
Derby City Council Workforce Training
Terms and Conditions

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1. Interpretation

1.1 In this Agreement, the following definitions apply:

Agreement: these terms and conditions along with the Order Form, entered into in accordance with clause 2;

Charges: the Charges payable by the Customer for the supply of the Services in accordance with this Agreement and as set out in the Order Form

Commencement Date: the date that this Agreement is entered into in accordance with clause 2.

Contract Year: any 12-month period starting on the Commencement Date and ending on the day before each anniversary of the Commencement Date.

Course Date: the date on which the Services are to be provided, as set out in the Order Form.

Course Time: the time at which the Services are to be provided, as set out in the Order Form.

Customer: the person or company who is ordering the services from DCC who is identified in the Order Form.

Customer Materials: any equipment, tools, resources, software, systems or documents provided by the Customer to DCC in connection with the delivery of the Services.

Customer Premises: a Premises, which is owned or occupied by the Customer, where the Services are to be provided.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

DCC: Derby City Council of the Council House, Corporation Street, Derby DE1 2FS

DCC Materials: any equipment, tools, resources, software, systems, documents or information provided by the provided by DCC and used by DCC in connection with the delivery of the Services.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

Force Majeure Event: an event beyond the reasonable control of DCC including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of DCC or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood or storm

Information: has, for the purposes of clause 14, the meaning given under section 84 of FOIA.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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 rights, 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.

Maximum Participants: the maximum number of Participants who can receive the Services as set out in the Order Form

Minimum Participants: the minimum number of Participants required for the Services as set out in the Order Form

Order Form: the order form submitted to DCC by the Customer which sets out the details of the Services to be provided including where appropriate, the Charges, the Premises and the Services.

Participants: the individuals who are to take part in the Services and who are to receive the training and who may be identified in the Order Form and **Participant** shall mean any one of them as appropriate in context.

Premises: the location (if any) where the Services are to be provided as identified on the Order Form

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Services: the training services to be delivered by DCC to the Customer under this Agreement, as more particularly described in the Order Form.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Working Day: a day Monday to Friday (other than a public holiday in England and Wales) when banks in London are open for business and such other days as may be agreed from time to time by DCC in writing.

Working Hours: the period from 9.00am to 5.00pm on any Working Day.

1.2 In this Agreement, the following rules apply:

- (a) Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;
- (b) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (c) a reference to a party includes its personal representatives, successors or permitted assigns;
- (d) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (e) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (f) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted, in each case from time to time;
- (g) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done;
- (i) A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time;

- (j) References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule; and
 - (k) a reference to **writing** or **written** excludes faxes but not e-mail.
- 1.3 Where there is any conflict or inconsistency between the provisions of this Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) The Order Form;
 - (b) the clauses of these terms and conditions;

2. Formation of Contract

- 2.1 These terms and conditions, together with the Order Form, shall form the Agreement.
- 2.2 The Agreement shall become binding and these terms and conditions shall be deemed to have been accepted by the Customer on:
- (a) the signing of the Order Form by the Customer;
 - (b) the payment of any of the Charges by the Customer; or
 - (c) the acceptance of the commencement any of the Services by the Customer;
- whichever is the earlier.
- 2.3 No terms or conditions submitted at any time by the Customer, or any amendments to these terms or conditions by the Customer, shall form any part of the Agreement unless expressly agreed by DCC in writing.
- 2.4 Each contract entered into in respect of an Order Form constitutes a separate agreement. There may be more than one agreement between the Parties in force at the same time as this Agreement.

3. Term

- 3.1 This Agreement shall take effect on the Commencement Date and shall continue until the Services have been performed by DCC or the agreement has otherwise been terminated.
- 3.2 This Agreement shall expire upon the completion of the Services by DCC and the provisions of clause 18 shall apply.

4. Supply of Services

- 4.1 In consideration of payment of the Charges by the Customer to DCC, DCC shall provide the Services to the Customer in accordance with the Order Form and the provisions of this Agreement.
- 4.2 DCC shall have the right to make any changes to the Services which are necessary to comply with any applicable law, legal obligation or duty of DCC, or which do not materially affect the nature or quality of the Services, and DCC shall notify the Customer in writing of any such event.
- 4.3 DCC warrants to the Customer that the Services will be provided using reasonable care and skill.

