

## CONDITIONS OF PURCHASE WITH CONSTRUCTION ADDENDUM

### 1. Definitions

**“BU” “us” “our” “we”** Bournemouth University Higher Education Corporation of Poole House, Talbot Campus, Fern Barrow, Poole, Dorset BH12 5BB.

**“Conditions”** means these conditions of purchase.

**“Deliverables”** all documents, products, materials or media in any form including, drawings, maps, plans, diagrams, designs, pictures, computer programs, data, timetables, case studies, specifications, and reports which you produce and or deliver to us as part of the Services including the Goods.

**“Goods”** any goods (including any part of them) to be bought under and as set out in the Services Specification, including any supplied as part of the Services.

**“Intellectual Property Rights, IPR”** patents, trademarks, service marks, registered designs, copyrights, database rights, design rights, know how, rights in confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above.

**“Services”** the services described in the Services Specification.

**“Services Specification”** a services specification agreed by you and us to sell and buy Goods and/or for the supply of Services to us that incorporates these Conditions and any schedules referred to in the Services Specification, together these are the **“Services Agreement”**.

**“Supply Chain”** you, your sub-contractors and any further sub-contractors at any stage of the supply chain engaged wholly or partly to perform (or contribute to performing) the whole or any part of the Services Agreement, together with any employee, officer, partner or agent of you or any of them.

**“you” “your”**, our service provider as named in the Services Specification.

You and we are each a **“party”** and together we are the **“parties”**.

### 2. The Services Agreement

2.1. The Services Agreement starts on the date:

- (a) you return the signed Services Specification to us; or
- (b) you start to perform the Services and or deliver the Deliverables, whichever is earlier.

2.2. Our rights under the Services Agreement are in addition to any other rights we have and do not affect those rights.

2.3. These Conditions, the Services Specification and any schedule referred to in and attached to the Services Specification set out the entire understanding and agreement between the parties relating to the Services and the Deliverables.

2.4. The Services Agreement may only be amended by an agreement in writing signed by both parties.

2.5. If these Conditions, the Services Specification or any schedule which forms part of the Services Agreement conflict with each other, the order of precedence is:

- (a) the Services Specification;
- (b) any schedule to the Services Specification (and if more than one, in the order they are referred to) except these Conditions; and
- (c) these Conditions.

2.6. These Conditions incorporate the conditions and warranties implied by law that apply to the Services, the Deliverables and/or the Services Agreement. We do not accept any exclusion or limitation by you of any implied conditions or warranties.

### 3. Performance

3.1. You will provide the Services and the Deliverables to us as they are set out in the Services Agreement.

3.2. Time is of the essence for any time limits or deadlines for delivery of the Services and the Deliverables unless we have agreed otherwise in the Services Specification.

3.3. We may at any time cancel or postpone any part of the Services that you have not already completed or the Deliverables you have not yet delivered by giving you notice in writing. Unless we have agreed cancellation fees in the Services Specification, we will not be liable to you for any costs or losses (including consequential loss) that you incur because of our cancellation or delay.

3.4. You must tell us in writing immediately if you anticipate there will be a delay in your performance of the Services and/or supply of the Deliverables for any reason.

3.5. Each party will name a contact who will be responsible for managing the performance of the Services Agreement.

### 4. Price & Payment

4.1. The price for the Services is set out in the Services Specification. We will not be liable for any costs, charges or expenses in addition to the stated price.

4.2. Unless stated otherwise in the Services Specification, you must not invoice us until you have performed all the Services and delivered the Deliverables in full.

4.3. Your invoices must include the supporting information that we ask for, so we can check the invoice is accurate.

4.4. We must pay all undisputed amounts within 30 days after the day we receive the invoice.

4.5. You must keep complete and accurate records of the time you spend and materials you use in providing the Services and the Deliverables. If we ask you, you must allow us to inspect these records. We may only inspect these records during normal working hours and we must give you 7 days' notice.

## **5. Your Obligations**

5.1. You must:

- (a) deliver the Services and the Deliverables diligently and in accordance with the Services Specification;
- (b) deliver the Services and the Deliverables to a high professional standard and to our satisfaction; and
- (c) assign sufficient resources to enable you to comply with your obligations under this clause.

5.2. You must not sub-contract, transfer, assign, charge or dispose of any of your rights or obligations under the Services Agreement without our prior written consent.

5.3. You must take all reasonable care of our premises and facilities. You will be liable to us for all loss and damage to our premises and facilities caused by your acts or omissions.

5.4. You must at all times when carrying out the Services and providing the Deliverables:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010, and with our anti-bribery and anti-corruption policy (available at [www.bournemouth.ac.uk/about/policies/index.html](http://www.bournemouth.ac.uk/about/policies/index.html) or on request), as amended or updated by us from time to time;
- (b) when processing personal data relating to any employee, worker, customer, client, supplier or agent of BU, comply with the Data Protection Act 1998 and our data protection policy that is in force;
- (c) comply with all other relevant legal requirements that are in force when you are performing the Services and providing the Deliverables; and
- (d) comply with our relevant policies, including any policies referred to in the Services Specification.

