



## South West Heritage Trust Learning Service

### Terms and Conditions

This document sets out the Terms and Conditions for the supply of Services by

1. **South West Heritage Trust** whose registered office is at the Somerset Heritage Centre, Brunel Way, Norton Fitzwarren, Taunton, Somerset TA2 6SF, company registration number 9053532 and charity registration number 1158791 (**'SWHT'**), ('the Supplier') and

2. **The School, Academy or any other form of educational establishment** obtaining the Services ('the Customer')

together 'the Parties'.

The Parties agree to be bound by these Terms and Conditions.

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## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

In these Terms and Conditions, the following definitions shall apply:

**Academic Year:** means 1 September in any given year to the 31 August in the following year.

**Business Day:** means 9.00 am–5.00 pm Monday to Friday, excluding public holidays.

**Charge(s):** means the payment(s) due to the Supplier for the delivery of the Services.

**Contract:** means the agreement between the Parties for the supply of the Services, such agreement being constituted by these Terms and Conditions, the Customer's Order, the Supplier's acceptance of the Order signified in accordance with clause 2.2, and the Specification.

**Customer:** means the school, academy or any other form of educational establishment requesting the Services.

**Order:** means the Customer's signed order for a subscription for the Customer to be supplied with the Services in accordance with these Terms and Conditions and the Specification.

**Service(s):** means the Service(s), including the supply of any goods peripheral to and part of the overall supply of the Service(s), supplied by the Supplier to the Customer in accordance with the Contract.

**Specification:** means the relevant Services specified in the Order and set out from time to time in the Supplier's 'Somerset Heritage: Primary Schools Programme'.

**Supplier:** Means the South West Heritage Trust, being a registered charity and a company limited by guarantee registered in England, registered office: Somerset Heritage Centre, Brunel Way, Norton Fitzwarren, Taunton, Somerset, TA2 6SF; Company Number: 09053532; Charity Number: 1158791; VAT Registration Number: 197221592.

**Terms and Conditions:** means the Terms and Conditions set out in this document.

**1.2 Construction.** In these Terms and Conditions, the following shall apply:

- a) a 'person' includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) a reference to a party includes its personal representatives, successors or permitted assigns;
- c) 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;
- d) 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;
- e) a reference to 'writing' or 'written' includes any text sent via the internet.

## **2. BASIS OF CONTRACT**

2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Terms and Conditions.

2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, via a letter or Order confirmation email.

2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4. These Terms and 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. The Supplier has the right to amend the Terms and Conditions of the Contract from time to time. Such amendments will not be applied retrospectively. The Terms and Conditions in force at the date of the Order will be applied.

### **3. SUPPLY OF SERVICES**

3.1. The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2. The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Specification or in any written quotation but any such dates shall be estimates only.

3.3. The Supplier shall have the right to make such changes to the Services as are reasonably necessary (eg in respect of the supply of a particular learning session or a particular loan object), but in such a case shall work with the Customer to agree a reasonable alternative supply or arrangement.

3.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

### **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

- a) co-operate with the Supplier in all matters relating to the Services;
- b) provide the Supplier, its employees, agents, consultants and subcontractors, with reasonable access to the Customer's premises and other facilities as reasonably required by the Supplier in order to deliver the Services;
- c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- d) take due care to safeguard any items on loan.

4.2 If the Customer needs to cancel the provision of the Services on specific dates it may do so, providing adequate notice is given to the Supplier. If sufficient notice, in the reasonable opinion of the Supplier, acting in good faith, is given there will not be a cancellation charge and, where appropriate, the Supplier will reschedule the work for the Customer.

4.3 If the Customer cancels the Service to be delivered on a specific date giving 48 hours' notice or less, the Supplier reserves the right to charge a cancellation charge. If the school closes for individual days (for example, because of in-service training or severe weather),

and does not cancel the Services booked for those days the Supplier reserves the right to charge the full applicable fee.

4.5 If the Customer does not have the items on loan ready for collection on the date specified, then the Supplier reserves the right to charge a collection fee in order to collect the items on another agreed date.

4.6 If items on loan are damaged, lost or stolen the Customer must inform the Supplier. The Customer must not attempt repairs but must return any damaged items to the Supplier for assessment. The Supplier reserves the right to charge for loss of or damage to items on loan.

## **5. CHARGES AND PAYMENT**

5.1 The Charges shall be calculated for an academic year.

5.2. The Supplier shall invoice the Customer on an annual basis.

5.3 The Customer shall pay any invoice submitted by the Supplier:

a) within 30 days of the date of the invoice; and

b) in full and in cleared funds to a bank account nominated in writing by the Supplier.

5.4 Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such 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.

5.5 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% per cent per annum accruing on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

5.6 The Customer shall pay all amounts due under the Contract 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 the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **6. INTELLECTUAL PROPERTY RIGHTS**

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

6.2 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 the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

6.3 All Supplier materials are the exclusive property of the Supplier unless otherwise agreed in writing.

## **7. CONFIDENTIALITY**

7.1 Both the Supplier and the Customer shall keep strictly confidential all information of a confidential nature that has been disclosed to either party by the other party, its employees, agents or subcontractors. Both Parties shall restrict disclosure of such confidential information to such of their employees, agents or subcontractors as are required to know for the purpose of discharging obligations under the Contract.

7.2 All information held by the Supplier about the Customer will be held and used by the Supplier in accordance with the provisions of the 2018 Data Protection legislation for the purposes of providing the contract. See [www.swheritage.org.uk/privacy-policy](http://www.swheritage.org.uk/privacy-policy) for a full privacy notice.

## **8. LIMITATION OF LIABILITY**

8.1 Nothing in these Terms and Conditions shall limit or exclude the Supplier's liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- b) fraud or fraudulent misrepresentation; or
- c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.

8.2 Subject to clause 8.1

- a) The Supplier shall not under any circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

b) The Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total Charges payable by the Customer for the particular Service wherein the liability has arisen.

8.3 Except as set out in these Terms and Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

## **9. TERMINATION**

9.1. For the avoidance of doubt, no rights of termination for convenience exist. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
- b) an event takes place that causes the Supplier, acting reasonably and in good faith, to have reason to believe that the Customer may not be in a position to pay any outstanding Charges.

## **10. CONSEQUENCES OF TERMINATION**

10.1 On termination of the Contract for any reason:

- a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) the Customer shall return all of the Supplier materials and which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of such Supplier materials. Until such materials have been

returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

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 the Contract 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.

## **11. GENERAL**

### **11.1 Force Majeure:**

a) For the purposes of this Contract, a Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier 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, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

c) If a Force Majeure Event prevents the Supplier from providing any of the Services for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract or any individual Service supplied under it immediately by giving written notice to the Customer.

### **11.2 Assignment and subcontracting:**

a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

## **12. DISPUTE RESOLUTION**

12.1 In the first instance both parties warrant that they will attempt in good faith to resolve any dispute that arises.

12.2 If the Supplier and Customer cannot resolve a dispute within 30 days of it arising, the matter will be referred to the Service Manager of the Supplier and the Head Teacher, or equivalent, of the Customer. At this point a further 30 days will be given for dispute resolution to take place. Only once this has been exhausted will 12.3 come into effect.

12.3 Upon the steps set out at 12.1 & 12.2 failing, any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the CEDR rules, which rules are deemed to be incorporated by reference into this clause. The governing law of the Contract shall be the substantive law of England and Wales.