5. Number of Participants

- 5.1 No more than the Maximum Participants will be permitted to receive the Services. If the Maximum Participants is reached any further potential Participants will be turned away and refused access to the Services.
- 5.2 Where the Minimum Participants threshold is not met, DCC may cancel the Services with immediate effect (written notice is not required to effect such cancellation). This will be treated as a cancellation of the Services with zero days' notice by the Customer and Charges will be payable in respect of the Services in accordance with clause 8.3.
- 5.3 Where the Minimum Participants threshold is not met but DCC do not exercise their right to cancel the Services in accordance with clause 5.2, where the Charges for the Services were calculated on the basis of number of Participants the Charges shall be calculated as though the Minimum Participants threshold had been met and the number of Participants was equal to the Minimum Participants.
- 5.4 The Customer shall not be permitted to reduce the number of Participants who are to receive the Services below the Minimum Participants.
- 5.5 If the Customer wishes to change the identity of or increase the number of Participants receiving the Services, the Customer must give DCC no less than 24 hours' notice of any such proposed change. Any change in the number of Participants must be approved in writing by DCC. Any reduction in number of Participants must be dealt with as a cancellation in accordance with the provisions of clause 8.

6. Non-attendance by Participants

- 6.1 Where a Participant does not attend a training course to receive the Services and such non-attendance is not approved ahead of time by DCC in accordance with clause 8 then the Charges shall remain fully payable by the Customer in respect of such Participant as though the Participant had attended the training course and received the Services.

7. Rearrangement of Services by DCC

- 7.1 DCC may rearrange the Course Date at any time by notifying the Customer in writing. Where DCC rearranges the Course Date the parties shall work together to agree a new Course Date and Course Time which is suitable for both parties.
- 7.2 If, within 15 Working Days of the DCC’s written notification pursuant to clause 7.1, the parties are unable to agree to a new Course Date or Course Time, either party shall be permitted to terminate this Agreement and in such an event DCC shall return any Charges paid.

8. Cancellation of Services by Customer

- 8.1 At any time prior to the Course Date, the Customer may cancel all or part of the Services by notifying the DCC in writing of such cancellation.
- 8.2 The parties agree and acknowledge that the Customer’s cancellation of the Services shall not be effective until accepted in writing by the DCC.
- 8.3 If the Services are cancelled under this clause 8, part of the Charges shall remain payable by the Customer. The amounts of Charges still payable are:

(a) where the Services are provided on one day only:

Time Cancellation is Received by DCC	Amount of Charges Payable
More than 5 Working Days before the Course Date	0% of the Charges will be payable
5 or fewer Working Days before the Commencement Date	100% of the Charges will be payable

(b) where the Services are to be provided over multiple days:

Time Cancellation is Received by DCC	Amount of Charges Payable
More than 10 Working Days before the Course Date	0% of the Charges will be payable
10 or fewer Working Days before the Commencement Date	100% of the Charges will be payable

- 8.4 Where the Customer has paid sums to DCC which are in excess of the amount of Charges due under clause 8.3 then the difference shall be repaid to the Customer by DCC within 30 days of the Cancellation.

8.5 The cancellation of all unperformed Services due under this Agreement by the Customer shall be treated as a termination of this Agreement.

