

Three76 Innovation Hub

Terms and Conditions of Use

Background

- A. Three76 has been established by the University as a means of supporting staff, students, entrepreneurs and business startups in the Newcastle and Hunter region.
- B. You wish to access the Premises and use the Facilities, and we agree to grant you access to the Premises and use of the Facilities, on the terms and conditions of this Agreement.

Terms & Conditions of Use

1. Operation of this Agreement

1.1 Term

This Agreement will commence on the Commencement Date and continue for the Initial Term, unless terminated earlier in accordance with clause 9.

1.2 Renewal

This Agreement will automatically renew for successive one month periods after the initial Term, until terminated in accordance with clause 9.

2. Facilities and Services

2.1 Facilities

- (a) The Premises and Facilities are to be used solely as an office and co-working space.
- (b) Subject to the terms of this Agreement, we will provide you with:
 - (i) access to the Premises; and
 - (ii) the Services and use of Facilities in accordance with your Service Package.
- (c) You acknowledge that the Premises are a co-working space and you will share the Premises and Facilities with others.
- (d) The University provides no guarantee that either the Premises or the Facilities will be available or accessible to you at all times.

2.2 Premises

- (a) You must not alter or damage any part of the Premises.
- (b) You are liable to us for any damage caused by you, your Guests or any of your Personnel.
- (c) You must not interfere with any cabling or electronic cords without our consent.
- (d) You acknowledge that nothing in this Agreement or in the conduct of the University or its Personnel creates any tenancy, leasehold estate or other real property interest in your favour with respect to the Premises.

2.3 Internet and Wi-Fi

- (a) We will endeavour to provide internet/Wi-Fi services as part of the Facilities available to you,

but we do not guarantee the availability, security or speed of internet/Wi-Fi services. We will not be liable for any downtime, loss or interruption including any loss or corruption of your data.

- (b) You are responsible for adopting all online and personal security measures you think appropriate for your circumstances (for example using a VPN).
- (c) Any security measure must not interfere with the Facilities, the Premises or other members of Three76.
- (d) You must not use the internet to engage in any activity that might be illegal or offensive, including downloading copyrighted materials without the copyright owner's consent.
- (e) You agree to:
 - (i) comply with our IT Conditions of Use Policy when accessing and using our internet facilities; and
 - (ii) comply with all internet related Laws and regulations relevant to the Premises and Facilities.
- (f) You acknowledge and agree that use of the Facilities is not private. You acknowledge that we, or our internet service provider may store information about your internet activity or your personal details in accordance with Data Retention Laws or our information technology security policies and procedures including under the IT Conditions of Use Policy.

2.4 Services

- (a) The Services available to you are set out in the Service Package.
- (b) We will endeavor to provide the Services, but do not guarantee that Services will always be available.
- (c) We do not warrant that the Services:
 - (i) are fit for purpose; or
 - (ii) will benefit you or your business.
- (d) To the extent permitted by Law, we do not provide any guarantee in relation to the Services.
- (e) To the extent the Services constitute advice, the advice is not specific to your circumstances and should not be relied upon by you as a substitute for independent professional advice.
- (f) You agree to seek professional and independent advice before acting or relying on any information provided by us or provided in the Services.

2.5 Desk usage

- (a) You must not permit any other person to use your desk without our consent.
- (b) You must not interference with any items from another person's desk without their consent.
- (c) We reserve the right to use all desks for special events, and will endeavor to give you prior notice.
- (d) We do not guarantee that you have an exclusive right to any desk allocated to you, and we may move you and re-allocate any desk in the Premises in consultation with you.

3. Co-working environment

3.1 Confidentiality

- (a) You acknowledge that Three76 is an open co-working environment, where collaboration is encouraged and ideas may be shared.
- (b) The University does not warrant that its Personnel or any other Three76 participants, members or Guests in the co-working space will keep any of your ideas confidential.
- (c) You acknowledge and agree that you are personally responsible for ensuring that you protect your ideas, Confidential Information and Intellectual Property.
- (d) You agree not to use or disclose another person's Confidential Information to their detriment or to the detriment of the University.

3.2 Intellectual Property

- (a) Nothing in this Agreement affects your or our ownership of any Intellectual Property.
- (b) Subject to (e), no Intellectual Property rights are granted by or to either party under this Agreement.
- (c) You agree that you are responsible for protecting any Intellectual Property rights you might lawfully hold and will seek independent legal advice about the protection of your Intellectual Property rights before disclosing relevant information to another person, member or our Personnel.
- (d) We are not liable for any loss, diminution of value or any inability to obtain registrable rights in relation to your Intellectual Property under any circumstances.
- (e) We may disclose your name and the general nature of your participation in Three76 for promotional purposes and you consent to this.

