

Highpoint Implementation and Training Services Ltd

Terms and Conditions

April 2017

Highpoint Implementation and Training Services Ltd provide software consultancy and training services. These Terms and Conditions shall apply to the provision of Services by the Company to its Clients. These terms of business are deemed to be accepted by the Client by virtue of a booking being made.

Definitions:

"Agreement": To provide the Services as set out in Schedule 1 or the Project Documentation in return for payment of the Company's fees.

"Project Documentation": The Project Overview Document and the Programme Schedule.

"Client": The individual, organisation, company or partnership to whom the Company agrees to provide the Services.

"Company": Highpoint Implementation and Training Services Ltd, (Co No 6561082) whose registered office is at 54d, Frome Road, Bradford on Avon BA15 1LA.

"Services": What the Company has agreed to provide in Schedule 1 or the Project Documentation

"Confidential Information": Information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

"Working Days": Monday to Friday inclusive, excluding bank holidays and public holidays.

"Fees": the agreed price for the Services

1. Provision of Services

a. The Company agrees to provide the Services set out in the attached quotation and any schedule or statement of work referred to in that quotation.

2. Payment of fees

a. The Client shall pay the Fees as agreed with the Company.

b. No work will be commenced by the Company until the issue of a Purchase Order to the Company by the Client.

c. All payments required to be made pursuant to these Terms and Conditions shall be payable in full within 30 days of invoicing without any set-off, withholding or deduction. The time of payment shall be of the essence of these terms and conditions.

d. Each individual invoice is payable in full within 30 days of the date of invoice and not at the completion of the Services, without any set-off, withholding or deduction.

e. The Company may charge interest and compensation on any overdue invoice(s) in accordance with the interest rate and compensation levels set out in the Late Payment of Commercial Debt (Interest) Regulations 2013.

3. Liability, Indemnity and Insurance:

a. The Company shall ensure that it has in place at all times suitable and valid insurance.

b. In the event that the Company fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.

c. The Company's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to £1 million

d. Nothing in these Terms and Conditions shall limit or exclude the Company's liability for death or personal injury.

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e. The Client shall indemnify the Company against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Company) caused by the Client or its agents or employees.

f. Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

g. The Company does not accept liability for losses arising from defects in the software that is provided which has not been manufactured by the Company.

4. Force Majeure

a. No Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

5. Termination

a. Either Party may terminate the Agreement by giving Notice and the amount of fees due is set out below and is dependent on the length of Notice given by the Client.

TRAINING delivery and all other types of work, excluding consulting:

5 working days notice or less	100% of fees
6-10 working days notice	75% of fees
11-20 working days notice	50% of fees

CONSULTING:

5 working days notice or less	100% of fees
6-10 working days notice	50% of fees

TRAINING MATERIALS including e-learning:

Where training materials (Manuals, Quick cards; PowerPoint Presentations; e-learning materials etc) have been prepared in accordance with the agreed training programme timetable and prior to the cancellation of the training programme, the full cost of the development work will be chargeable.

b. Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

i. the other Party commits any other breach of any of the provisions of these terms and conditions.

ii. the other Party goes in liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

6. Effects of Termination

Upon the termination of the Agreement for any reason:

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- a. any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable
- b. all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect
- c. termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- d. subject to the clauses in these terms and, except in respect of any accrued rights, neither Party shall be under any further obligation to the other.

7. Postponement of Services

- a. Where the Client postpones delivery of services by the Company fees will be payable according to the tables set up in Section 5 above.
- b. Postponement fees are payable irrespective of whether or not work is rescheduled for a future date unless specifically agreed in writing.

8. No Waiver

- a. Failure or delay by either Party in exercising any of its rights shall not be deemed to be a waiver of that right.

9. Set-Off

- a. Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

10. Time

- a. All times and dates referred to in the Agreement shall be of the essence of the Agreement.

11. Relationship of the Parties

- a. Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

12. Third Party Rights

- a. No part of these terms shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.
- b. These terms shall continue and be binding on the transferee, successors and assigns of either Party.

13. Notices

- a. All notices shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice. Notices will be deemed served on the other Party on the next working day after being sent by first class post, fax or e-mail

14. Severance

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a. In the event that one or more of the provisions of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

15. Copyright

a. The Company owns the copyright of all material unless otherwise stated, including electronic and web based materials, power point presentations, eLearning movies, audio files, webinars. The reproduction or retransmission of the materials, in whole or in part, in any manner, without the prior written consent of the Company, is a breach of copyright. The Company grants a licence to the Client as specified in Schedule 1 of the Project Documentation to reproduce materials for in house purposes only and the Client must not publish or share the material with any other person.

16. Dispute Resolution

a. 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 Rules of the Chartered Institute of Arbitrators which Rules are deemed to be incorporated by reference into this clause. The decision and outcome of the Arbitrator shall be final and binding on both Parties.

17. Confidentiality

a. Each Party undertakes that it shall, at all times during the continuance of the Agreement and for a period of 12 months following termination of the Agreement:

b. keep confidential all Confidential Information

c. not disclose any Confidential Information to any other party;

d. not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;

e. not make any copies of, record in any way or part with possession of any Confidential Information

18. Law and Jurisdiction

a. These Terms and Conditions (including any non-contractual matters and obligations arising there from or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

b. Any proceedings or claim between the Parties relating to these Terms and Conditions shall fall within the jurisdiction of the courts of England and Wales.

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