

## TERMS OF SERVICE – UCAS TEACHER TRAINING

### 1. Definitions and Interpretation

1.1. In these Terms of Service the following expressions shall have the following meanings:

**“Accrediting Provider”** means the higher education provider or school-centred initial teaching training provider who accredits the Programme for the Training Provider.

**“Access Criteria”** means the access criteria and any specific requirements as may be applicable for accessing and receiving the relevant Services as published by UCAS in its Admissions Guide or otherwise made available and updated from time to time.

**“Administration Fee”** means such reasonable fees as UCAS may specify from time to time for specified administration or account activity.

**“Admissions Guide”** means the UCAS Teacher Training Admissions Guide as updated and reissued by UCAS in each year and/or otherwise published on the UCAS website.

**“Agreement”** includes these Terms of Service, the joining form signed by the Training Provider and the Admissions Guide.

**“Applicant”** means persons applying for postgraduate teacher training programmes.

**“Applicant Data”** means all data provided to the Training Provider pursuant to the terms of the Admissions Guide.

**“Application”** means any submission for one or more Training Programmes, made by an Applicant, through UCAS to include the supporting information used to make the decision on their application.

**“Charges”** means the charges for the Services as notified to the Training Provider or Users. Charges include any Administration Fees payable.

**“Confidential Information”** means, in relation to a party all information, whether technical or commercial, disclosed in writing, electronically, on disc, orally or by inspection of documents or pursuant to discussions between the parties, and including information provided before the date of the Agreement, where the information either (a) is confidential in nature; (b) constitutes commercially sensitive information and/or trade secrets; (c) is identified as confidential at the time of disclosure; and/or (d) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

**“Content”** means information, data, articles, communications, applications, images and sounds, video, games, including any associated software, or any other material contained on or available through the Services which is either owned by UCAS and/or by a third party.

**“Course”** means a postgraduate programme of study offered to Applicants by the Training Provider..

**“Courses Data”** means information about all Courses including course title, mode of study, qualifications, entry requirements, campus and such other information relating to the Course.

**“Data Standards”** means the data standards, manual or guides or equivalent as from time to time published on the UCAS website.

**“DPA”** means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy including where applicable any guidance and/or codes of practice issued by the Information Commissioner or relevant regulator or government department in relation to such legislation.

**“FOIA”** the Freedom of Information Act 2000 Freedom of Information (Scotland) Act 2002 together with any guidance and/or codes issued by the Information Commissioner or Scottish Information Commissioner or relevant regulator or government department in relation to such legislation.

**“Input Material”** means all documents, information (including contact information) and materials provided by or on behalf of the Training Provider relating to the Services, including any trademarks, Programme Data and Applicant Data.

**“Intellectual Property Rights”** means all patents, copyright and related rights, trade marks, trade, business and domain names, goodwill or actionable claims for passing off, designs, database rights, confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**“Personal Data”** shall have the same meaning as in the DPA.

**“Training Programme”** means a programme of study offered to Applicants for recruitment through the admissions Services provided by UCAS.

**“Training Programme Data”** means information about all Programmes including Programme title, mode of study, qualifications, entry requirements, campus and such other information relating to the Programme

**“Services”** means the services provided by UCAS including admissions Services and any other services to include without limitation data information and data analysis products and services pursuant to these Terms of Service.

**“Suspension”** means the temporary or permanent block placed by UCAS on some or all of the Services the Training Provider normally uses and **“Suspend”** shall be construed accordingly.

**“Third Party Vendor”** means any third party provider which is engaged by the Training Provider to support the Training Provider in order for the Training Provider to receive the Services from UCAS, excluding an Accrediting Provider

**“Training Provider”** means the training provider specified in the joining form.

**“UCAS Materials”** means all documents, UCAS Software, UCAS Content, products, services, data, text and images and any other materials or equipment supplied by or developed by UCAS in relation to the Services. **“UCAS Software”** means software which UCAS owns or licenses from a third party and, in either case, licenses and/or otherwise makes available to the Training Provider via or as part of or in connection with the Services.

