the securities of a party are or are to be listed; or
 - ii. in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,

but only to the extent and for the purpose of that disclosure

8.4 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of clauses 8.2 and accordingly the University will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of clause 8.2.

8.5 Notwithstanding the provisions of clauses 8.1 to 8.4 the University is committed to meeting its responsibilities under the FOIA and the Consultant acknowledges that the University is subject to the requirements of the FOIA and shall assist and cooperate with the University (at no expense to the University) to enable the University to comply with these disclosure requirements.

8.6 Accordingly, all information submitted to the University may need to be disclosed and/or published. If you consider that any of the information held in connection with this Contract would give rise to an actionable breach of confidence and/or would prejudice your commercial interests, and/or constitute trade secrets ("Commercially Sensitive Information") please identify it and explain (in broad terms) what harm might result from the disclosure and/or publication.

8.7 The Consultant shall procure that its employees, and agents shall:

- (a) transfer any request for information within the meaning of the FOIA ("Request") received by the Consultant to the University as soon as

practicable after receipt and in any event within 2 working days of receiving a Request;

- (b) provide the University with a copy of all information within the meaning of S84 of FOIA in its possession or power in the form that the University requires as soon as is practicable and in any event within 5 working days (or such other period as the University acting reasonably may specify) of the University requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the University to enable the University to respond to a Request within the time for compliance set out in section 10 of the FOIA.

8.8 The University shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:

- a) is exempt from disclosure in accordance with the provisions of the FOIA, and
- b) is to be disclosed in response to a Request and in no circumstances shall the Consultant respond directly to a Request unless expressly authorised by the University.

8.9 You acknowledge that the University may, acting in accordance with the Code of Practice in the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "FOIA Code") be obliged under the FOIA to disclose information:-

- a) without consulting the Consultant, or
- b) following consultation with the Consultant and having taken its views into account.

provided always that where clause 8.9 (a) above applies, the University shall in accordance with the recommendations of the FOIA Code, draw this to the attention of the Consultant prior to any disclosure.

8.10 The Consultant shall ensure that all information produced in the course of or relating to the Contract is retained for disclosure.

9. DATA PROTECTION

9.1 The Consultant shall ensure that it complies with the provisions and obligations imposed on it by any applicable legislation relating to data protection, including the Data Protection Act 1998 and any legislation and/or regulations implementing or made under or pursuant to that Act or Directives 95/46/EC and 2002/58 of the European Parliament (all referred to as "Data Protection Legislation") and shall not perform its obligations under the Contract in such a way as to cause the University to breach any of its applicable obligations under the Data Protection Legislation.

9.2 The University (as between the University and the Consultant) shall determine the purpose for which and the manner in which all personal data made available by or on behalf of the University to the Consultant for the purposes of the Contract, obtained by the Consultant during the course of the Services, or generated in the course of providing the Services ("Relevant Personal Data") shall be processed by the Consultant whilst performing the Services.

- 9.3 The Consultant shall process Relevant Personal Data in accordance with instruction from the University, and all processing accordance with the Contract shall be deemed to be pursuant to those instructions.
- 9.4 The Consultant shall establish and maintain all reasonable technical and organisational measures against unauthorised or unlawful processing of the Relevant Personal Data and against accidental loss or destruction of, or damage to, the Relevant Personal Data (any such event being a “Data Protection Event”).
- 9.5 The measures to be adopted under clause 9.4 shall ensure a level of security appropriate to the harm that might result from a Data Protection Event and the nature of the Relevant Personal Data, having regard to the state of technological development and the cost of implementing the measures.
- 9.6 The Consultant shall take reasonable steps to ensure the reliability of its representatives and personnel who have access to the Relevant Personal Data and inform them of the need to avoid Data Protection Events.
- 9.7 The Consultant shall promptly, and in any event no later than reasonably required in order to enable the University to fulfil its duties under Data Protection Legislation relating to data protection:
- (a) pass on any enquiries or communications (including subject access requests) from individuals relating to their Relevant Personal Data or its processing; and
 - (b) shall provide such information as may be required for the purpose of responding to any such individual or otherwise to comply with duties under data protection laws or regulations.
- 9.8 The Consultant shall fully indemnify the University, its servants or agents against the costs of dealing with any claims made in respect of information subject to the Data Protection Legislation, if such claims would not have arisen but for some act, omission or negligence on the part of the Consultant, his sub-contractors, agents or staff.

10. LIABILITY AND INDEMNITY

- 10.1 The Consultant shall indemnify and keep indemnified the University in full on an after tax basis in respect of all damage or injury to any person or to any property and against all actions, suits, claims, demands, costs, losses, (whether direct or indirect and including loss of profits) damages (including special and consequential damages) and expenses (including legal expenses) suffered or incurred by the University to the extent that the same has been caused by:-
- a) any default or breach of Contract by the Consultant or any sub-contractor, agent or any other person engaged by the consultant;
 - b) any negligence of the Consultant;
 - c) any claim made against the University in respect of any breach or alleged breach by the University of any statutory provision, regulation or bylaws arising from the acts or omissions of the Consultant or its employees, agents or sub-contractors;

