



Standard Terms and Conditions

Newcastle Premier Health Limited

Dated: 21/05/2018

Newcastle Premier Health
4th Floor
Dobson House
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Newcastle upon Tyne
NE3 3PF

Standard Terms and Conditions of Supply

The Client's attention is particularly drawn to the provisions of clause 7.

1. Interpretation

1.1 Definitions:

1.2 In these Conditions (as defined below) the following terms shall have the following meanings:

"Charges"	the charges payable by the Client for the supply of the Services in accordance with clause 5;
"Commencement Date"	has the meaning set out in clause 2.;
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 11.5;
"Control"	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly;
"Client"	the person or firm defined as such in the Order;
"Client Default "	has the meaning set out in clause 4.1.9.1;
"Deliverables"	any deliverables, including but not limited to, any certificates, documents, information, opinions or advice produced by the Provider for the Client;
"Facilities"	has the meaning set out in clause 4.1.3;
"Intellectual Property Rights"	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Order"	an Order, agreed by both the Provider and the Client, in which these Conditions are incorporated;
"Provider"	the person or firm defined as such in the Order;
"Provider Materials"	has the meaning set out in clause 4.1.7; and
"Services"	the services, including the Deliverables and equipment, supplied by the Provider to the Client as set out in the Specification;
"Specification"	the description or specification of the Services set out in the Order, as amended or supplemented, by the Provider in accordance with these Conditions or by way of notice to the Client from time to time;

1.3 Interpretation:

- 1.3.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.3.2 Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3.3 A reference to **writing** or **written** includes email but not fax.

2. Basis of Contract

- 2.1 These Conditions apply to the Order to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 In the event of a conflict between the terms set out in these Conditions and the provisions in the Order, the Order shall take precedence between the parties.
- 2.3 A contract shall come into force between the parties on the date the Order is entered into between the parties (whether expressly or by way of conduct) (the "**Commencement Date**").

3. Supply of Services

- 3.1 The Provider shall supply the Services to the Client in accordance with the Specification in all material respects.
- 3.2 The Provider shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Provider shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Provider shall notify the Client in any such event.
- 3.4 The Provider warrants to the Client that the Services will be provided using reasonable care and skill. The Services will be provided by appropriately trained medical staff.
- 3.5 The Provider may notify the Client from time to time of any further support or services which it can offer and which it feels may be of benefit to the Client.
- 3.6 The Provider shall use its reasonable endeavours to meet any key performance indicators ("**KPIs**"), if any, explicitly set out in the Order only, in relation to the Services to which the KPIs relate.

4. Client's Obligations

4.1. The Client shall:

- 4.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- 4.1.2 co-operate with the Provider in all matters relating to the Services;
- 4.1.3 provide the Provider, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Provider (together the "**Facilities**");
- 4.1.4 provide the Provider with such information and materials as the Provider may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 4.1.5 prepare the Client's premises for the supply of the Services;
- 4.1.6 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- 4.1.7 keep and maintain all materials, equipment, documents and other property of the Provider (the "**Provider Materials**") at the Client's premises in safe custody at its own risk, maintain the Provider Materials in good condition until returned to the Provider, and not dispose of or use the Provider Materials other than in accordance with the Provider's written instructions or authorisation;
- 4.1.8 comply with any additional obligations as set out in the Specification; and
- 4.1.9 ensure that where the Services are to be provided at a location other than the Provider's premises:
 - 4.1.9.1 the Client provides the Provider with all necessary electrical connections, lighting and heating and a private space of sufficient size to enable the Services to be provided on a confidential basis, if required by the Provider, and co-operates with the Provider and gives to, or procures for the Provider all necessary access to the relevant premises;
 - 4.1.9.2 the Provider is provided with a broadband internet connection (Wi-Fi or by Ethernet cable) of sufficient bandwidth to enable the Provider to access the internet and to upload and download data via a laptop using the Provider's system within the time allotted for the provision of the Services;
 - 4.1.9.3 any change in location to that set out in the Order must be notified to the Provider as soon as possible and the Provider reserves the right, without liability, to alter the date or time for the provision of the Services or to require an alternative location to be found in such circumstances if it is no longer practicable for the Provider to provide the Services at the new location.
- 4.1.10 Where any materials or equipment used by the Provider in the provision of the Services ("**Equipment**") are stored by the Client, held by the Client for safekeeping, or otherwise in the possession or control of the Client for any period of time, then the Client:
 - 4.1.10.1 shall be responsible for loss of, or damage to, such Equipment;
 - 4.1.10.2 shall not part with possession of the Equipment;
 - 4.1.10.3 shall allow the Provider, its officers, employees and representatives access at any reasonable time to the premises at which the Equipment is stored in order to take possession of the same.

- 4.2 If the Provider's performance of any of its obligations is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (a "**Client Default**"):

- 4.2.1 the Provider shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Provider's performance of any of its obligations;
- 4.2.2 the Provider shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Provider's failure or delay to perform any of its obligations as set out in this clause 4.1.9.1; and
- 4.2.3 the Client shall reimburse the Provider on written demand for any costs or losses sustained or incurred by the Provider arising directly or indirectly from the Client Default.