**“User”** means an individual who is employed or engaged by the Training Provider and who is given the necessary access permissions to use the Services in accordance with these Terms of Service including any Third Party Vendor.

1.2. References to any statutory or regulatory provision will (a) include any relevant Act of Parliament, subordinate legislation or other enforceable right and (b) be construed as references to that provision as may be amended, replaced, extended, consolidated or re-enacted from time to time.

1.3. Headings are for convenience only and shall not affect the construction of the Agreement.

### 2. Provision of Services

2.1 As UCAS is continuously enhancing and evolving its Services and adding new services, UCAS reserves the right to vary, update or replace these Terms of Service by giving reasonable notice to the Training Provider which shall normally be 30 days' notice, subject to any changes, such as those demanded by a regulator, which may need to take immediate effect.

2.2 Where the Services are dependent on the Training Provider supplying Input Material or any general data or information required by UCAS, the Training Provider undertakes to:

2.2.1 provide such Input Material in a timely manner as UCAS may reasonably require;

of Service and not for any other commercial purpose or distribution to any third party (unless expressly permitted by the terms upon which such Content has been provided to the Training Provider).

- 2.2.2 keep the Input Material up to date and in accordance with such timescales as UCAS may advise from time to time; and
- 2.2.3 ensure that all Input Material is correct and accurate and complies with all applicable law.
- 2.2.4 ensure the Input Material has been agreed by an Accrediting Provider.
- 2.3 The Training Provider shall comply with the requirements set out in the Admissions Guide.
- 2.4 Should the Training Provider wish to give access to any Third Party Vendor to receive or process on the Training Provider's behalf any Services and/or Content provided by UCAS, the Training Provider agrees that it is responsible and liable for the compliance by its Third Party Vendor with the terms of this Agreement and shall be and remain liable to UCAS for any breach of this Agreement by such Third Party Vendor. UCAS reserves the right to deny, limit or withdraw access to any Third Party Vendor in the event of any breach of the Agreement by them or the Training Provider.

### 3 Courses Data

- 3.1 The Training Provider shall provide the Input Material required by UCAS to populate UCAS' courses data set and agrees and undertakes to maintain the accuracy of the Courses Data at all times throughout the term of this Agreement.
- 3.2 The Training Provider shall comply with the requirements of UCAS' published Data Standards and with applicable laws in providing the Input Materials.
- 3.3 UCAS shall be entitled to capture any Input Material from The Training Provider's own website or marketing materials which UCAS may require to complete the Courses Data published by the Training Provider for the purpose of ensuring that its search application presents users of that application with comprehensive information in relation to promoted courses and to satisfy the requirements of UCAS's commercial customers.

### 4 Third Party Content

UCAS has no or limited control over the availability, value or quality of Content offered by third parties via the Services. Content is obtained from a large range of sources and is supplied to the Training Provider on an "as is" basis. UCAS is not responsible or liable for any error in any third party Content but shall seek to remedy any such error which is brought to its attention. UCAS is not responsible or liable in any way for any loss or damage resulting from any action that the Training Provider takes in reliance on any Content.

### 5 General Service Limitations

- 5.1 UCAS shall take all reasonable steps to make the Services available to the Training Provider at all times. However, the Training Provider acknowledges and agrees that no Service can be guaranteed to be a continuous fault-free service. Quality and the availability of Services may sometimes be affected by factors outside UCAS' control. The Training Provider acknowledges and accepts that it is reasonable that:
  - 5.1.1 as UCAS introduces new Services, applications and technologies, these may be made available to the Training Provider subject to certain limitations or restrictions notified to the Training Provider at the relevant time; and
  - 5.1.2 the UCAS Software and IT systems on which the Services rely may from time to time require upgrading, modification, maintenance or other works. These may result in temporary interruption or unavailability of some or all of the Services although UCAS shall endeavour to keep such disruption to a minimum particularly at peak periods of activity for the majority of Training Providers. For any pre-planned work, UCAS shall give as much notice as reasonably practicable before any temporary interruption to Services is effected by UCAS.

