

## Analytical Services Standard Terms and Conditions

### 1. Definitions:

1.1. In this Agreement the following expressions shall have the following meanings:

“Agreement” means these Standard Terms and Conditions of Service and the accepted and agreed Sample Submission Form, which are hereby incorporated into this Agreement;

“Background IP” means Intellectual Property Rights, excluding any Foreground IP, controlled or owned by a party which are made available to another party in connection with the Services and which are already in existence prior to the start of the Service Period or which come into existence after the start of the Service Period but are developed independently of the Services;

“Event of Force Majeure” means any cause or circumstance beyond a party’s reasonable control, including without limitation:

- (i) any plague, epidemic, pandemic, outbreak of infectious disease or any other public health crisis, including those which result in the imposition of any governmentally advised or legislative quarantine requirement or other employee restriction;
- (ii) compliance with any law or governmental order, rule, regulation, direction, curfew or restriction including compliance with the same which arise as a result of any change in law, which shall include without limitation, any change to any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law;
- (iii) any mob violence, including any act of civil disobedience;
- (iv) any act of terrorism, sabotage or piracy; and/or
- (v) any shortage of, or inability to obtain critical material or supplies, to the extent such shortage or inability to obtain critical materials arises as a direct result of causes outside the reasonable control of the affected Party.

“Foreground IP” means any Intellectual Property Rights arising from and developed in the course of the Services by the Analyst; and

“Intellectual Property Right” means any patent, registered design, copyright, database right, design right, trade mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world.

1.2. Capitalised terms used but not defined in these Standard Terms and Conditions shall have the meanings given to them in the Sample Submission Form.

### 2. Scope of the Services

2.1. The University of Durham (the “University”) will provide the Services in accordance with the agreed Sample Submission Form.

2.2. The University shall take all reasonable steps to ensure that the Services will be performed with skill, care, and diligence in accordance with applicable professional standards, and that the Analyst will comply with all applicable health and safety standards in the provision of the Services.

### 3. Payment

3.1. The Client agrees to pay the University for the provision of the Services in accordance with the prices provided by the University.

3.2. The Client agrees to pay VAT where applicable, in addition to the agreement price.

3.3. Payment under this Agreement shall be made by the Client to the University within thirty (30) days of receipt of an invoice.

### 4. Confidentiality

4.1. All information resulting from the Services undertaken by the University shall be disclosed to the Client. The University shall take all reasonable steps to ensure that all members of staff maintain the confidentiality of information relating to the Services identified as confidential by the Client, including any information supplied by the Client.

4.2. The provisions of clause 4.1 shall not apply to any information which:

4.2.1. is publicly known at the time of disclosure to the receiving party;

4.2.2. after disclosure becomes publicly known otherwise than through a breach of this Agreement by the receiving party, its officers, employees, agents or contractors;

4.2.3. can be shown by reasonable proof by the receiving party to have reached its hands otherwise than being communicated by the other party including being known to it prior to disclosure, or having been developed by or for it wholly independently of the other party or having been obtained from a third party without any restriction on disclosure on such third party of which the recipient is aware, having made due enquiry;

4.2.4. is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by the receiving party, provided that, where practicable, the disclosing party is given reasonable advance notice of the intended disclosure and provided that the relaxation of the obligations of confidentiality shall only last for as long as necessary to comply with the relevant law, regulation or order and shall apply solely for the purpose of such compliance; or

4.2.5. is approved for release, in writing, by an authorised representative of the disclosing party.

4.3. The Client acknowledges that the University is subject to the requirements of the Freedom of Information Act 2000. The Client agrees to assist and cooperate with the University to enable the University to comply with the requirements of this law.

4.4. The confidentiality obligations set out in this clause 4 shall remain in effect for the term of this Agreement and a period of three (3) years thereafter.

4.5. The Client acknowledges that the University is required by its funders to demonstrate its impact and the Client agrees to comply with all reasonable requests made by the University to provide such information (not including the Client’s Confidential Information) as the University may reasonably require to address requirements placed on the University. Such information may include (in relation to the Services), but shall not be limited to, effects, changes or benefits to the economy, society, public policy or services, health and the environment.

