

## Undergraduate Terms of Service

### 1. Definitions

In these terms, the following expressions have the meanings shown.

**Access criteria** – the access criteria and specific requirements published in our handbook (as updated from time to time).

**Admissions guide** – the latest version of our admissions guide, or any equivalent document issued or published by us from time to time.

**Agreement** – the agreement between you and us for our services. The agreement is made up of these terms, our admissions guide and any contract between you and us for the services.

**Applicant** – a person who has applied for an undergraduate course (or courses) through us.

**Awarding body** – an examination board or other body that is responsible for awarding qualifications and confirming grades achieved by applicants.

**Charges** – our charges for our services, including any administration fees, as quoted to you or anyone you have appointed to use the services for you.

**Content** – information, communications, applications, images and sounds, video, games and so on, including any associated software, available through the services.

**Embargoed information** – any information which you must not release before results day, including applicants' results and decisions on applications you have received.

**Intellectual property rights** – a party's legal rights and interest in things they own or have created (for example, inventions, designs, programs, logos, service marks, brand, product and business names, materials, databases, know-how, items that have patents, trademarks, copyright rights, and any other similar unique thing). Those rights apply if they are protected by law at any time anywhere in the world.

**Results day** – the date awarding bodies publish results, or any other date we tell you.

**Scheme** – the undergraduate admissions system for a particular category of course or course provider.

**Services** – the undergraduate admissions services we provide for the schemes, and all supplementary services we offer.

**Suspension** – a temporary or permanent block on your access to some or all of our services.

## **2. Providing the services**

- a We are continuously developing and improving our services and adding new services. As a result, we can change, update or replace these terms from time to time. We will try to give you at least 30 days' notice of any changes, but there may be times when we need to make changes at shorter notice or immediately (for example, if we need to make changes to meet legal or regulatory requirements or to reflect changes in a third party's services or systems).
- b If the services rely on you providing certain information (for example, information about courses and applicants), you must:
  - provide that information as soon as reasonably possible;
  - update that information immediately if there are any changes to the information; and
  - make sure that all the information is correct and accurate, and keeps to all laws that apply.
- c You must keep to the requirements, rules and principles set out in our admissions guide.
- d If you give any third-party provider access to our services or content, you must make sure they keep to these terms. You will be liable to us for anything the third party does in connection with our services or content. We can deny, limit or withdraw a third party's access to our services and content if you or they break any of these terms.

## **3. Third-party content**

- a We have no control, or very limited control, over the availability, value or quality of third-party content we provide through our services. We get third-party content from a large range of sources and provide it as part of the services on an 'as is' basis (that is, we provide that content in the same form as we receive it from the third party without any changes).
- b We will take reasonable steps to correct any mistake in third-party content which is brought to our attention, but we are not responsible or liable for any such mistakes. We are also not responsible or liable for any loss or damage resulting from you relying on any third-party content.

#### **4. General limitations to our services**

- a We will take all reasonable steps to make our services available to you at all times. However, we cannot guarantee that the services will not be interrupted or have any faults as the quality and availability of our services can be affected by factors outside our control.
- b As we introduce new services, applications and technologies, we may make them available to you with certain limitations or restrictions.
- c Our software (software that we own or have a licence to use) and the IT systems we use to provide our services may need to be upgraded, altered, maintained and so on from time to time, which may result in some or all of our services being temporarily interrupted or unavailable. We will try to keep any disruption to a minimum, particularly at peak periods (such as during the period when applicants are accepted onto courses or matched to courses). If we are going to carry out any planned work, we will give as much notice as reasonably possible.

#### **5. Using content**

- a We will make content available to you and your users (anyone you authorise to use the services) in line with these terms and any other terms we or a third party give to you or your users. If you access the content, you must keep to all terms and conditions that apply.
- b We can withdraw any content, or limit or suspend your or a user's access to it.
- c You must not, and must make sure your users do not:
  - copy, alter, store, publish or distribute any content without written permission from us or the third party who owns the content;
  - use content for any purpose other than the one it was provided for under these terms; or
  - use the content for any commercial purpose (unless allowed under the terms the content has been provided under).