### 6 Use of Content

- 6.1 UCAS shall make Content available to Training Providers and Users via the Services. All such Content is subject to the terms of the Agreement and on such additional licence or other terms as will be communicated to the Training Provider by UCAS or a third party, which the Training Provider accepts by accessing such Content.
- 6.2 UCAS reserves the right to withdraw, limit or suspend access to the Content it makes available under the Agreement at any time. The Training Provider undertakes that it will not and that its Users will not:
  - 6.2.1 copy, modify, store, forward, publish or distribute any Content without the prior written consent of UCAS or the relevant rights owners; or
  - 6.2.2 use Content other than for purposes contemplated in these Terms

### 7 Software

- 7.1 UCAS warrants that the UCAS Software shall conform in all material respects to any associated documentation supplied by UCAS if the UCAS Software is used in accordance with such documentation and no unauthorised modifications are made to the UCAS Software. UCAS does not warrant that the UCAS Software will meet the Training Provider's requirements or that operation of the UCAS Software will be uninterrupted or error-free. UCAS' sole obligation and liability for breach of this warranty will be to repair or replace the defective UCAS Software as soon as reasonably practicable.
- 7.2 UCAS Software is licensed to the Training Provider on a non-exclusive, revocable basis solely to access the Services for the duration of the Agreement.
- 7.3 The Training Provider undertakes that it will not and that its Users will not, copy, adapt, modify, decompile, reverse engineer, disassemble, translate, distribute, sub-licence, rent, lease, allow any third party access to or otherwise deal with any part of any UCAS Software in any way or create derivative works based on the UCAS Software.
- 7.4 The Training Provider undertakes not to use the UCAS Software to develop or market any software which is substantially similar in function and expression to any UCAS Software.

### 8 Charges and Payment

- 8.1 UCAS shall invoice the Training Provider in respect of the Charges together with all VAT due in accordance with the periods set out in the Admissions Guide or otherwise notified to the Training Provider. The Training Provider shall pay each invoice submitted to it by UCAS within 30 days of the date of invoice.
- 8.2 UCAS may in its absolute discretion accept payment of Charges by credit card. Any Administration Fee or charges incurred as a result of processing such payment (including for the avoidance of doubt any charges relating to rejected or declined payments) will be passed onto the Training Provider and invoiced accordingly.
- 8.3 If the Training Provider disputes any part of a UCAS invoice, the Training Provider shall notify UCAS in writing of the dispute within 14 days of the date of such invoice. The Training Provider shall pay the undisputed portion of the invoice in accordance with the terms of the Agreement and in good faith co-operate with UCAS to resolve the dispute.

### 9 Financial and Suitability Assessments

- 9.1 The Training Provider agrees and acknowledges that for some Services the relevant Charges may not be invoiced until after the Service has been provided and that it is reasonable for UCAS to assess the Training Provider's ability to pay for any such Services. The Training Provider must also meet the requirements of the Access Criteria at all times. Accordingly this Agreement is subject to the Training Provider's credit or otherwise suitability status, as determined in UCAS' sole opinion, to be sufficient to enable the Training Provider to comply with its obligations under this Agreement and the Training Provider's continued compliance with the Access Criteria. The Training Provider agrees that UCAS may, prior to supplying any particular Services, and at such other times as it may deem appropriate during the provision of the Services, carry out a credit assessment of the Training Provider and audit the Training Provider's compliance with the Access Criteria. UCAS may use credit scoring and/or other decision-making systems when assessing the Training Provider's status from time to time. If the Training Provider's credit status is not acceptable to UCAS or the Training Provider does not meet the Access Criteria then UCAS reserves the right to refuse to supply and/or suspend particular Services, terminate this Agreement by written notice to the Training Provider, impose a credit limit (where the Training Provider's credit status is not acceptable) and/or a limit on the supply of Services.
- 9.2 If the Training Provider believes that UCAS' assessment is incorrect, UCAS will review the Training Provider's eligibility. However, UCAS cannot accept any responsibility for the accuracy of information provided from credit reference agencies nor does it accept any liability for the consequences of UCAS declining to provide any Services to a Training Provider, terminating this Agreement or restricting the supply of Services to the Training Provider.