9. The Customer's obligations

9.1 The Customer shall:

- (a) co-operate with DCC in all matters relating to the Services;
- (b) provide DCC with such information and materials as DCC may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (c) use all reasonable endeavours to avoid taking any action, or failing to take any action, which may result in any breach of DCC's legal obligations as a public body;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (e) keep and maintain all materials, equipment, documents and other property (DCC Materials) of DCC in safe custody at its own risk, maintained in good condition until returned to DCC, and not use or dispose of DCC materials other than in accordance with DCC's written instructions or authorisations;
- (f) provide DCC with the names and email addresses of all Participants no later than 7 days prior to the Course Date;
- (g) notify DCC ahead of time of any special requirements (including a need for any audio or visual support) of any Participants;

9.2 Where the Services are to be provided at DCC's Premises, the Customer shall:

- (a) ensure that any Participants, employees, agents or representatives of the Customer visiting or using the DCC Premises shall:
 - (i) keep the DCC Premises clean, tidy and properly secure;
 - (ii) co-operate as far as may be reasonably necessary with DCC's employees;
 - (iii) act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of DCC;
 - (iv) comply with all the rules and regulations in place from time to time relating to the use and security of the DCC Premises;
 - (v) at all times wear and display appropriate visitor ID badges; and
 - (vi) comply with any other specific instructions or requirements communicated to the Customer or Participants as part of the Order Form or as agreed during discussions between the parties as part of arranging the Services.

- (b) ensure that any Participants, employees, agents or representatives of the Customer shall not:
 - (i) obstruct access to the DCC Premises, or any part of them;
 - (ii) access any area of the DCC Premises which is not necessary in connection with the Services;
 - (iii) do or permit to be done on the DCC Premises anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to DCC or the occupiers of or visitors to the DCC Premises;

9.3 Where the Services are to be provided at the Customer's Premises, the Customer shall:

- (a) provide DCC, its employees, agents, consultants and subcontractors, with access to the Customer Premises, accommodation and other facilities and equipment as is reasonably required by DCC to carry out the Services;
- (b) engage with DCC in good faith to agree requirements for the provision of the Services and shall comply with any requirements agreed between the parties resulting from such discussions.

9.4 Where the Services are to be provided via an online webinar, the Customer shall:

- (a) be responsible for ensuring that all Participants have the appropriate equipment (including software), connection and permissions to access the Services on the Course Date and Course Time;

9.5 If DCC's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) DCC shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve DCC from the performance of any of its obligations to the extent Customer Default prevents or delays DCC's performance of any of its obligations;
- (b) DCC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from DCC's failure or delay to perform any of its obligations as set out in this clause 9.5; and
- (c) The Customer shall reimburse DCC on written demand for reasonable costs sustained or incurred by DCC arising directly from Customer Default.

10. Premises

10.1 Where the Services are to be provided at the DCC Premises, with effect from the Course Date, DCC shall grant the Participants a non-exclusive and revocable licence to enter the DCC Premises for the sole purpose of accessing the Services from DCC. The licence shall be subject to the conditions of this agreement, is personal to the Participants and is not deemed to create a relationship of landlord and tenant between the parties.

10.2 The licence granted pursuant to clause 10.1 shall terminate immediately upon:

- (a) the termination of this Agreement (however so arising);
- (b) 5:00PM on the Course Date
- (c) any breach by the Participants of the obligations set out at clauses 10.3 and 10.4.

whichever is the earlier.

10.3 Whilst exercising the right of access granted by the licence pursuant to clause 10.1 the Participants shall:

- (a) keep the DCC Premises clean, tidy and properly secure;
- (b) co-operate as far as may be reasonably necessary with DCC's employees;
- (c) act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of DCC;
- (d) comply with all the rules and regulations in place from time to time relating to the use and security of the DCC Premises;
- (e) at all times wear and display appropriate visitor ID badges; and
- (f) comply with any other specific instructions or requirements communicated to the Customer or Participants as part of the Order Form or as agreed during discussions between the parties as part of arranging the Services.

10.4 Whilst exercising the right of access granted by the licence pursuant to clause 10.1 the Participants shall not:

- (a) obstruct access to the DCC Premises, or any part of them;
- (b) access any area of the DCC Premises which is not necessary in connection with the Services;

- (c) do or permit to be done on the DCC Premises anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to DCC or the occupiers of or visitors to the DCC Premises;