#### **6. Software**

- a Our software will meet the essential parts of the description contained in any document we give you, as long as you use the software in line with the document.
- b We do not guarantee that our software will meet your needs or that it will never be interrupted or contain mistakes.
- c If we do not keep to 6a above, our only obligation to you will be to repair or replace the software as soon as reasonably possible.
- d We grant you a right to use our software only in connection with the services and for the duration of the agreement. That right:

- is not exclusive (that is, we may grant the same right to others);
  - cannot be transferred by you; and
  - may be withdrawn by us.
- e You must not, and must make sure that your users do not:
- copy, adapt, change, interfere with or translate our software;
  - distribute, sub-licence, rent or lease our software or allow any third party to access our software (except as allowed under clause 2d);
  - allow any third party to copy, adapt, change, interfere with, translate, distribute, sub-licence, rent or lease our software;
  - create any new software based on our software; or
  - use our software to develop or market any software which has a substantially similar purpose as our software.
- f We can change our third-party software providers from time to time.

## **7. Charges and payment**

- a We will send you invoices for our charges (plus VAT, if appropriate) as set out in our admissions guide or as we have told you.
- b You must pay each invoice within 30 days of the date of the invoice.
- c We may accept, or refuse to accept, credit-card payments.
- d If you disagree with any part of an invoice, tell us in writing within 14 days of the date of the invoice. You must pay the amount of the invoice that you agree is correct. You and we must co-operate in an open and honest way to settle the dispute.

## **8. Financial and suitability assessments**

- a You must at all times meet the access criteria in our admissions guide.
- b We may not invoice the charges for some services until after we have provided those services. As a result, we must be satisfied that your finances and suitability are sufficient for you to meet your obligations under the agreement, including the obligation to keep to the access criteria.
- c You agree that we may, at any time before or while providing the services, carry out a credit assessment of you or assess whether you meet the access criteria. We may use credit scoring or other decision-making systems (or both) when assessing your finances and suitability.
- d If your credit record is not acceptable to us, or you do not meet the access criteria, we can:
- set a credit limit;
  - suspend or limit your access to some or all of our services; and
  - end the agreement by giving you written notice.

- e If you tell us that you think an assessment is incorrect, we will review it. However, we cannot accept any responsibility for the accuracy of information we receive from third parties such as credit-reference agencies, and do not accept any liability for the consequences of taking any action in line with 8d above.

## **9. Deposits**

- a You may need to pay a deposit towards future charges. We will decide the amount of the deposit and you must pay it before we provide any services or reinstate the services after any suspension.
- b We do not refund deposits. They are put towards future charges.

## **10. Sole use and group companies**

- a The services we provide to you under the agreement are only to be used by you and your users.
- b You must not sell on, supply or otherwise distribute the services to any third party without our permission in writing.
- c If you want any other company within your group (a group company) to benefit from using the services, you must get our permission in writing. Before we give our permission, we may need to agree to certain conditions.
- d You will be held responsible if a group company (or a third-party provider appointed by a group company) breaks the agreement. You will stop being responsible if we enter into a separate agreement for the services with the group company.

## **11. Data protection**

- a Both parties (you and we) must:
- meet their obligations under data protection laws; and
  - make sure that they use all personal information in line with the data protection laws.

You must also meet any obligations relating to data security that are set out in our admissions guide or which we have told you about.

- b Each party acknowledges that it is a 'data controller' (that is, responsible for how and why personal information is collected, used and held in connection with the agreement). Each party must establish their own purposes and policies for collecting, storing, using, sharing and destroying any personal information in connection with the services.

- c You must pay us all losses, costs, expenses and damages we suffer or are held responsible for (including all foreseeable losses, any loss of profit or reputation, and all interest, penalties, legal and other reasonable professional costs) as a result of:
- you failing to keep to any part of this clause 11; or
  - any group company or other third party you are responsible for under the agreement failing to keep to any part of this clause 11.

## **12. Confidentiality**

- a You and we must keep all confidential information provided by the other party (or received in connection with the agreement) confidential, unless the agreement allows such information to be revealed.
- b For the purpose of the agreement, 'confidential information' is all information provided by the other in connection with the agreement, including during any discussions between you and us or between us and an awarding body (including information provided before the date of the agreement) if the information:
- is commercially sensitive or a trade secret;
  - is stated to be confidential at the time it is given; or
  - should reasonably be considered to be confidential because of the nature of the information or the circumstances it was provided in.

Confidential information includes all embargoed information.

- c You and we can only use the other party's confidential information for purposes relating to the services or agreement.
- d Your and our obligations under this clause 12 will stay in force for six years after the agreement ends.
- e We and you can release embargoed information on or after results day.
- f You and we can release any confidential information that needs to be provided under any law, regulation, court order or order of a competent statutory authority (for example, HMRC, the Office of the Independent Adjudicator or the Office for Students).
- g We can release confidential information to:
- debt-collection agencies, credit-reference agencies, credit- or fraud-monitoring schemes, security agencies or credit providers;
  - the Information Commissioner's Office;
  - an awarding body, if this is necessary for us to keep to the terms of any agreement between us and the awarding body; and
  - any regulatory or governing authority (or similar organisation) which we are required to give information to or which, in our reasonable opinion, it is appropriate for us to give information to.