### 10 Training Provider's Sole Use and Group Company Benefit

- 10.1 The Training Provider acknowledges that the Services under the Agreement

are for the sole and exclusive benefit of the Training Provider and its Users and nothing in the Agreement authorises or entitles the Training Provider to re-sell, re-supply or otherwise distribute the Services without the prior written agreement of UCAS.

10.2 The Training Provider shall be liable to UCAS for any acts or omissions of affiliates, entities and companies including any Third Party Vendors which constitute a breach of this Agreement.

#### 11 Data Security

The Training Provider and UCAS shall comply with their respective obligations in respect of data security as set out in the Agreement or otherwise notified to the Training Provider.

#### 12 Data Protection

12.1 Each party shall comply with their obligations under the DPA and ensure that Personal Data is used at all times in compliance with the DPA.

12.2 The Training Provider indemnifies UCAS for all liabilities, costs, expenses, damages and losses (including direct losses, loss of profit, loss of reputation and all interest, penalties, legal and other reasonable professional costs and expenses suffered or incurred by UCAS) as a result of the breach of DPA obligations under this Agreement by the Training Provider.

#### 13 Confidentiality

13.1 Except as otherwise expressly stated in the Agreement, the parties shall keep confidential all Confidential Information communicated in confidence or obtained as a result of the relationship under or leading to the Agreement.

13.2 Each party shall only use such Confidential Information for purposes related to the performance of the Agreement. This obligation of confidentiality shall survive termination of the Agreement for a period of six years. However disclosure is permitted in the following circumstances:

13.2.1 by UCAS disclosing any Confidential Information to any company within its corporate group;

13.2.2 by reason of any law, regulatory requirement, court order or order of a competent statutory authority;

13.2.3 by UCAS to any debt collection agency, credit reference agency, credit or fraud monitoring scheme, security agency or credit provider of any information relating to the Training Provider's performance in meeting its obligations under the Agreement; or

13.2.4 by UCAS as may be permitted by UCAS' DPA notification to the Information Commissioner's Office (ICO) or pursuant to the DPA or an investigation by the ICO.

#### 14 Freedom of Information Act

The parties acknowledge and agree that they may both be subject to the requirements of the FOIA and shall reasonably assist and cooperate with each other to comply with their respective disclosure obligations. However, the Training Provider acknowledges that UCAS' obligations to disclose information under FOIA are limited by its status and designation and nothing in the Agreement shall compel UCAS to disclose any information which it would ordinarily be exempt from disclosing.

#### 15 Intellectual Property Rights

15.1 As between the Training Provider and UCAS, all Intellectual Property Rights and all other rights in the UCAS Materials shall be owned by UCAS.

15.2 UCAS hereby grants to the Training Provider a world-wide, royalty free, non-exclusive, non-transferable licence to use the UCAS Materials for the duration of the Agreement to the extent necessary to enable the Training Provider to receive the benefit of the Services.

15.3 UCAS warrants that it has all necessary rights to grant a licence pursuant to clause 15.2 and that the Training Provider's use of such licence shall not infringe any Intellectual Property Rights of any third party.

15.4 The Training Provider hereby grants to UCAS a world-wide, royalty free, non-exclusive, non-transferable licence to use all Input Materials supplied to UCAS pursuant to the Agreement for the duration of the Agreement to the extent necessary for the purposes of providing the Services to the Training Provider.

