

1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Service Specification;
- 1.2 "Customer" means the organisation or person who purchases services from the supplier;
- 1.3 "Service Specification" means a statement of work, quotation, fee proposal or other similar document describing the services to be provided by the Supplier;
- 1.4 "Supplier" means BatAbility Courses & Tuition and/or Time For Bespoke Solutions and/or any sub-contractors, associates or agents working on behalf of the supplier as described.

2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of services by the Supplier to the Customer.
- 2.2 The Service Specification shall be subject to these Terms and Conditions.
- 2.3 The Supplier shall use all reasonable endeavours to complete the services within the estimated time frames but time shall not be of the essence in the performance of any services.

3 FEE AND PAYMENT

- 3.1 The fees for the performance of the services are as set out in the Service Specification. The Supplier shall invoice the Customer for the services as laid out in the Service Specification.
- 3.2 Unless otherwise referred to within the Service Specification, invoiced amounts shall be due and payable within 28 days of receipt of invoice. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 5% per annum above the base rate of the Bank of England. In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the services are rendered.

4 CUSTOMER'S OBLIGATIONS

- 4.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:
 - 4.1.1 co-operate with the Suppliers and provide the Supplier with any information reasonably required by the Supplier;
 - 4.1.2 obtain all necessary permissions and consents which may be required before the commencement of the services; and
 - 4.1.3 comply with such other requirements as set out in the Service Specification or otherwise agreed between the parties.
- 4.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 4.1.
- 4.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the services agreed to in the Service Specification, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the services contracted for as set out in the Service Specification, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 4.1 shall be deemed to be a cancellation of the services and subject to the payment of the damages set out in this Clause.
- 4.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:
 - 4.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;
 - 4.4.2 if applicable, the timetable for the project will be modified accordingly;
 - 4.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

5 WARRANTY

- 5.1 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

6 INDEMNIFICATION

The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any services provided by the Supplier in accordance with the Service Specification infringes a patent, copyright or trade secret or other similar right of a third party.

7 LIMITATION OF LIABILITY

- 7.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the fees paid by the Customer to which the claim relates.
- 7.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.
- 7.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

8 TERMINATION

Either party may terminate this Agreement forthwith by notice in writing to the other if:

- 8.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
- 8.2 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 8.3 the other party ceases to carry on its business or substantially the whole of its business; or the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

9 CONFIDENTIALITY

All documents, information and advice provided by the Supplier in the course of the Services and all confidential information concerning the Customer shall be treated by the Supplier as confidential and shall not be disclosed to any third party or used or relied on for the purposes of providing services to any other person and the Supplier shall not be entitled to disclose the fact that the Customer has used the Suppliers services, whether for marketing or promotional purposes or otherwise unless: the Customer gives prior written consent; or the Supplier is required by law or by any regulatory authority to make the disclosure; or the document or information or advice enters the public domain through no fault of the Supplier.

10 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

11 INDEPENDENT CONTRACTORS

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement.

12 INSURANCE

The Supplier will have in place and maintain appropriate insurance arrangements for Public Liability, Employers Liability and Professional Indemnity and if requested to do so will provide copies of these arrangements to the Customer.

13 ASSIGNMENT

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

14 SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

15 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

16 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Service Specification or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

17 BIOLOGICAL RECORDS

Unless otherwise agreed to the contrary in writing, the Supplier reserves the right to use, refer to, or pass on to potentially interested third party organisations (e.g. Biological Record Centres) any biological records of interest gained directly by the Supplier during the performance of the contract provided these records are released in such a manner that they are not identifiable to specific site and/or discrete location level, and the release of any such record(s) does not conflict in any way with the interests of the Customer.

18 INTELLECTUAL PROPERTY (REPORTING)

Unless otherwise agreed to the contrary in writing, regardless of whether the report is produced in the name of the Supplier or that of the Customer, the style, format, layout, figures, graphs and wording used or created by the Supplier within any report produced by the Supplier on behalf of the Customer as a result of the contract remains at all times the intellectual property of the Supplier and cannot be used or replicated in any way or at any time for any other contract or purpose by the Customer or any person associated with the Customer.

19 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

20 NO THIRD PARTIES

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

21 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of Scotland and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.