5. Charges and Payment

- 5.1 The Charges for the Services shall be those set out in the Order.
- 5.2 Subject to clause 5.3, the Charges shall, where applicable, be calculated based on the number of units (or parts thereof) in respect of which the Provider agrees to provide the Services, as set out in the Order, or if greater, the actual number of units in respect of which the relevant Services are provided by the Provider to the Client.
- 5.3 Where the Charges set out in the Order are stated to be subject to a minimum charge (the "Minimum Charge(s)") the Client hereby acknowledges and agrees to pay to the Provider the Minimum Charges in respect of those Services, regardless of whether or not the Services are provided or provided for the number of units envisaged in the Order.
- 5.4 The chargeable units in relation to the Charges for the Services are calculated on the basis of the Provider's standard Business Days. The Provider shall be entitled to charge an overtime unit rate of 150 per cent of the standard unit rate set out in the Order on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours of 0800 to 1800 on Business Days.
- 5.5 The Provider shall with prior agreement with the Client, be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Provider engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Provider for the performance of the Services, and for the cost of any materials.
- 5.6 The Provider shall invoice the Client on completion of the Services (if this occurs within a month of the Commencement Date) or monthly in arrears, unless stated otherwise in the Order.
- 5.7 The Client shall pay each invoice submitted by the Provider:
 - 5.7.1 within 30 days of the date of the invoice; and
 - 5.7.2 in full and in cleared funds to a bank account nominated in writing by the Provider, and time for payment shall be of the essence.
- 5.8 All amounts payable by the Client under the Order are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Order by the Provider to the Client, the Client shall, on receipt of a valid VAT invoice from the Provider, pay to the Provider such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.9 If the Client fails to make any payment due to the Provider under the Order by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

5.10 The Client shall pay all amounts due under the Order in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Provider may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Provider to the Client.

6. Intellectual Property Rights

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Provider.

6.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on the Provider obtaining a written licence from the relevant licensor on such terms as will entitle the Provider to license such rights to the Client.

6.3 All Provider Materials are the exclusive property of the Provider.

7. Data Protection

7.1 All Provider Materials are the exclusive property of the Provider.

Data Controller: has the meaning set out in section 1(1) of the Data Protection Act 1998;

Data Subject: an individual who is the subject of Personal Data;

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, of which either party processes from time to time in relation to the Services or the Data Subjects who may receive or are the subject of all or any part of the Services provided under this Agreement;

Privacy and Data Protection Requirements: the Data Protection Act 1998, the General Data Protection Regulation (GDPR) (EU) 2016/679 which repeals Directive 95/46/EC (Data Protection Directive), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and sensitive personal data and privacy from time to time, and the equivalent of any of the foregoing in any relevant jurisdiction (whether mandatory or not);

Processing and process: have the meaning set out in section 1(1) of the Data Protection Act 1998; and

Sensitive Personal Data: has the meaning set out in the Data Protection Act 1998.

7.2 The Client undertakes that all of its employees, contractors or agents who receive, or are the subject of any or all of the Services from the Provider have given their prior express consent in writing to the Client and the Provider processing data relating to the employees, contractors or agents in question for legal, personnel, administrative and management purposes and in particular, their explicit written consent to the processing of any Sensitive Personal Data relating to them, including, as appropriate:

7.2.1 information about the individual's physical or mental health or condition in order to monitor sick leave and take decisions as to the individual's fitness for work; and

7.2.2 in order to comply with the Client's legal requirements and obligations to third parties.

7.3 The Client warrants that:

7.3.1 it will process Personal Data and Sensitive Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and

7.3.2 it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and/or Sensitive Personal Data and against the accidental

loss or destruction of, or damage to, Personal Data and/or Sensitive Personal Data to ensure the Client's compliance with the seventh data protection principle.

- 7.4 The Client agrees to indemnify and keep indemnified and defend at its own expense the Provider against all costs, claims, damages or expenses incurred by the Provider or for which the Provider may become liable due to any failure by the Client or its employees or agents to comply with any of its obligations under this clause 7 or for any breach of the Client's obligations under the Privacy and Data Protection Requirements.
- 7.5 The Provider reserves the right to terminate (without any liability whatever) any or all of the Services in the event that such Services require the processing of Personal Data or Sensitive Personal Data, in circumstances where the individual in question has not, will not, or revokes their explicit, informed, and freely-given consent in writing to the Provider to enable it to process their Personal Data and/or Sensitive Personal Data such that the Provider cannot (or will not be able to, as the case may be) provide the Services (or any part of them) in accordance with the terms of the Order.
- 7.6 The Provider shall process the Personal Data and Sensitive Personal Data only to the extent, and in such a manner, as is necessary for the purposes of the Order and shall not process the Personal Data and/or Sensitive Personal Data for any other purpose.
- 7.7 The Provider will promptly and securely destroy any and all Personal Data and/or Sensitive Personal Data which is no longer relevant for the purposes of the Services promptly following termination or expiry of the Order.
- 7.8 Notwithstanding any other provision of these Conditions, the Client acknowledges that the Provider is entitled to maintain the confidentiality of all medical records and information that it may collect, create or otherwise obtain in relation to any officer or employee of the Client (or any person who is otherwise the subject of the Services), and all information relating to the medical reasons for any recommendation, certification, opinion or other matter given by the Provider pursuant to Services shall likewise be treated as confidential by the Provider, and the Client shall not therefore be entitled a copy or any other details of any of such records or information (in whole or part), and such records and information shall not form part of the Deliverables.

