

Telford Business Services – Terms and Conditions

BACKGROUND

- (A) The Council via its department Telford Business Services offers a comprehensive range of value for money services for customers to meet their needs.
- (B) The Customer wishes to use the Council's Service(s) via its department Telford Business Services in its business operations.
- (C) The Council via its department Telford Business Services has agreed to provide and the Customer has agreed to take and pay for the Council's Service(s) subject to the terms and conditions of this agreement.

AGREED TERMS

DEFINITIONS

In this Agreement unless the context otherwise requires the following terms shall have the meanings given them below:

- **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- **Commencement Date:** has the meaning given in clause 2.2.
- **Council's Equipment:** including equipment, systems, or facilities, provided by the Council via its department Telford Business Services or its subcontractors and used directly or indirectly in the supply of the Services.
- **Customer's Premises:** the premises which are to be made available for use by the Council via its department Telford Business Services for the provision of the Services on the terms set out in this agreement.
- **Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998
- **Deliverables:** all documents, products and materials developed by the Council or its agents, subcontractors, consultants and employees in relation to the Services in any form, including data, reports and specifications (including drafts).
- **GDPR:** General Data Protection Regulation ((EU) 2016/679)
- **Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in 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.
- **Order:** the Customer's written acceptance of the Council's (via its department Telford Business Services) quotation
- **Specification:** the description or specification of the Services provided by the Council via its department Telford Business Services to the Customer
- **Services:** the services, including the Deliverables, supplied by the Council via its department Telford Business Services to the Customer.
- **The Council:** via its department Telford Business Services
- **VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

INTERPRETATION

- 1.1 Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent and any successor enactment, order, regulation or instrument.
- 1.2 A reference to **writing** or **written** does not include fax or e-mail.

- 1.3 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

2 BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Council to provide the Services in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted when the Customer confirms acceptance of the Council's quotation at which point and on which date the Contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Council, and any descriptions or illustrations contained in the Council's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Council is only valid for a period of [30] Business Days from its date of issue.

3 COUNCIL'S OBLIGATIONS

- 3.1 The Council shall use reasonable endeavours to:
- provide the Services in accordance with the Specification in all material respects;
 - observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement;
 - ensure that all the Council's equipment is maintained in good working order and suitable for the purposes for which it is used in relation to the Services, is adequately insured and conforms to all relevant United Kingdom standards or requirements.
- 3.2 The Council reserves the right to amend the Services if necessary to comply with any Applicable Law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Council shall notify the Customer in any such event.
- 3.3 The Council warrants to the Customer that the Services will be provided using reasonable care and skill.

4 CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- ensure that the terms of the Order and any information it provides in the Specification are complete and accurate
 - co-operate with the Council in all matters relating to the Services
 - prepare the Customer's premises for the supply of the Services and provide, for the Council, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, data and other facilities as required by the Council;
 - inform the Council of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
 - provide the Council with such information and materials as the Council may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects.
 - obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services in all cases before

the date on which the Services are to start.

- ensure that all materials, equipment, furniture, specifications and data supplied by the Council to the Customer (including the Council's Equipment) shall, at all times, be and remain as between the Council and the Customer the exclusive property of the Council, but shall be held where appropriate by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Council, and shall not be disposed of or used other than in accordance with the Council's written instructions or authorisation.
- 4.2 If the Council's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees the Council shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 4.3 The Customer shall be liable to pay to the Council, on demand, all reasonable costs, charges or losses sustained or incurred by the Council (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Council confirming such costs, charges and losses to the Customer in writing.

5 CHARGES AND PAYMENT

- 5.1 In consideration of the provision of the Services by the Council, the total price for the Services shall be the amount set out in the Council's quotation.
- 5.2 The Customer shall pay each invoice submitted to it by the Council, in full and in cleared funds, immediately following receipt to a bank account nominated in writing by the Council and time for payment shall be of the essence of the Contract save for the provision of Telford & Wrekin Training Services where payment shall be made via the Telford Business Services [website](#) upon booking unless the date of the training is more than 30 days from the date of booking in which case payment shall be made via invoice but in all cases shall be made before the Training course takes place.
- 5.3 All amounts payable by the Customer under the Contract are inclusive of VAT.
- 5.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Council on the due date, the Council may suspend all Services until payment has been made in full.
- 5.5 If the Customer fails to make a payment due to the Council under the Contract by the due date, then, without limiting the Council's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6 INTELLECTUAL PROPERTY RIGHTS

As between the Customer and the Council, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Council. The Council licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If this agreement is terminated, this licence will automatically terminate.

7 LIMITATION OF LIABILITY

- 7.1 Subject to Clause 7.4, the Council's liability for losses suffered by the Customer arising out of or in connection with this agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall be limited to £100,000 (one hundred thousand pounds) in respect of any one event or series of connected events, and to £1,000,000 (one million pounds) in total of all claims.
- 7.2 The Council shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for: loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of or damage to goodwill; or any indirect or consequential loss.
- 7.3 Nothing in these Conditions shall limit or exclude the liability of either party for death or personal injury caused by its negligence, or the negligence, fraud, fraudulent misrepresentation or deliberate personal repudiatory breaches of this agreement;
- 7.4 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 this agreement.