4. Responsible behaviour

4.1 Compliance

You agree to comply with:

- (a) all Laws and the Code of Conduct;
- (b) by-laws, rules and regulations advised by the University from time to time; and
- (c) any express written or verbal instruction of University Personnel while you are on the Premises including undertaking any induction process.

4.2 Prohibited activities

You must not:

- (a) conduct an auction or sale on or from the Premises;
- (b) sleep on the Premises;
- (c) engage in any activity that could negatively impact the health or safety of yourself or others on the Premises;
- (d) engage in sexual, racial, age, gender or other forms of discrimination on the Premises;
- (e) sublicense your desk or on-sell any Facilities or Services;
- (f) charge others to enter the Premises or access the Facilities; or
- (g) share your access card with any other person.

4.3 Guests

- (a) You may invite Guests onto the Premises during Business Hours for business purposes.
- (b) You agree:
 - (i) you are responsible for the acts or omissions of any Guest you bring to the Premises;
 - (ii) to inform your Guest of the Code of Conduct;
 - (iii) to accompany them at all times while they are on the Premises; and
 - (iv) to ensure that any Guest that stays more than one hour on the Premises arranges and pays (if applicable) for a Day Pass.

4.4 Securing personal property

- (a) You agree that you are solely responsible for the security of your property on the Premises and we are not responsible for any loss or damage including any theft.
- (b) We do not insure your property, so it is your responsibility to obtain insurance for any property you bring on the Premises.

4.5 Equipment

- (a) You are responsible for checking that your equipment is not faulty prior to connecting it to our Facilities.
- (b) We are not liable for any damage to your equipment under any circumstances.
- (c) We reserve the right to inspect, test and tag any equipment you bring onto the Premises.
- (d) We may require you to cease using and/or remove any of your equipment for any reason, including if it:
 - (i) is noisy or an annoyance;
 - (ii) is offensive;
 - (iii) may be a safety risk;
 - (iv) negatively affects the Wi-Fi or internet service; or
 - (v) overloads or shorts the power supply.

5. Fees, Invoicing and Payment

5.1 Fee

You will pay the Fee to the University monthly in advance.

5.2 Refunds

If you fail to take the desk allocated to you, change your mind or otherwise decide not to use the Facilities, you will not be entitled to a refund.

5.3 Goods and Services Tax (GST)

- (a) The Fee excludes GST.
- (b) If any supply made under, or in respect of, this Agreement is a taxable supply, the recipient will pay, in addition to the consideration provided under this Agreement for that supply (unless it expressly includes GST), an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply.

6. Warranties

You warrant that you:

- (a) have had an opportunity to seek independent legal advice as to the nature, effect and extent of this Agreement;
- (b) agree that the University has not made any promise, representation or inducement material to your entry into this Agreement, other than those matters set out in this Agreement; and
- (c) are aware that the University is relying upon these warranties in executing this Agreement.

7. Liability and indemnities

7.1 Liability

To the maximum extent permitted by Law, the aggregate liability of the University arising under or in connection with this Agreement (whether in contract, tort (including negligence), statute, equity or otherwise) is limited to the value of the Fees paid under this Agreement up to the date the Claim first arose.

7.2 Indemnity

You indemnify, and agree to keep indemnified, the University against any Claim or Loss the University suffers, incurs or is liable for in connection with any:

- (a) breach of this Agreement;
- (b) infringement, or alleged infringement, of Intellectual Property;
- (c) default or negligent act or omission;
- (d) breach of tort, including negligence or breach of statutory duty;
- (e) death or injury to any person or damage to any property; and
- (f) breach of equitable duty, including breach of confidentiality or breach of fiduciary duty,

that you have caused or contributed to.

7.3 Indirect Loss

Under no circumstances is the University liable to you for Indirect Loss.

7.4 Release

You release the University and its Personnel from any liability, Loss or damage incurred or suffered by:

- (a) you; or
- (b) your Personnel or Guests,

arising out of any act or omission by the University in connection with this Agreement including in relation to the Services.

7.5 Benefit of indemnity

The University holds the benefit of this clause 7 on its own behalf and on behalf of University Personnel.

8. Force majeure

8.1 Force majeure event

The University is not liable for any breach of its obligations under this Agreement to the extent that the breach resulted from a Force Majeure Event.

9. Termination

9.1 Termination on notice

Either party may terminate this Agreement at any time by giving the other party 20 Business Days' written notice of termination.

9.2 Immediate termination by the University

The University may immediately terminate this Agreement by giving written notice to you if:

- (a) you breach a term of this Agreement, which is not capable of remedy;
- (b) you breach any of the provisions of this Agreement which is capable of being remedied to the University's satisfaction, but which is not remedied within 5 Business Days after written notice of that breach has been given to you;
- (c) you commit a breach of the Code of Conduct;
- (d) you suffer an Insolvency Event; or
- (e) in the reasonable opinion of the University, you are or become unwilling to satisfy your obligations under this Agreement.

