

Southern Universities Management Services Standard Terms and Conditions

**Southern Universities Management Services
(trading as SUMS Consulting) ("SUMS")
("SUMS Consulting International")**

These are the SUMS Standard Terms & Conditions of business, and should be read in conjunction with the Order Form agreed between SUMS and the Client, and the applicable Contract for the service required.

The logo for SUMS Consulting, featuring the text "SUMS Consulting" in white on a blue rectangular background.

Definitions

1 SUMS Definitions and Terms

1.1 In these terms, the following definitions will apply:

"Assignment" means the specific services provided by SUMS to the Client as described in the relevant Terms of Reference.

"Charges" means the charges and expenses for an Assignment as set out in the Terms of Reference.

"Client" means you or the person, entity or organisation engaging SUMS to provide services as described above.

"Confidential Information" means all technical or commercial know how, processes, information, plans and other data or information relating to a party's business or affairs, which are marked as or stated to be confidential and any such information of a third party.

"Contract" means the Assignment, the Terms of Reference and these terms.

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

"Deliverables" mean all documents, computer software, information or materials created by SUMS as a direct result of the Assignment.

"Input Materials" mean all documents, information and materials provided by the Client in relation to the Assignment.

"IP Rights" mean all copyright, patents, rights to inventions, trademarks, trade, business and domain names, rights in designs (whether or not registered), data base rights, rights to know how and other intellectual property rights.

"Pre-existing Materials" mean all documents, computer software, information and materials provided by SUMS relating to the Assignment which existed prior to the start of the Assignment.

"Terms of Reference" means the letter from SUMS to the Client that describes the Assignment and referenced as the Terms of Reference.

1.2 In these terms, the headings are for convenience only and shall not affect interpretation. Words importing the singular include the plural and vice versa, and the neuter singular gender includes all other genders.

1.3 These terms are referred to as the SUMS terms and shall apply to the provision of services and goods under contracts into which they are expressly incorporated.

- 1.4 Once incorporated, these terms shall apply to the exclusion of all other terms and conditions including any terms which the Client may purport to apply under any purchase order, confirmation of instruction or similar document. The SUMS terms shall continue to apply to all services and goods provided by SUMS to the Client under any contract hereafter until expressly excluded in writing before any such contract is made.

2 Commencement and Duration

- 2.1 This Contract shall commence on the date it is signed by all parties and shall continue unless terminated earlier in accordance with clause 10, until either party gives the other party not less than three months' prior written notice.
- 2.2 SUMS agrees to carry out the Assignment in accordance with this Contract, from the date and for the period as specified in the Terms of Reference or until the event specified in the Terms of Reference.

3 SUMS' Obligations

- 3.1 SUMS shall use reasonable endeavours to manage and complete the Assignment, and deliver the Deliverables to the Client, in accordance with the Terms of Reference in all material respects.
- 3.2 SUMS shall use reasonable endeavours to meet any performance dates specified in the Terms of Reference, but any such dates shall be estimates only and time for performance by SUMS shall not be of the essence of this Contract.
- 3.3 SUMS shall appoint a manager in respect of the Assignment, such person as identified in the Terms of Reference. That person shall have authority to contractually bind SUMS on all matters relating to the Assignment. SUMS shall use all reasonable endeavours to ensure that the same person acts as SUMS' manager throughout the term of the Assignment, but may replace that person from time to time where reasonably necessary in the interests of the SUMS' business.

4 Client's Obligations

- 4.1 The Client shall cooperate with SUMS in the performance of the Assignment (and the delivery of any goods) and to give such support, facilities and information as may be reasonably required.
- 4.2 The Client shall provide SUMS with such Input Materials and other information as SUMS may reasonably require in a timely manner and shall ensure that it is and remains accurate in all material respects.
- 4.3 The Client shall provide SUMS, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by SUMS for the purposes of the Assignment.
- 4.4 The Client shall inform SUMS of all health and safety and security requirements that apply at the Client's premises.

5 Charges and Payment

- 5.1 In consideration for SUMS undertaking the Assignment, the Client shall pay the Charges. The due date for payment shall be 30 days from the invoice date and payment shall be made to a bank account nominated by SUMS in writing from time to time.
- 5.2 All sums due from the Client which are not paid on the due date (without prejudice to the rights of SUMS under these terms) shall bear interest from day to day at the same annual rate as is prescribed from time to time pursuant to section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (or any amendment or re-enactment) with a minimum rate of 8% per annum above base rate.
- 5.3 During any period in which payments from the Client are overdue, the obligations of SUMS under the Contract may be suspended by notice to the Client taking effect immediately.

- 5.4 The Client shall not be entitled to withhold payment of any sum otherwise payable to SUMS by reason of any claim, set-off or for damages in relation to the Contract.