8. Limitation of Liability

- 8.1 Nothing in these Conditions shall limit or exclude the Provider's liability for:
 - 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 8.1.2 fraud or fraudulent misrepresentation; or
 - 8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, the Provider shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Order for:
 - 8.2.1 loss of profits;
 - 8.2.2 loss of sales or business;
 - 8.2.3 loss of agreements or contracts;
 - 8.2.4 loss of anticipated savings;
 - 8.2.5 loss of use or corruption of software, data or information;
 - 8.2.6 loss of damage to goodwill; and
 - 8.2.7 any indirect or consequential loss.
- 8.3 Subject to clause 8.1, the Provider's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Order shall be limited to 100% of the total Charges paid under the Order.

- 8.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Order.
- 8.5 This clause shall survive termination of the Order.

9. Termination

- 9.1 Without limiting its other rights or remedies, the Provider may terminate the Order at any time for convenience by giving the Client notice of the same at any time.
- 9.2 The Client may terminate the Order by giving the Provider the following notice periods, subject to the applicable minimum charge becoming payable on receipt of such notice, as set out below, such charge being a genuine pre-estimate of the Provider's loss in such circumstances:
- 9.2.1 more than 48 hours' notice of termination prior to the time on which any of the Services to which the Order relate are due to commence – no charge;
 - 9.2.2 between (and including) 24 hours' to 48 hours' notice of termination prior to the time on which any of the Services to which the Order relates are due to commence, a termination charge of £40.00 plus VAT shall be payable by the Client to the Provider; and
 - 9.2.3 fewer than 24 hours' notice of termination prior to the time on which any of the Services to which the Order relate are due to commence, the full amount of Charges (plus VAT) relating to the Services in question shall be payable by the Client to the Provider.
- 9.3 Without limiting its other rights or remedies, either party may terminate the Order with immediate effect by giving written notice to the other party if:
- 9.3.1 the other party commits a material breach of any term of the Order and (if such a breach is remediable) fails to remedy that breach within 10 (ten) days of that party being notified in writing to do so;
 - 9.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 9.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 9.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Order has been placed in jeopardy.
- 9.4 Without limiting its other rights or remedies, the Provider may terminate the Order with immediate effect by giving written notice to the Client if:
- 9.4.1 the Client fails to pay any amount due under the Order on the due date for payment and remains in default not less than 3 (three) days after being notified to make such payment; or
 - 9.4.2 there is a change of Control of the Client.
- 9.5 Without limiting its other rights or remedies, the Provider may suspend provision of the Services under the Order or any other contract between the Client and the Provider if the Client becomes subject to any of the events listed in clause 9.3.2 to clause 9.3.4 or the Provider reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Order on the due date for payment.

9.6 Termination or expiry of an Order shall not in any way impact upon any other orders or contracts in place between the Provider and the Client.

10. Consequences of Termination

On termination of the Order for any reason:

- 10.1.1 the Client shall immediately pay to the Provider all of the Provider's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Provider shall submit an invoice, which shall be payable by the Client immediately on receipt;
- 10.1.2 the Client shall return all of the Provider Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Provider may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Order;
- 10.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of these Conditions which existed at or before the date of termination or expiry; and
- 10.1.4 clauses which expressly or by implication survive termination shall continue in full force and effect.

11. General

11.1 Force majeure.

Neither party shall be in breach of these Conditions nor liable for delay in performing, or failure to perform, any of its obligations under the Order if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 Assignment and other dealings.

- 11.2.1 The Provider may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Order and may subcontract or delegate in any manner any or all of its obligations under the Order to any third party or agent.
- 11.2.2 The Client shall not, without the prior written consent of the Provider, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Order.

11.3 Confidentiality.

11.3.1 Each party undertakes that it shall not at any time during the Order, and for a period of five years after termination of the Order, disclose to any person any confidential information concerning the business, affairs, customers, clients or Providers of the other party, except as permitted by clause 11.3.2.

11.3.2 Each party may disclose the other party's confidential information:

11.3.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Order. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and

11.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Order.

11.4 Entire agreement.

11.4.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.4.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

11.5 Variation.

No variation of the Order or these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6 Waiver.

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

11.6.1 waive that or any other right or remedy; or

11.6.2 prevent or restrict the further exercise of that or any other right or remedy.

11.7 Severance.

If any provision or part-provision of the Order or these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Order and these Conditions.

11.8 Notices.

11.8.1 Any notice or other communication given to a party under or in connection with the Order shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, commercial courier or email.

11.8.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.8.1; if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

11.8.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.9 Third parties.

No one other than a party to the Order shall have any right to enforce any of its terms.

11.10 Governing law.

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

11.11 Jurisdiction.

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