15.5 The Training Provider warrants that it has all necessary rights to grant a licence pursuant to clause 15.4 and that UCAS' use of such licence shall not infringe any Intellectual Property Rights of any third party.

#### 16 Suspension of Services

16.1 UCAS may Suspend some or all of the Services:

16.1.1 if UCAS has reasonable grounds to believe that the Training Provider or a User has not complied with the Agreement. UCAS

will notify the Training Provider of such Suspension and the reasons for it as soon as reasonably possible (and where reasonably practical, will endeavour to give notice in advance of such Suspension);

16.1.2 if the Training Provider does not pay a Charge when due and fails to remedy such non-payment within [7] days of written notification from UCAS (save whether such Charge is disputed in good faith), such Suspension shall remain in force until the Training Provider has paid all amounts owed to UCAS;

16.1.3 if in UCAS' reasonable opinion the Training Provider no longer meets the Access Criteria;

16.1.4 if the provision of the Services to the Training Provider would or would be likely to damage, or the acts or omissions of the Training Provider have damaged, the goodwill or reputation of UCAS; or

16.1.5 in respect of an individual User without notice if a complaint has been made against that User in relation to a suspected act or omission which constitutes a breach of the Agreement. UCAS will endeavour to notify the Training Provider at the earliest opportunity of any such investigation or Suspension. The complaint will be investigated and Services will remain Suspended until UCAS receives the results of that investigation.

16.2 Suspension shall not affect the Training Provider's obligation to pay Charges during any period of Suspension. Except where expressly otherwise agreed, UCAS reserves the right to charge the Training Provider a reasonable Administration Fee for reconnection and removal of any Suspension.

#### 17 Termination for Breach

17.1 Either Party may terminate the Agreement (in whole or in part, including termination of any individual Service) if the other party is in material or persistent breach of the Agreement, by giving written notice specifying the breach and (if capable of remedy) requiring it to be remedied. If the breach is not remedied within 21 days of the date of the notice then the Agreement shall end on the expiry of the 21 day notice period. If the breach is not remediable, termination will take effect immediately.

17.2 If UCAS has reasonable grounds for believing that a User or the Training Provider is in breach of any of clauses 6, 7, 10, 11, 12, 13 or 15 UCAS may immediately Suspend the Services under clause 16 and if the Training Provider fails

to correct such breach (if capable of remedy) within 7 days of receiving notice of such breach, UCAS may immediately terminate the Agreement by written notice to the Training Provider.

#### 18 Termination for Insolvency

18.1 Either party may terminate the Agreement in whole or in part immediately by notice in writing if the other party:

18.1.1 ceases, threatens to, or suspends trading or carrying on business (other than temporarily by reason of a strike); or

18.1.2 suspends payment of its debts or is or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or commits any act of insolvency, or enters into a composition or voluntary arrangements with its creditors, or has a receiver or administrator appointed over the whole or any part of its business or assets, or has a creditor's winding up petition advertised against it in the appropriate gazette, or passes a resolution to wind up (other than for the purposes of a solvent amalgamation or reconstruction), or is the subject of any action or procedure commenced in any jurisdiction which is similar to or analogous with any above-mentioned action or procedure.

#### 19 Termination for Convenience

Either party may terminate the Agreement in whole or in part by giving the other party not less than 30 days' written notice.

#### 20 Liability

20.1 Each party limits its liability to the other in aggregate for all claims (whether brought in contract, tort, (including negligence), breach of statutory duty, misrepresentation, or by way of indemnity or otherwise) arising out of or in connection with the Agreement to 100 per cent of the average annual Charges paid or payable by the Training Provider.

20.2 Nothing in the Agreement excludes or limits:

20.2.1 either party's liability for negligent acts or omissions of its employees or agents causing death or personal injury to any person;

20.2.2 from recovering Charges or other sum due from the Training Provider; or

20.2.3 any liability to the extent it cannot be excluded or limited under applicable law.