11. Charges and payment

- 11.1 The Charges shall be the amount set out in the Order Form and this shall be a fixed amount.
- 11.2 the Customer shall pay the Charges:
 - (a) in advance using the Civica e-pay system (or other such method as may be communicated to the Customer by DCC with reasonable notice); and
 - (b) no later than 24 hours prior to the Course Date;
- 11.3 All amounts payable by the Customer under this Agreement are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under this Agreement by DCC to the Customer, the Customer shall, on receipt of a valid VAT invoice from DCC, pay to DCC such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 11.4 Without limiting any other right or remedy of DCC, if the Customer fails to make any payment due to DCC under this Agreement by the due date for payment (**Due Date**), DCC shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England Base Rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. the Customer shall pay all amounts due under this Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against DCC in order to justify withholding payment of any such amount in whole or in part.
- 11.5 Where DCC terminates this agreement in accordance with clause 17.4 DCC shall return any Charges paid within 30 days of termination.

12. Intellectual property rights

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (including the DCC Material) shall be owned by DCC.
- 12.2 The Customer shall not:
 - (a) copy, reproduce, redistribute etc. any of the DCC Materials without the express consent of DCC;

- (b) record, rebroadcast etc. any of the Services without the express consent of DCC.
- 12.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on DCC obtaining a written licence from the relevant licensor on such terms as will entitle DCC to license such rights to the Customer.
- 12.4 This clause 12 shall survive the termination of this Agreement.

13. Confidentiality and DCC's property

- 13.1 The provisions of this clause do not apply to any confidential information which:
- (a) is or becomes available to the public (other than as a result of its disclosure by the receiving party in breach of this clause);
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - (d) the parties agree in writing is not confidential or may be disclosed;
- 13.2 Both parties shall keep in strict confidence all technical or commercial know-how which are of a confidential nature and have been disclosed to the other party or its employees and any other confidential information concerning either DCC's or the Customer's (as appropriate) business or its products which either party may obtain.
- 13.3 Each party shall not use the other party's confidential information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement.
- 13.4 All documents, manuals, hardware and software provided for the Customer's use by DCC, and any data or documents (including copies) produced, maintained or stored on DCC's equipment, computer systems or other electronic equipment remain the property of DCC.
- 13.5 This clause 13 shall survive termination of this Agreement.

14. Freedom of Information

- 14.1 The parties acknowledge that they are subject to the requirements of the FOIA and the EIRs. The parties shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the other party to enable that party to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the other party all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt; and
 - (c) provide the other party with a copy of all Information belonging to said other party requested in the Request for Information which is in its possession or control in the form that the other party requires within 5 Working Days (or such other period as the other party may reasonably specify) of the other party's request for such Information.
- 14.2 The parties acknowledges that they may be required under the FOIA and EIRs to disclose Information (including commercially sensitive Information) without consulting or obtaining consent from the other party. Each party shall take reasonable steps to notify the other party of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the party which received the Request for Information shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA or the EIRs.
- 14.3 If there is any Information which either party believes is subject to an exemption under the provisions of the FOIA or EIRs then they should make this clear at the earliest opportunity (in each case being no later than the end of the period of five (5) Working Days required pursuant to clause 14.1(c)) and the receiving party will take this into consideration in dealing with a Request for Information and where this is consistent with that party's duties under the FOIA and EIRs.
- 14.4 This clause 14 shall survive the termination of this Agreement.

15. Data Protection

- 15.1 For the purposes of this clause 15, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 15.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

15.3 Without prejudice to the generality of clause 15.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to DCC for the duration and purposes of this agreement.

16. Limitation of liability

16.1 This clause 16 sets out the entire financial liability of DCC (including any liability for the acts or omissions of its employees) to the Customer in respect of:

- (a) any breach of this Agreement however arising;
- (b) any use made by the Customer of the Services; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

16.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

16.3 DCC shall have no liability in respect of:

- (a) legislation, policy, guidance, evidence or practice changes, which make the Services inaccurate or unsuitable for the originally intended purpose;
- (b) any technical (including computer failure, software failure or connectivity issues) or organisational issues of the Customer or the Participants which prevents any of the Participants from receiving all or part of the Services.