### 13. Embargoed information

- a You must not:
- release embargoed information to any applicant or other third party before results day;
  - discuss embargoed information with any applicant or other third party before results day; or
  - respond to any request an applicant, journalist or other third party makes in connection with embargoed information before results day.

If you receive any request for embargoed information, you must report this to us immediately.

- b You must:
- keep to any restrictions relating to embargoed information that are set out in our admissions guide or that we tell you about at any time; and
  - tell us immediately if you find out that this clause 13 has been broken.
- c You confirm that you understand the following.
- (i) We have entered into one or more 'data-sharing agreements' with awarding bodies, under which the awarding bodies will give us results so we can provide the services.
  - (ii) If a data-sharing agreement ends, your right to use the results will automatically end at the same time. In this case, you must (if we ask) immediately return or destroy all copies of the results and confirm in writing that you have done this.
  - (iii) All intellectual property rights in the results are owned by the awarding bodies.
  - (iv) We will not be liable for:
    - failing to provide the results;
    - providing the results later than expected; or
    - any mistakes in, or details missing from, the results;if this is caused directly or indirectly by an awarding body or by a data-sharing agreement ending.
- d You agree to give us and the awarding bodies any assurance we or the awarding bodies may reasonably need in connection with the security of the results.
- e We can suspend or withdraw your access to the results, or apply any appropriate restriction, if you (or any third party you are responsible for under the agreement) fail to keep to any part of this clause 13.

## **14. Freedom of information**

- a The requirements of the Freedom of Information Act 2000 may apply to you and us. You and we agree to co-operate reasonably to allow the other party to meet their obligations under the Act.
- b You understand that we may need to release information under the Act without your permission. We are responsible for deciding whether we release any information under the Act.

## **15. Intellectual property rights**

- a All intellectual property rights in our materials, documents, software, content, products, services, information, text and images, and any other materials or equipment we have supplied or made available to you in relation to the services, are owned by us or other businesses we have an agreement with to use their materials, documents, software, content, products, services, information, text and images as part of the services. We do not own the intellectual property rights in any materials, documents, software, content, products, services, information, text and images provided by third parties, as explained in clause 3.
- b We grant you a licence to use our materials in connection with the services and for the duration of the agreement. We grant you a right to use our software only in connection with the services and for the duration of the agreement. That licence:
  - applies anywhere in the world;
  - does not require you to make any payment other than the charges referred to in clause 7;
  - is not exclusive; and
  - cannot be transferred by you.
- c We have the right to grant the licence referred to in 15b, and that licence and your use of our materials will not infringe (break, limit or undermine) any third party's intellectual property rights.
- d We are not responsible for any third party's content or for any intellectual property rights being infringed as a direct or indirect result of:
  - that content;
  - any information you have given us; or
  - our materials being changed by anyone other than us.
- e You grant us a worldwide, royalty-free, non-exclusive, non-transferable licence to use the information you have provided for the purpose of providing the services to you during the period of the agreement. This licence and our use of the information you have provided will not infringe any third party's intellectual property rights.



## **16. Suspending the services**

- a We may suspend your access to some or all of the services in the following circumstances.
- (i) If we have good reason to believe that you (or a user or third party you are responsible for) have not kept to the agreement. (In this case we will tell you about the suspension and our reasons for it as soon as reasonably possible. If possible, we will give you notice before the suspension.)
  - (ii) If you do not pay a charge when it is due and fail to pay within seven days of us giving you written notice to pay, unless you have disagreed with the charge, as set out in clause 7d. (The suspension will stay in force until you have paid all undisputed amounts you owe us.)
  - (iii) If we have good reason to believe that you no longer meet the access criteria.
  - (iv) If providing the services to you, or if anything you have done or failed to do, could damage our reputation.
  - (v) If a complaint has been made against you in connection with something that a user is believed to have done or failed to do, and which breaks the agreement. (In this case, we may suspend your access to the services or just the user's access to them. We will investigate the matter and the access to the services will stay suspended until we make a final decision to lift the suspension or end the agreement.)
  - (vi) If clause 17e applies.
- b You must continue to pay the charges during any suspension. Also, we can charge you a reasonable administration fee for lifting the suspension and reinstating the services.

## **17. Ending the agreement**

- a We may end the agreement, after giving you as much written notice as reasonably possible, if we stop providing the scheme or the services.
- b You or we may end the agreement (completely or for individual services) if the other party breaks the agreement in a serious way or more than once. The party wanting to end the agreement must give the other written notice setting out the reasons why.