6 Confidentiality

- 6.1 Each party undertakes to use its reasonable endeavours not at any time to divulge or allow to be divulged to any person any Confidential Information relating to the business or affairs of the other party other than, in the case of SUMS, to its employees or sub-contractors or such other persons where the Client has expressly or impliedly consented to the disclosure, provided that SUMS shall ensure that such parties comply with the confidentiality undertakings of this clause 6.
- 6.2 The obligation of confidentiality will not apply to information which is or comes into the public domain (other than by breach of clause 6.1) or to information which is required to be disclosed by law.
- 6.3 The obligation of confidentiality shall continue during the relevant Assignment and for a period of 12 months after the end of the relevant Assignment.

7 Delegation

- 7.1 SUMS undertakes to consult with the Client before delegating any of SUMS' obligations under the Contract.
- 7.2 SUMS shall have discretion as to which of its employees and sub-contractors are assigned to perform its services but shall consult with the Client concerning any significant changes.

8 Intellectual Property

- 8.1 In relation to the Input Materials:
- 8.1.1 The Client and its licensors shall retain ownership of all IP Rights in the Input Materials.
- 8.1.2 The Client grants to SUMS a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Input Materials for the term of the Contract for the purpose of the relevant Assignment.
- 8.2 In relation to any Pre-existing Materials and Deliverables:
- 8.2.1 SUMS and its licensors shall retain ownership of all IP Rights in any Pre-Existing Materials and any Deliverables, excluding the Input Materials.
- 8.2.2 The Client undertakes to keep Pre-existing Materials and any Deliverables provided to it by SUMS confidential to itself and its employees and not to distribute or disclose any Deliverables to any third party without SUMS' prior written consent.
- 8.2.3 SUMS grants the Client a non-exclusive licence to use the Deliverables for internal use only in connection with the purposes of the relevant Terms of Reference and such licence shall terminate immediately if notice is given by SUMS terminating the Contract.
- 8.2.4 Subject to the prior written consent of the Client, SUMS shall be free to re-utilise the Deliverables and other outputs of the Assignment for other projects or clients and such will not be regarded as the Confidential Information of the Client.
- 8.3 Each party undertakes to the other that the Input Materials, Pre-existing Materials or Deliverables, as applicable, will not, during the course of the Contract, infringe the registered IP Rights of any third party.

9 Limitation of Liability

9.1 Nothing in this Contract limits any liability which cannot legally be limited, including but not limited to:

9.1.1 death or personal injury caused by negligence;

9.1.2 fraud or fraudulent misrepresentation; or

9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, the entire liability of SUMS to the Client or to any other party or person in respect of any claim or claims which arise from services provided or goods supplied by SUMS under the Contract or breach the Contract and any liability for negligence, shall be limited in aggregate for all and any claims to the greater of twice the Charges paid by the Client to SUMS under the Contract.

9.3 Subject to clause 9.1, SUMS shall not be liable to the Client for the following types of losses which are wholly excluded:

9.3.1 Loss as result of any representation (unless fraudulent).

9.3.2 Loss as a result of any implied warranty, condition or other term, or any duty at common law or under the express terms of the Contract.

9.3.3 Loss of profits.

9.3.4 Loss or corruption of data.

9.3.5 Economic loss.

9.3.6 Lost savings.

9.3.7 The costs or expense of obtaining alternative goods or services not provided in accordance with this Contract.

9.3.8 Indirect, special or consequential loss or damage.

9.3.9 Costs or expenses or other claims for compensation whatsoever (whether caused by the negligence of SUMS, its employees, agents or otherwise and whether reasonably foreseeable or not and whether SUMS had been advised of the possibility of the Client incurring or suffering the same) which arise out of or in connection with the supply or non-supply of SUMS services or any goods or otherwise in connection with the performance or non-performance of the Contract.

10 Termination

10.1 Without affecting any other right or remedy available to it, and without prejudice to clause 2.1, either party may terminate the Contract by giving 14 days' written notice to the other party in the event of:

10.1.1 the other party commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 28 days after being notified to do so provided that such notice refers to this clause; specifies the breach with full particulars and indicates how the breach is to be remedied;

10.1.2 the levying of distress or execution against the other party or the making by it of any composition or arrangement with creditors or the presentation of a petition for the other party's liquidation or bankruptcy or administration or the appointment of a receiver over any part of the other party's assets (or if anything analogous to any of the foregoing should occur in relation to the other party in any jurisdiction); or

10.1.3 the doing or permitting of any act by which any IP Rights of either Party may be prejudiced or put in jeopardy.

10.2 SUMS may terminate this Contract with immediate effect if the Client fails to pay any amount due under this Contract on the due date for payment.

