

GENERAL CONDITIONS OF CONTRACT

SAMPLE

1. Complaints

- 1.1 The Service Provider shall have a written procedure for dealing with complaints about the Service and shall operate it for the duration of the Contract. The procedure will be made available to all Service Users receiving Service funded under this Contract. The procedure will include a reference to Service Users's rights to access the Council's complaints procedure at any time by contacting the Council's Consumer Relations Officer at Worcestershire County Council, Corporate Services Directorate, County Hall, Spetchley Road, Worcester WR5 2NP (telephone: 01905 766365).
- 1.2 At the reasonable request of the Council's Authorised Representative, the Service Provider shall supply details of any complaint made about the Service and Service Provider's response.

2. Statutory Obligations

The Service Provider shall comply with all statutory regulations and enactments relating to the provision of the Service and will comply with any relevant directives or regulations of the European Union which are for the time being in force in the United Kingdom.

3. Health and Safety

The Service Provider shall take every precaution to ensure the health, safety and well being of service users and staff at all times and shall comply with the provisions of the Health and Safety at Work Act 1974 and any other relevant Health and Safety regulations and appropriate Codes of Practice currently in force. The Service Provider shall provide a copy of its Health and Safety Policy to the Council on request.

4. Protection of Vulnerable Adults and Children

- 4.1 The Service Provider shall work, as appropriate in accordance with :
- i) the **Worcestershire Inter-Agency Vulnerable Adult Protection Policy and Procedure**, which can be accessed via the Council's website (search under "Safeguarding Adults"); and
 - ii) **Worcestershire Safeguarding Children Board Child Protection Policy and Procedures**, which can be accessed at any Worcestershire Hub or via the Safeguarding website, www.worcestershiresafeguarding.co.uk;
 - iii) The requirements of the **Safeguarding Vulnerable Groups Act 2006**.

Further information can be obtained from the **Council's Adult Protection Coordinator** (tel: 01527 556060) or **Service Manager, Safeguarding and Quality Assurance** (tel: 01905 728841)

Any allegation or suspicion of abuse of a vulnerable adult or child must be reported to the Council immediately and confirmed in writing within 2 working days. During normal office hours notification about **adult abuse** should be made to the Officer detailed in the appropriate Policy and Procedure under (i) above and notification about **abuse of a child/child protection** should be made by telephoning 0845 607 2000. Outside normal office hours notification about adult abuse or abuse of a child/child protection should be made to the Council's Emergency Duty Team (tel: 01905 768020)

- 4.2 The Service Provider shall ensure that staff and/or volunteers providing the service are aware of their responsibilities in relation to the Policies and Procedures detailed in Clause 4 (i) and (ii) and the legislation detailed in Clause 4 (iii) and make them available for relevant training arranged by the Council.

- 4.3 The Service Provider shall cooperate fully with any **Adult Protection** or **Safeguarding Children** investigation carried out by the Council under the Policies and Procedures detailed in Clause 4 (i) and (ii).

5. Equal Opportunities

The Service Provider, in recruiting staff and volunteers and in providing the Service, shall be committed to anti-discriminatory and anti-oppressive practices and policies and shall not discriminate on the grounds of age, race, gender, marital status, religion, sexual orientation or disability.

6. Protection of Information

The Parties shall comply with the provisions of Schedule 1 to this Appendix 5.

7. Indemnity

The Service Provider shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs and expenses whatsoever and howsoever arising out of the provision of the Service except and to the extent that it arises out of the negligence of the Council, its employees and agents.

8. Insurance

- 8.1 For the duration of the Contract the Service Provider shall maintain the following insurances:

- i) Employers Liability Insurance as required to comply with legislative requirements.
- ii) Public Liability Insurance in a minimum amount of £2.5 million for each and every claim, act or occurrence or series of claims, acts or occurrences.

- 8.2 Prior to commencement of the Contract, the Service Provider shall provide the Council's Contracts Officer for Learning Disabilities, as detailed in Appendix 1, with a copy of the Policy Schedule for the insurances detailed in Clause 8.1. Prior to the expiry of any Policy Schedule, the Service Provider shall provide the Officer with a new Policy Schedule to evidence continued cover.

9. Non-Compliance

- 9.1 If the Council identifies areas of the Service which do not comply with the requirements of this Contract (including any Appendices to the Contract) it shall send the Service Provider a Non-Compliance Action list detailing (i) the areas of non-compliance; (ii) the action to be taken; and (iii) the date by which the action must be taken.

- 9.2 If the Service Provider fails to take any or all of the necessary action by the given date the Council shall send the Service Provider a Final Non-Compliance Action list detailing (i) the areas of non-compliance; (ii) the action to be taken; and (iii) the date by which the action must be taken.

- 9.3 If, in the opinion of the Council the Service Provider fails to complete all remedial actions in a Final Non-Compliance Action list by the due date or on two or more occasions fails to complete a material action on a non-compliance list the Council shall be entitled to take any of the following steps depending on the seriousness of the non-compliance;

- i) To make arrangements to take its own corrective action by its own employees or by the employees of another Service Provider and to deduct all expenses consequent thereon or

incidental thereto from any sums due or to become due to the Service Provider under the Contract, or to recover such sums from the Service Provider as a debt.