## 5. Intellectual Property

5.1. All Background IP is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background IP has been derived) as of the start of the Service Period. No party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any Background IP of the other party except under the terms of this Agreement and each party acknowledges that nothing contained in this Agreement shall give it any such right, title or interest.

5.2. All Foreground IP arising from the Services, whether or not solely produced by the University shall belong absolutely to the Client, as shall the right to apply for and obtain relevant intellectual property rights and protection in relation thereto. The Client hereby grants to the University a non-exclusive, royalty-free, fully paid-up, perpetual right and licence to use the Foreground IP for the purposes of performing the Services for the Client.

## 6. Restrictions

6.1. Nothing in this Agreement shall prevent or restrict the University or its employees (including without limitation the Analyst) from providing services of any kind to any other person or becoming or continuing to be a director, employee, agent, consultant or partner of, or holding other offices or positions with, any other person or from undertaking or being engaged, concerned or interested in or continuing to undertake or be engaged, concerned or interested in (whether directly or indirectly and whether during or at any time after the expiry or termination of this Agreement) any other business.

## 7. Liability

7.1. The following sets out the entire financial liability of the University (including any liability for the acts or omissions of the Analyst, other agents or subcontractors) to the Client in respect of any breach by the University of this Agreement; non or incomplete performance or contemplated performance by the University of this Agreement; negligence for which the University is liable; and any representation or statement arising under or in connection with this Agreement or by or on behalf of the University.

7.2. The aggregate liability of the University to Client for any:

7.2.1. breach;

7.2.2. negligence; and/or

7.2.3. liability arising in any other way out of the subject matter of this Agreement or the performance of the Services;

will not exceed in total the amounts actually received by the University from Client in connection with the Services.

7.3. All warranties, conditions or other terms, whether express or implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.

7.4. The University shall in no circumstances be liable to the Client for: any loss of profits, loss of business or production, depletion of goodwill, loss of or corruption to data; and/or any indirect loss.

7.5. The University will in no event be liable for: any statement or representation about the Client, its business, products or services made or communicated in or by any item, material or work approved by the Client; and/or any liability arising from or in connection with any goods, materials, property or information of or provided or approved by the Client.

7.6. The Client will fully indemnify the University from and against any and all liabilities the University may incur arising from or in connection with: breach of this Agreement by the Client; the University or the Analyst's use or possession of any goods, materials, property or information provided by the Client; and any claim, action or proceedings by any third party in connection with the Services.

7.7. For clarity, nothing in this Agreement limits or excludes either party's liability for:

7.7.1. death or personal injury caused by such party's negligence; or

7.7.2. any fraud or for any sort of liability that, by law, cannot be limited or excluded.

7.8. The provisions of this clause 7 shall survive expiry or termination of this Agreement.

## 8. Termination

8.1. This Agreement shall commence as of commencement of the Service Period and shall continue until the end of the Service Period unless earlier terminated in accordance with this clause 8.

8.2. Without prejudice to any remedy it may have against the University for breach or non-performance of any provision of this Agreement, the Client may by written notice to the University terminate this Agreement with immediate effect if:

8.2.1. the University commits any material breach of any of the provisions of this Agreement (and, in the case of a breach capable of remedy, shall not have remedied that breach within twenty eight (28) days of receipt of a notice from the Client specifying the breach and requiring its remedy);

8.2.2. the University fails to perform the Services to standards reasonably required by the Client;

8.2.3. any order shall be made or a resolution passed for the liquidation, winding-up or dissolution of the University (otherwise than for the purpose of reconstruction or amalgamation); or

8.2.4. a receiver, manager, administrative receiver is appointed over the University or any of its assets or any person takes any step to appoint an administrator of the University.

8.3. The University may terminate this Agreement immediately by notice in writing in the event that the Client shall have committed a material breach of this Agreement which, in the case of a breach capable of remedy shall not have been remedied within twenty eight (28) days of the receipt of a notice by the University specifying the breach and requiring its remedy or if a liquidator, administrator, administrative receiver, receiver or trustee in bankruptcy is appointed over any of the property or assets of the Client.