5.5. You must comply with all reasonable instructions that we give you while you are on our property and with any relevant rules, policies and procedures that apply including, without limitation, BU's [Code of Practice on Freedom of Speech](#).

5.6. As well as any specific insurance requirements in the Services Specification, you must have valid insurance policies in place with a reputable insurance company during the period of the Services Agreement and at least 6 years after it ends. These insurance policies must cover claims, actions, proceedings, legal costs, expenses, and any other liabilities that arise:

- (a) because you or your staff or contractors have caused, directly or indirectly, death or personal injury, or loss of, or damage to property; and
- (b) out of, or incidental to, your work in delivering the Services and/or the Deliverables; and
- (c) from any negligent acts or defaults by you or any person employed or acting for you in performing the Services and/or providing the Deliverables.

5.7. If we ask, you must provide us with evidence of the insurance policies during the period of the Services Agreement and at least 6 years after it ends.

5.8. You warrant on an ongoing basis that you and each member of your Supply Chain from the date of this Services Agreement and for the duration of this Services Agreement has not committed and shall not commit any act or make any omission which would, if it took place in England, be an offence under any English law or regulation as amended from time to time.

5.9. You shall upon request promptly provide us with such information and documentation on you and each member of your Supply Chain as we may reasonably require to demonstrate the steps you and each member of your Supply Chain have taken to ensure that you and each member of your Supply Chain have not engaged in slavery or human trafficking as defined by s. 54(12) Modern Slavery Act 2015. You warrant that all such information is accurate and complete.

5.10. You warrant that the Deliverables:

- (a) are of satisfactory quality and fit for purpose (whether expressly or impliedly made known to you by us);
- (b) without prejudice to clause 5.10(a), will for 12 months from delivery (or such longer period agreed between us and you in writing) be free from defects in design, material and workmanship;
- (c) without prejudice to clause 5.10(b), comply with the Services Specification and any schedules attached; and
- (d) comply with all applicable legislation in force at the time of delivery, including for these purposes any EU Directive relevant to the Goods pending implementation in England.

5.11. The Deliverables shall be delivered, carriage, duties and levies paid by you, to our place of business or to such other place of delivery agreed by us in writing prior to delivery.

## **6. Status**

6.1. You acknowledge that you are an independent contractor and that you must pay all taxes and contributions that apply to a contractor.

6.2. This Services Agreement constitutes a contract for the provision of services and not a contract of employment. You are fully responsible for and shall indemnify BU for:

- (a) income tax or National Insurance or social security contributions in the UK or elsewhere;

- (b) any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services;
- (c) all reasonable costs, expenses and any penalty, fine or interest incurred or payable by BU in connection with any such liability, deduction, contribution, assessment or claim; and
- (d) any liability arising from any employment claim or claim based on the status of workers either in the UK or otherwise (including reasonable costs and expenses) brought against BU in connection with the provision of the Services and/or the Deliverables.

6.3. BU may choose to deduct any amounts due under this clause 6 from any other payments due to you.

6.4. You shall not:

- (a) have any authority to incur any expenditure in the name of or for the account of BU; or
- (b) hold yourself out as having authority to bind BU.

## **7. Disclosure of Information**

7.1. You must not disclose any information about the Services Agreement, the Services, the Deliverables or our business and activities, unless you have our approval in writing in advance. You do not need our consent if the information:

- (a) is already in the public domain;
- (b) is in your possession without restriction as to its disclosure; or
- (c) is received from a third party who lawfully acquired it and is under no obligation restricting its disclosure.

7.2. We may disclose information about the Services Agreement if we believe that we need to, following a valid request under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

## **8. Intellectual Property Rights**

8.1. Ownership of all IPRs in the Deliverables or arising from your performance of the Services vests in us, except as set out in clause 8.6.

8.2. You hereby assign to us, with full title guarantee, all IPRs that arise in the Deliverables or are created because of your performance of the Services.

8.3. This assignment of IPRs takes effect on the date of the Services Agreement as a present assignment of future rights and it will apply immediately that the IPR come into existence.

8.4. You hereby waive all moral rights in copyright in the Deliverables or arising from the performance of the Services Agreement. You will ensure that anyone else who has any moral rights also waives them.

8.5. You must execute any documentation that we ask for as evidence of the IPR assignment.

8.6. So we can receive the Services and use the Deliverables and the results of the Services, if you use any pre-existing IPR when performing the Services, then,

- (a) if the IPR belongs to you, you must grant us a licence; and
- (b) if the IPR belongs to a third party, you must ensure the third party grants us a licence.