9.3 Effect of termination

- (a) When this Agreement has ended, you must immediately vacate your desk and the Premises, leaving the place in the same condition as it was when you took it.
- (b) The University reserves the right to charge additional reasonable fees for any repairs needed to remedy any damage.

9.4 Reservation of rights and remedies

Termination of this Agreement for any reason will not prejudice any rights or remedies already accrued to the University under, or in respect of, any breach of this Agreement.

9.5 Survival

Clause 7 survives expiry or termination of this Agreement and is enforceable at any time at law or in equity.

10. General

10.1 Notices

Any notice under this Agreement must be in writing, and may be delivered to a party at the addresses and numbers set out in the Details of this Agreement.

10.2 Further assurances

Each party must promptly do all further acts required by Law or reasonably requested by the other party to give effect to this Agreement or any obligation under it.

10.3 Assignment

Neither party may, without the other party's consent, assign or novate this Agreement.

10.4 Waiver

A failure to exercise, a delay in exercising or a partial exercise of a right created under or arising from a breach of this Agreement does not result in a waiver of that right.

10.5 Relationship between the parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

10.6 Severability

Where a clause in this Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Agreement.

10.7 Variations

Any variation to this Agreement must be in writing signed by, or on behalf of, both parties.

10.8 Entire agreement

This Agreement replaces all previous agreements between the parties concerning its subject matter and contains the entire agreement between the parties.

10.9 Governing law and jurisdiction

This Agreement is governed by and construed in accordance with the law of New South Wales, and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

11. Definitions and Interpretation

11.1 Definitions

Business Day means a day on which banks are open for business in New South Wales, Australia excluding a Saturday, Sunday or public holiday.

Claim means a claim, demand, action, or proceeding.

Code of Conduct means the University's Code of Conduct which can be accessed and downloaded from <http://www.newcastle.edu.au/about-uon/governance-and-leadership/policy-library/resource-record?RecordNumber=D14/30430> or such other code of conduct as advised by the University from time to time.

Confidential Information means all information which is disclosed by you, or to you by another person on the Premises, which:

- (a) is by its nature confidential;
- (b) is designated by the disclosing person as being confidential; or
- (c) you know or ought to know is confidential, but does not include information which:
 - (d) is or becomes public knowledge other than through a breach of confidentiality;
 - (e) was already in your possession and not subject to an obligation of confidentiality;
 - (f) is lawfully received from a third party; or
 - (g) is independently developed by you.

Data Retention Laws means the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* (Cth), and any related provisions in the *Telecommunications (Interception and Access) Act 1979* (Cth) and *Telecommunications Act 1997* (Cth).

Day Pass means an access pass that a short term visitor must obtain if they are to remain on the Premises for any longer than an hour, or if they will not be accompanied while on the Premises for any period of time.

Force Majeure Event means an event which is outside the reasonable control of the party claiming that the event has occurred and the adverse effects of which could not have been prevented or mitigated against by that party with reasonable diligence or reasonable precautionary measures, and includes natural disasters, acts of terrorism, riots, revolutions, civil commotion or epidemic, but does not include industrial action or any act or

omission of a subcontractor (except to the extent that act or omission is caused by a Force Majeure Event).

GST means any goods and services tax imposed by the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Guest means a person that you have brought to the Premises for business purposes for a period less than one hour or who obtains a Day Pass at your instruction.

Indirect Loss means any special, indirect, consequential, incidental or punitive damages or economic loss, loss of profits, revenue, goodwill, bargain, lost opportunity, depreciation in value of equipment, anticipated savings or loss or corruption of data, and any costs or expenses incurred in connection with the foregoing.

Intellectual Property means all present and future rights to intellectual property including any inventions and improvements, trademarks (whether registered or common law trade marks), designs, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data, or formula.

IT Conditions of Use Policy means the University's current information technology conditions of use policy or such other policy as advised by the University from time to time.

Law means all applicable statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time anywhere in Australia, whether made by the Commonwealth, a State, a Territory or a local government and, where the context permits, includes the common law and equity.

Loss means claims, actions, expenses, losses, liabilities, damages and costs (including legal costs) and indirect losses and damages including those arising from third party claims.

Personnel means, in relation to a party, any employee, officer, agent, contractor, sub-contractor, student or volunteer of that party.

Premises means the Three76 building at 376 Hunter Street, Newcastle NSW 2300.

Services means the services provided as part of the Service Package or as otherwise provided by the University from time to time.

16.1 Interpretation

- (a) The singular includes the plural and the plural includes the singular.
- (b) The word 'includes' in any form is not a word of limitation.
- (c) Words of any gender include all genders.
- (d) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.
- (e) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (f) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.

- (g) A reference to a party to a document includes that party's employees, subcontractors, successors and permitted assignees.
- (h) A promise on the part of 2 or more persons binds them jointly and severally.

- (i) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this Agreement or that provision.