16.4 Nothing in this agreement limits or excludes the liability of DCC:

- (a) for death or personal injury resulting from negligence, or the negligence of its employees, agents or subcontractors; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by DCC; or
- (c) for any liability incurred by the Customer as a result of any breach by DCC of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

16.5 Subject to clause 16.2, 16.3 and clause 16.4:

- (a) DCC shall not under any circumstances whatsoever be liable for:
 - (i) loss of profits; or
 - (ii) loss of business; or

- (iii) depletion of goodwill and/or similar losses; or
- (iv) loss of anticipated savings; or
- (v) loss of goods; or
- (vi) loss of contract; or
- (vii) loss of use; or
- (viii) loss of corruption of data or information; or
- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

- (b) DCC's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of each Service shall in all circumstances be limited to the total amount of the Charges in respect of the Agreement.

16.6 This clause 16 shall survive termination of this Agreement.

17. Termination

17.1 Without limiting its other rights or remedies, each party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other

party with one or more other companies or the solvent reconstruction of that other party;

- (e) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (g) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) either Party or any employee of either Party is found guilty of any offence under the Bribery Act 2010 in relation to the award of this Agreement;
- (j) the circumstances set out in clause 7.2 apply;

17.2 Without limiting its other rights or remedies, DCC may terminate this Agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment;
- (b) the Minimum Participants threshold is not met as per clause 5.2

17.3 This agreement shall terminate automatically in the circumstances set out in clause 8.5.

17.4 Without limiting its other rights or remedies, DCC shall have the right to terminate this Agreement by giving the Customer notice in writing.

17.5 Without limiting its other rights or remedies, DCC shall have the right to suspend provision of the Services under this Agreement if the Customer becomes subject to any of the events listed in clause 17.1(b) to clause 17.1(h), or DCC reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Agreement on the due date for payment.

18. Consequences of termination

18.1 On termination of this Agreement for any reason:

- (a) the Customer shall immediately pay to DCC all of DCC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, DCC shall submit an invoice, which shall be payable by the Customer within 30 days of receipt;
- (b) the Customer shall immediately return to DCC all of the DCC Materials, other than DCC Materials which DCC has expressly agreed are to be kept by the Customer (including handouts, booklets etc.);
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

19. Health and Safety

- 19.1 The Customer shall promptly notify DCC of any health and safety hazards or incidents which may arise in connection with the performance of the Agreement.
- 19.2 The Customer shall comply with the requirements of the Health and Safety at Work etc, Act 1974 and any other act, order, regulations and code of practice (including any issued by DCC relating to health and safety, which may apply to persons working on the Premises in the performance of the Agreement

20. Force majeure

- 20.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 20.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 20.3 If the Force Majeure Event prevents DCC from providing any of the Services for more than 2 weeks, DCC shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Customer.

21. Assignment and subcontracting

- 21.1 DCC may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent. In the event that DCC do assign, transfer, charge, subcontract or deal with all or any of its rights they shall endeavour to ensure that any replacement provision delivered by a replacement party would be of equal standard to those provided by DCC.
- 21.2 The Customer shall not, without the prior written consent of DCC, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement

22. Notices

- 22.1 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:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service to the address set out in the Agreement (or an address substituted in writing by the party to be served); or
 - (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (i) DCC: WLD.Admin@derby.gov.uk
 - (ii) The Customer: as specified in the Order Form
- 22.2 Any notice or other communication shall be deemed to have been duly received:
- (a) If delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
 - (c) if sent by email, at the time of transmission, or if this time falls outside Working Hours in the place of receipt, when Working Hours resume.
- 22.3 This clause 22 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.

23. Waiver

- 23.1 A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent right or remedy.

23.2 No failure or delay by a party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

24. Rights and Remedies

24.1 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

25. Severance

25.1 If a court or any other 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 deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

25.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

26. No partnership

Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

27. Third parties:

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement..

28. Entire Agreement

28.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

28.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

29. Variation:

Except as set out in this Agreement, any variation, including the introduction of any additional terms and conditions, to this Agreement, shall only be binding when agreed in writing and signed by both parties.

30. Governing law

30.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

31. Jurisdiction

31.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.