- If the matter can be put right, the notice must set out the action the other party must take. If the matter is not put right within 21 days, the agreement will end on the last day of the 21-day period.
  - If the matter cannot be put right, the agreement will end immediately.
- c You or we may end the agreement immediately (completely or for individual services), by giving the other party written notice, in the following circumstances.
- (i) If the other party stops or threatens to stop trading, or suspends trading or carrying on business (other than temporarily because of a strike).
  - (ii) If the other party:
    - suspends payment of its debts or becomes unable to pay its debts when they are due;
    - takes steps to become insolvent;
    - enters into a voluntary debt arrangement with its creditors;
    - has a receiver or administrator appointed over any part of its business or assets;
    - has a creditor's winding-up petition advertised against it, or passes a resolution to be wound up); or
    - is involved any similar action or procedure in any country.
- d Either you or we may end the agreement (completely or for individual services) at any time by giving the other party at least 60 days' notice in writing. However, the agreement will not end until the last day of the full admissions cycle following the admissions cycle the notice was given in.
- e If we have good reason to believe that you have, or a user has, broken clause 5, 6, 10, 11, 12 or 13 of these terms, we may immediately suspend your or their (or both) access to the services. If you do not put the matter right within seven days of receiving notice of the action you must take, or if the matter cannot be put right, we may give you written notice that ends the agreement immediately.

## **18. Liability**

- a Nothing in the agreement removes or limits:
- your or our liability for negligence which results in death or personal injury to any person; or
  - any liability that the law prevents us from removing or limiting.
- b Your obligation to pay the charges or other payments you owe us is not limited.

- c Except as set out in 18a and 18b above, your or our maximum total liability to the other party in connection with the agreement will be equal to the total annual charges you paid for the services during the previous 12 months. If the agreement has been in force for less than 12 months, your or our maximum total liability to the other party will be:
- 12 times the average monthly charges you have paid during the term of the agreement (worked out by the total amount you have made divided by the number of months the agreement has been in force for); or
  - £100,000;
- whichever is greater.
- d Except as stated in clause 11c, you and we will have no liability to the other party for any of the following losses or damage.
- Loss of business, income or profits
  - Loss of anticipated savings
  - Damage to reputation
  - Loss or corruption of data or software
  - Any loss that is not a natural and foreseeable consequence of the party's actions or failings (known as 'consequential or indirect loss').
- e We do not accept responsibility for, and will not have any liability for, any losses or damages arising out of or in connection with the accuracy of any information that:
- you have provided; or
  - an applicant or referee has provided;
- about the applicant's identity, education and employment record, or other detail that forms part of the application.

## **19. Notices**

- a Any notice, permission or approval given under the agreement will only be valid if it is given in writing by post or email.
- b All invoices and notices sent by post will be sent to the most recent address provided by the party the invoice or notice is being sent to.
- c Notice sent by post will be considered to have been received 48 hours after it was posted or when proof of delivery is received, if earlier. Notice sent by email will be considered to have been received at the time the email was actually received in the other party's inbox.
- d Any notice you send us must be sent to our legal team (legal@ucas.ac.uk) and your UCAS Customer Success Manager (B2B).

## **20. General conditions**

- a The agreement can only be changed if you and we agree to the change in writing.

- b If you or we fail to exercise, or delay in exercising, any right under the agreement, this does not prevent you or us (as appropriate) from exercising that right, or any other right, in the future.
- c You or we will not be considered to have broken the agreement if that party cannot meet an obligation due to any factor outside their reasonable control (for example, changes in law, natural disasters, extreme weather, strikes, the failure of a third party, war, riot, terrorist act or government action).
- d Only you and we can enforce the terms of the agreement.
- e You cannot transfer any of your rights under the agreement without our permission in writing.
- f The agreement is the whole agreement between you and us in connection with the services. The agreement replaces all proposals and previous agreements and understandings between you and us relating to the services. No terms set out in any purchase order or other customer document will affect the agreement.
- g When entering into the agreement (or any part of it) neither you nor we relied on any statement or promise that is not written in the agreement.
- h No term which is not specifically written in the agreement will apply, except where that term is necessary and any law that applies states that it must apply.
- i Any reference in the agreement to a law includes any future amendments or replacements of that law.
- j The agreement is governed by and interpreted in line with the laws of England and Wales. You and we agree that any dispute we cannot settle between us will be decided by the courts of England and Wales.

We agree and accept these terms of service as a customer of UCAS:

**SIGNED** on behalf of .....

Signature .....

Name .....

Position .....

Date .....