8.7. The licences granted under this clause must:

- (a) allow us to use (which shall include the right to load, store, copy, publish, modify, adapt, exploit, enhance, compile, distribute, maintain, alter, extend, rebuild, redesign and translate) the relevant IPR;
- (b) be perpetual, royalty free and irrevocable; and
- (c) include the right for us to sub-license.

8.8. You must not infringe any IPR of any third party in supplying the Services and the Deliverables.

## **9. Indemnity**

You must indemnify and keep us indemnified and hold us harmless from and against all actions, claims, demands, losses, charges, damages, costs and other liabilities that we suffer or incur because of or in connection with:

- (a) any alleged or actual infringement of any third party's IPR arising out of your provision of the Services and/or the Deliverables;
- (b) any claims made against us for your income tax, national insurance or other similar contributions relating to the work that you do under the Services Agreement; and
- (c) your breach, negligent performance or delay in performance of this Services Agreement.

## **10. Ending the Services Agreement**

10.1. Unless you or we end the Services Agreement earlier under clause 10.2 or we cancel all the Services and the Deliverables under clause 3.3 or 11.4 the Services Agreement will continue until the later of:

- (a) the end date, if one is stated in the Services Specification; or
- (b) the date we have accepted all the Deliverables and all the Services set out in the Services Specification.

10.2. We may end the Services Agreement immediately and we will not be liable to you for damages if you:

- (a) commit a continuing or material breach of the Services Agreement and, if the breach can be remedied, you have not remedied it within 30 days of the date of a written notice from us that gives full details of the breach and requires it to be remedied; or
- (b) persistently fail for any reason to perform the Services or provide the Deliverables to our reasonable satisfaction; or
- (c) cannot pay your debts as they fall due, become bankrupt, have a receiver, administrator, administrative receiver or liquidator appointed, call a meeting of your creditors or cease for any other reason to carry on your business;
- (d) the Services Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015 (PCR 2015); or
- (e) you have, at the time the Services Agreement was awarded, been in one of the situations referred to in regulation 57(1) PCR 2015, including as a result of the application of regulation 57(2) PCR 2015, and should

therefore have been excluded from the procurement procedure for the Services Agreement; or

- (f) the Services Agreement should not have been awarded to you in view of a serious infringement of English law and/or the duties under the Treaty on European Union, the Treaty on the Functioning of the European Union and/or the Public Contracts Directive and which infringement has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union; or
- (g) you fail to provide us with the information required under clause 5.9 or we deem such information to be inadequate, inaccurate or incomplete;
- (h) we reasonably suspect that you or any member of your Supply Chain has committed or may commit an act or has made or may make an omission which would, if it took place in England, be an offence under any English law or regulation.

10.3. We may end the Services Agreement at any time by giving you not less than 14 days' written notice. Unless we have agreed fees for early termination in the Services Specification, we will not be liable to you for any costs or losses (including consequential loss) that you incur because of our termination.

10.4. The parties' rights and remedies that have accrued before the end date will continue in force after the Services Agreement has ended.

10.5. At the end of the Services Agreement, you must give us all documents, formulae, papers, drawings, software, data, specifications, reports, notes and materials (whether or not complete) that:

- (a) we gave you; or
- (b) you prepared; or
- (c) were prepared on your behalf,

for or during the performance of the Services and provision of the Deliverables.

10.6. Clauses 5.2, 5.6, 5.7, 6, 7, 8, 9, 10.3, 10.4, 10.5, 10.6, 12, 13, E.4 and F shall survive termination or expiry of the Services Agreement, and so shall any other provisions of the Services Agreement that by implication are intended to survive termination or expiry.

## **11. Force Majeure**

11.1. Neither party is liable to the other for any default under the Services Agreement if that default was caused directly or indirectly by, or arose out of, any event beyond its reasonable control.

11.2. The parties agree the mere shortage of labour, materials, or a utility is not force majeure unless the shortage is caused by circumstances that are themselves out of the control of the party affected.

11.3. If you or we want to claim that any default under the Services Agreement has been caused by force majeure, you or we must tell each other in writing immediately.

11.4. If any events or circumstances prevent you from carrying out your obligations under the Services Agreement for a continuous period of more than 7 days

we may terminate the Services Agreement immediately by giving you written notice.

## **12. Waiver**

12.1. If we allow you more time to complete the Services or deliver the Deliverables or do not enforce our rights under the Services Agreement immediately, those rights shall remain in force and we will not be deemed to have waived them.

12.2. If we do waive any of these rights for any breach of the Services Agreement, then we will not be deemed to have waived our rights if there is any later breach.

## **13. General**

13.1. Any notice under the Services Agreement must be sent by first class post to the address set out in the Services Specification.