8.4. University agrees to notify the Client promptly if at any time the Analyst is unable or unwilling to continue the performance of the Services on behalf of the University. This includes without limitation where the Analyst ceases to be employed by the University. Within sixty (60) days after such incapacity or expression of unwillingness the University shall, if reasonably able, nominate a successor to replace the Analyst. The Client will not decline unreasonably to accept the nominated successor. However, if the successor is not acceptable on reasonable and substantial grounds, or if the University has not found a suitable replacement, then this Agreement may be terminated by either Party by giving sixty (60) days' written notice to the other Party.

8.5. This Agreement may be terminated at any time by mutual agreement of both parties. Said agreement shall be made in writing and signed by both parties.

8.6. In the event of the termination of this Agreement pursuant to sub-clauses 8.2, 8.3, 8.4 or 8.5 above, the Client will only be liable to the University in respect of fees and expenses incurred for the Services provided up to the date of termination.

## 9. Law

9.1. This Agreement shall be governed by the laws of England and Wales.

## 10. Dispute

10.1. The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between senior representatives of the Parties, who have authority to settle the same. If the matter is not resolved by negotiation within THIRTY (30) days of receipt of a written 'invitation to negotiate', the dispute resolution process shall be in accordance with clause 10.2 below. For the avoidance of doubt, the Parties may mutually agree to extend the above-mentioned negotiation period.

10.2. Subject to clause 10.1 above, any dispute arising out of or in connection with this Agreement, including without limitation any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under The London Court of International Arbitration ("LCIA") Rules, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be one.

The seat, or legal place, of arbitration shall be London, England

The language to be used in the arbitral proceedings shall be English.

## 11. Force Majeure

11.1. With the exception of any obligation on the part of any party to make any payment to another party under the provisions of this Agreement, no party shall be liable to any other party or be deemed to be in breach of this Agreement, for any delay in performing, or failure to perform any obligation hereunder, where such delay or failure to perform arises as a direct result of an Event of Force Majeure.

11.2. In the event that an Event of Force Majeure occurs which prevents or causes any delay on the part of any party to perform any obligation hereunder, the affected party shall notify the other party in writing, as soon as reasonably practicable. Subject to the remainder of this clause 11.2 (and except in respect of an obligation to make payment to another party under the provisions of this Agreement), on receipt of such notification, the date(s) for performance of such obligation (and therefore the completion date if needed) shall be postponed for as long as the effects of the Event of Force Majeure prevent completion.

11.3. All Parties shall use their reasonable endeavours to minimise the effects of any Event of Force Majeure.

## 12. Relationship

12.1. University's relationship with Client is that of an independent contractor, and nothing in this Agreement is intended to, or shall be construed to, create a partnership, agency, joint venture, employment or similar relationship.

## 13. Notices

13.1. The University's representative for the purpose of receiving legal notices is:

Legal Services  
The Palatine Centre  
Durham University  
Stockton Road  
Durham  
DH1 3LE

13.2. The Client's representative for the purposes of receiving legal notices is the Client's registered business address.

## 14. Anti-Corruption Provision

14.1. The Client represents and warrants that it shall comply with all provisions of the Bribery Act 2010, and will not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.

## 15. Miscellaneous

15.1. No amendment or variation to this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties by their duly authorised representatives. Additional Services to be performed shall be agreed in advance by the University and the Client and documented in writing through the submission of a Sample Submission Form which is subsequently accepted and agreed by the University..

15.2. This Agreement contains the entire agreement between the University and the Client and supersedes all prior agreements between them relating to the subject matter of this Agreement.

15.3. Neither party will furnish, deliver, or release any information or material made available to it hereunder to any individual, entity, or destination, or for any use, except in full accordance with all applicable laws, regulations, and requirements with regard to export control and trade sanctions. Each party warrants that they shall at all times be and remain compliant with all such applicable laws, regulations, and requirements.

15.4. Without prejudice to clause 15.2 the Services shall be exclusively governed by the terms of this Agreement and the terms and conditions specified in this Agreement are hereby incorporated into any purchase order or other order document issued by the Client. Terms and conditions of any purchase order or other order document issued by the Client in connection with this Agreement shall not be binding on the University and shall not modify the terms of this Agreement.

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

15.6. Nothing in this contract confers or purports to confer on any third party any right to enforce any term of this contract.

15.7. No party shall be entitled to use the name or trade mark of the other party in any publicity, advertising, or news release without the prior written consent of such other party.