11 Consequences on Termination

- 11.1 If the Contract is terminated for any reason other than by the Client in accordance with clause 10.1.1, the Client shall immediately pay to SUMS all of SUMS' outstanding unpaid invoices and interest and, in respect of any services supplied by SUMS but for which no invoice has been submitted, SUMS may submit an invoice for such services, including any expenses, which shall be payable immediately on receipt.
- 11.2 On termination or expiry of the Contract, SUMS shall return all Input Materials to the Client and the Client shall return any Pre-existing Material to SUMS.
- 11.3 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.
- 11.4 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 Recruitment of SUMS' Staff

- 12.1 The Client undertakes that, except with the prior written consent of SUMS, it (including for this purpose any subsidiary or associated company of the Client) or any person connected with it will not solicit or recruit as an employee or engage as an independent contractor any person employed or so engaged by SUMS in connection with the Assignment for the longer of (a) during and for a period of six months after the Contract and (b) for a period of six months after such person last provided services to the Client. Nothing in this clause 12.1 shall prevent the Client from employing any person employed or so engaged by SUMS in connection with Assignment that responded to the Client's job advertisement.
- 12.2 It shall be a pre-condition of SUMS giving its consent under clause 12.1, that the Client pays in advance to SUMS an amount equal to 33% of the annual remuneration or payment and any other benefits payable to the relevant individual by SUMS at the rate payable during the week immediately prior to such individual ceasing to provide services to or on behalf of SUMS.

13 SUMS' References to Client

Subject to clause 6 (Confidentiality) SUMS shall be entitled to refer to its provision of services to the Client for any purpose in connection with SUMS' business provided that prior to any published reference to the Client SUMS shall give the Client an opportunity to object to such reference and in the event of objection upon reasonable grounds shall not refer to the Client as proposed.

14 Force Majeure

Both parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them materially delays or renders the performance of the contract impossible, whereupon all money accrued at the relevant date shall be paid.

15 General**15.1 Warranty**

Each of the parties warrants its power to enter into the Contract and has obtained all necessary approvals to do so.

- 15.2 **Whole agreement**
Each party acknowledges that the Contract contains the whole agreement between the parties and that it has not relied upon any oral or written representations made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it. This shall not apply in the case of fraud.
- 15.3 **Change of address**
Each of the parties shall give notice to the other of the change or acquisition of any address or telephone, e-mail or similar numbers at the earliest possible opportunity but in any event within 24 hours of such change or acquisition.
- 15.4 **Notices**
Any notice to be served shall be delivered by hand, sent by pre-paid special delivery post to the address of the relevant party referred to in the Contract or such other address substituted in writing under clause 15.3 (and if more than one address any such address) or electronic mail and shall be deemed to have been received by the addressee on delivery (in the event of hand delivery or special delivery post) or within 24 hours if sent by electronic mail to the correct electronic mail address (provided a transmission report or equivalent for the complete message can be produced and provided). This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 15.5 **Data Protection**
Each Party shall ensure it complies in all respect with the provisions of the Data Protection Legislation. In particular where either party receives any personal data (as defined by the Data Protection Legislation), the parties shall collect and process it in line with the Data Protection Legislation.
- 15.6 **Waiver**
Failure by either party to enforce at any time or for any period any one or more of the terms or conditions of the contract shall not be a waiver of them or the right at any time subsequently to enforce all terms and conditions of the Contract.
- 15.7 **Assignment or Sub-contracting**
SUMS shall be entitled to sub-contract any of its rights or duties under the Contract, provided that it shall consult the Client before sub-contracting any of its rights or duties. The Client shall not assign or sub-contract any of its rights or obligations under a contract without the prior written consent of SUMS.
- 15.8 **Mediation**
In the event of any dispute arising between the parties in connection with the Contract, the parties will in good faith seek to resolve that dispute through mediation. The mediator shall be agreed upon within seven days of one party requesting mediation, failing which the mediator shall be appointed by the President for the time being of the Law Society of England and Wales. Unless otherwise agreed, the parties shall share equally the costs of the mediation. If the dispute is not resolved within 30 days or one of the parties refuses to participate in mediation, the dispute shall be resolved by way of litigation. Nothing in this clause shall prevent either party seeking a preliminary injunction or other judicial relief at any time nor shall SUMS be precluded from issuing proceedings or taking any other step in relation to the non-payment of monies due.
- 15.9 **Variation**
15.9.1 SUMS may, from time to time and without notice, change the Assignment in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of or fees for the Assignment. If SUMS requests a change to the Assignment for any other reason, the client will not unreasonably withhold or delay consent to it.
15.9.2 Subject to clause 15.9.1, no variation of the Contract shall be valid unless it is in writing and signed by the authorised representatives of both parties.

- 15.10 Severance
If any provision of the Contract is found to be illegal or void, it shall be deemed deleted without affecting the validity of the remaining terms.
- 15.11 Third party rights
A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.12 No partnership
Nothing in the Contract is intended to or shall be deemed to constitute a partnership or joint venture of any kind between the parties.
- 15.13 Governing law and jurisdiction
- 15.13.1 The Contract shall be governed by English and Welsh law in every particular including formation and interpretation and shall be deemed to have been made in England.
- 15.13.2 Subject to clause 15.13.3, any proceedings arising out of or in connection with a contract may be brought in any court of competent jurisdiction in England or Wales.
- 15.13.3 In the event that the Client is resident outside England, its address for service in England shall be the address for such service nominated in the Contract and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Client.

SIGNED for and on behalf
of **Southern Universities Management Services**

Signed

Name

Position

Date DD/MM/YYYY

SIGNED for and on behalf
of **[Insert client's name here]**

Signed

Name

Position

Date