- (a) If you or we change our address, we must inform each other in writing.
- (b) Any notice sent by first class post is to be deemed to have been received two working days after the date it was posted.
- (c) Notices sent by e-mail or fax are not valid notices under the Services Agreement.

13.2. The Services Agreement shall be governed by and construed in accordance with English Law. The parties agree to submit to the exclusive jurisdiction of the English Courts.

13.3. Any clauses of the Services Agreement that a court holds to be invalid or unenforceable are deemed to be severable, and severing them shall not affect the validity of the other clauses.

13.4. The Services Agreement does not create any rights that are enforceable by any person, firm or company that is not a party to it.

## **14. Construction works addendum**

Where the Services to be provided under the Services Agreement are "**Construction Operations**" as defined by s. 105 HGCRA Act 1996 (as amended by the LDEDCA Act 2009) ("**Works**"), this construction works addendum shall apply and any conflicting terms of these Conditions shall be construed in accordance with this construction works addendum.

### **A. Defects**

A.1 NOT USED.

A.2 In the event that you fail to make good defects, we shall be entitled to engage alternative persons to remedy defective Works, about which you have been notified previously. The cost of which shall be deducted from your invoice(s) or in the event that insufficient money is due to you, we shall be entitled to recover any and all costs incurred directly from you.

### **B. Payment**

B.1 You shall no more than once per calendar month submit applications for interim payment to us, together with any supporting documents that are reasonably necessary to check the application. The application and supporting documents (if any) shall specify the sum that you consider will become due on the payment due date in

respect of the payment and the basis on which that sum is calculated.

B.2 Payment shall be due on the date we receive each application.

B.3 No later than five days after payment becomes due, we shall notify you of the sum that we consider to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated.

B.4 The final date for payment shall be 30 days after the date on which payment becomes due.

B.5 Unless we have served a notice under clause B.6, we shall pay you the sum referred to in the notice under clause B.3 (or, if we have not served notice under clause B.3, the sum referred to in the application referred to in clause B.1) (in this clause the **Notified Sum**) on or before the final date for payment of each application.

B.6 Not less than seven days before the final date for payment (in this clause, the **Prescribed Period**), we may give you notice that we intend to pay less than the Notified Sum (in this clause, a **Pay Less Notice**). Any Pay Less Notice shall specify:

B.6.1 the sum that we consider to be due on the date the notice is served; and

B.6.2 the basis on which that sum is calculated.

### **C. Insurance**

C.1 NOT USED.

### **D. Health and safety**

D.1 NOT USED.

### **E. Suspension**

E.1 Without prejudice to any other rights and remedies which you may possess if we shall, subject to any notice issued pursuant to clauses B.3 or B.6, fail to pay you in full by the final date for payment as required by these Conditions and such failure shall continue for 14 days after you have given us written notice of your intention to suspend performance of your obligations under the Services Agreement and the ground or grounds on which you intended to suspend performance, then you have the right to suspend such performance of your obligations under the Services Agreement to us until such payment in full occurs.

E.2 For the avoidance of doubt, the right to suspend performance ceases upon payment in full by us of the amount due.

E.3 Without prejudice to any other rights we may have at common law if you shall:

E.3.1 suspend performance of the Works other than pursuant to clause E.1;

E.3.2 fail to proceed with the Works with due diligence or in accordance with our directions;

E.3.3 refuse to remove, repair or reinstate defective work or materials;

E.3.4 in any manner breach the Services Agreement;

E.3.5 become bankrupt or insolvent; or

E.3.6 fail to perform the Works in accordance with the dates and times included within the Services Specification or in accordance with the programme referred to within

the Services Specification then we shall provide written notice to you specifying the default. Should you not remedy the same complaint within 7 days of the date of the said written notice, we may, at our sole discretion, determine your engagement under the Services Agreement forthwith by notice.

E.4 In the event of determination of your engagement and of the Services Agreement we shall be under no further obligation to ascertain the value of the Works until 3 months after the completion of all of the Works then incomplete whereupon we shall ascertain the value of the Works performed but not paid for before the termination and the amount so ascertained in respect thereof shall become a sum determined by us as reasonable.

### **F. Adjudication**

F.1 If any dispute or difference arises under this Services Agreement either party may refer it to adjudication in accordance with Clause F.2.

F.2 The Construction Industry Council's Model Adjudication Rules as amended by the Conditions set out below will apply to any adjudication reference:

"The Adjudicator's powers to make money awards will be limited to ordering money to be paid to a Trustee Stakeholder pending final determination of the dispute by an Arbitrator or by the courts or by agreement between the parties."

F.3 To the extent that any portion of this construction works addendum shall be found not to comply with the HGCR Act 1996 (as amended by the LDEDC Act 2009), the Scheme for Construction Contracts shall apply and shall be limited to only that noncompliant portion and shall leave those other compliant portions unaffected.