- 20.3 Neither party shall have any liability to the other whether in contract, under statute or tort (including negligence) or otherwise for any of the following loss or damage:
- 20.3.1 loss of business, revenue or profits,
  - 20.3.2 loss of anticipated savings,
  - 20.3.3 damage to goodwill or reputation,
  - 20.3.4 loss or corruption of data or of software, or
  - 20.3.5 consequential or indirect loss.
- 20.4 UCAS does not accept liability for the accuracy of any information provided by an Applicant or any referee of an Applicant in relation to his or her identity, education and employment record or other detail within the Application or Applicant Data.

dispute is not resolved through the consultation within 21 days, the parties will attempt in good faith to resolve the dispute through a procedure (such as mediation, conciliation or executive tribunal or other dispute resolution technique) recommended by the Centre for Effective Dispute Resolution or any equivalent replacement body. The costs and fees of any such procedure shall be borne equally by UCAS and the Training Provider, unless otherwise determined within that dispute resolution procedure.

## 29 Law and Jurisdiction

The Agreement is governed by and shall be construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

## 21 Notices

All notices, consents and approvals under this Agreement shall be given in writing and must be served by post, facsimile or e-mail. All invoices and notices served by post will be sent to the address given by one party to the other (or such other address as may be notified from time to time). Notices by post will be deemed served 48 hours after they are sent, or on earlier proof of delivery; facsimiles are deemed served at the time of transmission; and notices served by email, will be deemed served at the time the email was sent on a business day (if not, on the next business day), with proof of copy of the sent email, record of time it was sent and the email address to show notice has been given. Notices must be sent to UCAS' General Counsel e-mail: [legal@ucas.ac.uk](mailto:legal@ucas.ac.uk) Fax: 01242 544964.

## 22 Variations

Save as otherwise provided in the Agreement, the Agreement may be varied or amended only by the written agreement of both parties.

## 23 Waiver

The failure to exercise or delay in exercising a right or remedy under the Agreement does not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. No single or partial exercise or waiver of any right or remedy under the Agreement shall prevent any further exercise of the right or remedy.

## 24 Force Majeure

The parties will not be liable to one another to the extent that the other party is unable to perform an obligation or provide Services because of any factor outside its control, including but not limited to changes in applicable law, Acts of God, industrial action, default or failure of a third party, war, riot, terrorist act, governmental action, or by any act or decision made by a court of competent jurisdiction.

## 25 Exclusion of Third Party Rights

The Agreement is intended and agreed to be solely for the benefit of the Training Provider and UCAS and their permitted assignees. No third party shall acquire any benefit, claim or rights of any kind pursuant to, under, by or through the Agreement under the Contract (Rights of Third Parties) Act 1999.

## 26 Assignment

The Training Provider may not assign any of its rights under the Agreement without UCAS' prior written consent (such consent not to be unreasonably withheld).

## 27 Whole Agreement

- 27.1 The Agreement contains the whole agreement between the parties relating to its subject matter and supersedes all proposals and prior agreements, arrangements and understandings between the parties relating to the subject matter of the Agreement. Services are supplied only on the terms and conditions of the Agreement and no provisions in any purchase order or other document submitted at any time by the Training Provider will be of any effect.
- 27.2 Both parties acknowledge that they have not entered into the Agreement (or any part of it) in reliance on any warranties, representations, covenants and undertakings except as expressly stated in the Agreement.
- 27.3 No term, condition or warranty will be implied into the Agreement by statute or otherwise, whether relating to fitness for purpose or otherwise, except to the extent that such implied provision may not be lawfully excluded by contract.

## 28 Dispute Resolution

If any dispute arises between the parties with respect to any matter under the Agreement either party may request that the matter be referred for consultation between the parties at senior management level. If the