8 INSURANCE

- 8.1 The Council shall maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- 8.1.1 public liability insurance with a limit of indemnity of not less than £40,000,000.00 (ten million pounds) in relation to any one claim or series of claims;
- 8.1.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000.00 (ten million pounds) in relation to any one claim or series of claims;
- 8.1.3 professional indemnity insurance with a limit of indemnity of not less than £5,000,000.00 (one million pounds) in relation to any one claim or series of claims.
- ("the Council's Required Insurances")
- 8.2 The Customer shall maintain appropriate insurances relevant to its business and to comply with legislation ("the Customer's Required Insurances")
- 8.3 The cover shall be in respect of all risks which may be incurred by the Council or the Customer as applicable, arising out of the Council's or Customer's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss.
- 8.4 The Council shall give the Customer, on request, and the Customer shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Council's Required Insurances or the Customer's Required Insurances as applicable, are in place.
- 8.5 The terms of any insurance or the amount of cover shall not relieve the Council nor the Customer of any liabilities under the agreement.

9 DATA PROTECTION

- 9.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to and does not relieve, remove or replace a party's obligations under the Data Protection Legislation.
- 9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Council is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation)
- 9.3 The Customer acknowledges and agrees that details of the Customer's

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- name, address and payment record may be submitted to a credit reference agency.
- 9.4 This Clause 9 shall survive the termination of the agreement.
- 10 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**
- 10.1 The parties acknowledge that the Council is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 10.2 The Council shall:
- ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - monitor the level and validity of the checks under this Clause 11.2 for each member of staff.
 - The Council warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Council in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 10.3 The Council shall notify the Customer of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 11 have been met.
- 10.4 The Council shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or vulnerable adults.
- 10.5 The Council shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to children or vulnerable adults.
- 12. CANCELLATIONS**
- 12.1 The cancellation terms and charges apply for the following services:
- 12.1.1 Let's Dine:
- Cancellation of order within 72 hours of order delivery/collection – no cancellation charge.
 - Cancellation of order less than 72 hours order delivery/collection – the customer will be charged 50% of the total cost of the order.
- 12.1.2 Let's Clean:
- Cancellation of order for one-off services within 10 working days – no cancellation charge
 - Cancellation of order for one-off services within 5 working days – the customer will be charged 25% of the total cost of the order.
- 12.1.2 ICT Support:
- Cancellation of order for one-off services within 10 working days – no cancellation charge
 - Cancellation of order for one-off services within 5 working days – the customer will be charged 50% of the total cost of the order.
- 12.2 Without prejudice to any other rights or remedies which the parties may have, the Council may terminate this agreement without liability to the Customer with immediate effect by giving written notice if:
- 12.2.1 the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default after being notified in writing to make such payment; or
- 12.2.2 the Customer commits a material breach of any term of this agreement
- and (if such a breach is remediable) fails to remedy that breach within 10 days of being notified in writing of the breach.
- 12.2.3 the Customer financial position deteriorates to such an extent that in the Council's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13 CONSEQUENCES OF TERMINATION**
- On termination of this agreement for any reason the customer shall:
- 13.1 immediately pay to the Council all of the Council's outstanding unpaid invoices and, in respect of Services supplied but for which no invoice has been submitted, the Council may submit an invoice, which shall be payable immediately on receipt;
- 13.2 return all of the Council's Equipment and Deliverables. If the Customer fails to do so, then the Council may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
- 13.3 the accrued rights, remedies, obligation and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination; and
- 13.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 14 FORCE MAJEURE**
- Neither party to this agreement shall be liable to the other as a result of any delay or failure to perform its obligations under the agreement if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable.
- 15 VARIATION**
- No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 16 WAIVER**
- 16.1 A waiver of any right or remedy under this agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 16.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of any such right or remedy.
- 17 RIGHTS AND REMEDIES**
- Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 18 SEVERANCE**
- 18.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- 18.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 19 ENTIRE AGREEMENT**
- 19.1 This agreement and any documents referred to in it or annexed to it and initialled by the parties constitute the entire agreement between the parties and supersede and extinguish all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this agreement.
- 19.2 Each party acknowledges that, in entering into this agreement and the documents referred to in it or annexed to it, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement or those documents. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement or those documents (whether made innocently or negligently) shall be for breach of contract.
- 20 ASSIGNMENT**
- Neither Party shall, without the prior written consent of the other party assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 21 NO PARTNERSHIP OR AGENCY**
- Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 22 RIGHTS OF THIRD PARTIES**
- A person who is not a party to this agreement shall not have any rights under or in connection with it.
- 23 NOTICES**
- 23.1 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service providing proof of postage or proof of delivery, at the address specified at the front of this agreement.
- 23.2 Any notice shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 23.3 This Clause 23 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. A notice required to be given under this Agreement shall not be validly served if sent by fax or e-mail.
- 24 DISPUTE RESOLUTION**
- The Council and the Customer will use their best endeavours to resolve by agreement any complaint or dispute arising between them and shall negotiate in good faith at all times by means of prompt discussion at an appropriate managerial level. Should the complaint not be resolved to the Customer's satisfaction they should utilise the Council's complaints procedure.
- 25 GOVERNING LAW AND JURISDICTION**
- 25.1 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 25.2 The parties to this Agreement irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).