- d) any claim, allegation, action, dispute or proceedings that the Deliverables, or the provision or receipt of the Services infringe the Intellectual Property Rights of any third party; or
 - e) any defective design (other than design furnished by the University for which the Consultant has disclaimed responsibility).
- 10.2 In respect of claims arising out of loss or damage to the University's tangible property the limit of the Consultant's liability for each and every claim shall be one million pounds Sterling.
11. INSURANCE
- 11.1 The Consultant (but without limiting his obligations and responsibilities under clause 10), shall maintain insurance cover with a reputable insurer against its liabilities under the Contract.
- 11.2 In addition to the obligations in clause 11.1, the Consultant shall take out and maintain:-
- a) professional indemnity insurance to a level of at least one million pounds Sterling and shall maintain such insurance for a period of 6 years after completion of the Service; and
 - b) employers liability insurance not less than £10,000,000 for each and every incident.
- 11.3 The Consultant shall whenever required produce evidence satisfactory to the University that the policies required by clause 11 are in force.
- 11.4 If the Consultant is in breach of any of clauses 11.1 to 11.3 the University may itself insure against any risk with respect to which the default shall have occurred, and may deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any monies due or to become due to the Consultant under the Contract or recover them from the Consultant as a debt.
12. WORK ON SITE/SAFETY
- 12.1 The Consultant whilst on the University's premises shall conform in all respects with the statutory requirements in force relating to safety and all reasonable and proper direction issued by the University, the University of Newcastle upon Tyne Code Of Safety Practice For Contractors Working For Academic Departments, and in particular such matters as concern the safety, health and welfare of persons working on said premises.
- 12.2 The University may acting reasonably, refuse to admit, or order the removal of the Consultant, its employees or sub-contractor whose behaviour or conduct renders that person unfit to be on the University's premises such removals or refusal shall not relieve the Consultant of its duties under the Contract.
13. STATUS

- 13.1 It is hereby declared and it is the intention of the parties that if the Consultant is a private person he shall have the status of an independent contractor and is not an employee of the University.
- 13.2 The Consultant is responsible for all payments due to third parties in respect of any sub-contracts, agents or employees of the Consultant, including (where appropriate) payment of salary, benefits and expenses, and remittance to the appropriate authorities of all required income tax and national insurance contributions.
- 13.3 The Consultant shall indemnify the University in respect of any claims that may be made by the relevant authorities against the University in respect of income tax (whether under PAYE or otherwise) or National Insurance, including any connected interest, penalties or any similar contributions relating to the Services.

14. TERMINATION

- 14.1 The University may terminate the appointment of the Consultant under the Contract immediately at any time without any liability and reserving all rights to the University if:-
- a) if the Consultant is in breach of Contract which in the case of a breach capable of remedy is not remedied by the consultant within 30 days of being notified by the University in writing
 - b) if the Consultant suffers and Insolvency Event
- 14.2 The University may terminate the appointment of the Consultant at any time by giving not less than 1 month's notice to the Consultant. and upon the expiration of the notice, the Contract.
- 14.3 Where the Contract terminates under clause 14.2 before completion of the relevant Services, the Contract Price shall be reduced by a fair and equitable amount having regard to the proportion of the Services performed in accordance with the Contract and where the revised Contract Price:
- a) exceeds the aggregate amount then paid to the Consultant, the University shall make a balancing payment of the difference; or
 - b) are less than the aggregate amount then paid to the Consultant, the Consultant shall refund the excess.
- 14.4 Termination of the Contract does not affect:-
- a) the rights or liabilities of the parties under this clause 14.4 or which have accrued on or before termination; and
 - b) the continuance in force of clauses 6, 7.4, 8, 9, 10, 11 and 20, which survive termination of the Contract.

14. FORCE MAJEURE

- 14.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances which could not have been contemplated and which are beyond the party's reasonable control. Failure of sub-contractors and strikes are not force majeure.

14.2 If any event detailed in clause 14.1 prevents, hinders or delays performance of all or any part of the obligations of a party for more than 30 days, then by notice to the Consultant the University may terminate the Contract without liability as of the date specified by the University in the notice.

15. EQUAL OPPORTUNITIES AND THE EQUALITY ACT 2010

15.1 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.

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

15.3 The Consultant shall comply with the provisions of section 41 of the EA in all dealings with sub-contractors.

15.4 All personnel employed by the Consultant for the purpose of performing the Contract shall be suitably trained, qualified and experienced, and shall fulfil their duties in a professional, ethical manner, consistent with the University's commitment to equal opportunities and the EA.

15.5 The Consultant shall accept its legal obligation to comply with legislation for 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.

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

15.7 Copies of the University's policies are available on request.

16. CORRUPT GIFTS

The Consultant shall not, and shall procure that their employees, officer, agents, subcontractors, or anyone else acting on their behalf shall 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. The attention of the Consultant is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.

17. RIGHTS OF THIRD PARTIES

For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Contract is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

18. WAIVER

A failure at any time by The University to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

19. NOTICES

All notices and communications required to be sent the Consultant or the University in this Contract shall be made in writing in English and be served by leaving it at, or by sending it by first class post or facsimile to, the address of the party specified in the Contract

20. LAW

The Contract is governed by English Law and the Consultant and the University hereby submit to the exclusive jurisdiction of the English Courts.