- ii) To terminate the Contract in accordance with the Termination Clause.

10. Termination

10.1 Without prejudice to any accrued rights and remedies of the Council under this Contract, the Council may terminate this Contract forthwith by notice in writing to the Service Provider if:

- i) The Service Provider is declared bankrupt or enters into liquidation or has a winding-up order made or (except for the purposes of amalgamation or reconstruction) passes a resolution for winding-up or has an administrative receiver appointed or has possession taken of any property comprised in a floating charge.
- ii) In relation to any contract with the Council, the Service Provider, or any person employed by the Service Provider or acting on its behalf, commits an offence under the Prevention of Corruption Acts 1896 – 1916 or shall have given any fee or reward the receipt of which is an offence under Sections 117(2) and (3) of the Local Government Act 1972 or any amendment or re-enactment thereof.
- iii) The Service Provider has failed to perform a substantial part of the service or has committed any other breach of contract which in the reasonable opinion of the Council has seriously prejudiced the interests of the Council or any Service User.
- iii) The Service Provider fails to complete all remedial actions in a Final Non-Compliance Action list by the due date or if the Service Provider on two or more occasions fails to correct a material action on a non-compliance list.

10.2 Should the Contract between the Service Provider and The Granary Hotel terminate prior to the termination date of this Contract, this Contract will automatically terminate on the same date.

10.3 If the Service Provider fails to provide Service due under this Contract, the Council shall be entitled to recover from the Service Provider any payment already made for the Service together with any additional cost incurred by the Council in obtaining a replacement Service.

11. Notices

11.1 Except where otherwise specified in this Contract or where otherwise agreed in writing between the parties, any notification from one party to the other shall be made to the Authorised Representatives named in Appendix 1.

11.2 Any notification required to be given in writing under this Contract shall be sufficiently served if served personally on the addressee or if sent by prepaid first class post or facsimile to their usual or last known address and if so sent will, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting or on successful transmission, as the case may be.

12. Contracts (Rights of Third Parties) Act 1999

This Contract expressly excludes the provisions of the Contracts (Rights of Third Parties) Act 1999.

13. Exclusion of Agency and Partnership

- 13.1 Neither the Service Provider nor its employees shall in any circumstances hold itself or themselves out as being the servant or agent of the Council except where expressly permitted by this Contract.
- 13.2 Neither the Service Provider nor its paid staff and/or volunteers shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council.

14. Assignment and Sub-Contracting

The Service Provider shall not assign or transfer the whole or any part of the Contract or sub-contract any of the Service to which this Contract relates without the prior written consent of the Council.

15. Waiver

No failure by either party to insist upon the strict performance of any condition of this Contract or to exercise any right or remedy upon breach of any provision of this Contract shall constitute waiver of any condition or waiver of any subsequent breach or default in the performance of any condition.

16. Force Majeure

- 16.1 If either party fails to carry out their respective obligations under this Contract as a result of force majeure then the affected party shall not be liable under this Contract for such failure provided that they have given notice to the other party of the force majeure event within ten days of the failure occurring.
- 16.2 If an event of force majeure occurs then the parties shall meet to discuss how best the Service Provider can continue to provide the Service until the force majeure event ceases.
- 16.3 In this clause 'force majeure' means acts of war, acts of God, decrees of Government, riots, civil commotion and any event or circumstance which is both beyond the control of the affected party and which could not have been prevented by acting prudently, diligently or with reasonable foresight but for the avoidance of doubt does not include any strike or labour dispute or failure to provide the Service by any of the Service Provider's sub-contractors.

17. Variations

Variations to this Contract shall only be made in writing and must be properly signed by duly authorised signatories of both parties.

18. Future Service

- 18.1 During the 12 months preceding the expiry of this Contract or after the Council has given notice to terminate this Contract or at any other time as directed by the Council, and within 15 working days of being so requested by the Council, the Service Provider shall provide to the Council any and all information to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Service. For the avoidance of doubt, this obligation will extend to all workforce information in connection with the transfer of Undertakings (Protection of Employment) Regulations 1981 as amended. All information provided pursuant to this Clause shall be at no cost to the Council.

- 18.2 The Service Provider shall warrant the accuracy of all the information provided to the Council pursuant to Clause 18.1 and authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the services (or any part thereof).

19. Disputes

- 19.1 In the event of a dispute arising between the parties about the interpretation or operation of this Contract, which cannot be resolved locally or by the Authorised Representatives, either party may notify the other's Authorised Representative in writing that it wishes the dispute to be referred to the most senior level of management of each party.
- 19.2 In the event that the dispute cannot be resolved in accordance with Clause 19.1 the Council and Service Provider agree to refer the dispute to an independent mediator to be agreed between the Parties or in default of agreement appointed by the President for the time being of the Law Society of England and Wales.

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