



TERMS AND CONDITIONS FOR THE SUPPLY OF LEADERSHIP, MANAGEMENT AND SALES TRAINING AND RELATED SERVICES 2019

BETWEEN THE SKILLS FARM LIMITED (“US” “WE” AND “OUR”) REGISTERED IN ENGLAND AND WALES WITH COMPANY NUMBER 08206011 AND THE CUSTOMER (“YOU” AND “YOUR”).

1. DEFINITIONS

1.1. In these Conditions, the following definitions apply:

Agreed Purposes: providing and facilitating training to participants

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by you for the supply of the Services in accordance with clause 6.

Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation in force at the time.

Commencement Date: has the meaning set out in clause 3.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.7.

Contract: the contract between us and you for the supply of Services in accordance with these Conditions.

Data Protection Legislation: all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

Deliverables: the deliverables agreed by us and set out in the Order or Specification.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: your order for Services as set out in your written acceptance of our quotation in the template Order Form which is attached to these Terms.

Permitted Recipients: The parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this Contract.

Services: the services, including the Deliverables, supplied by us to you as set out in the Specification.

Shared Personal Data: the personal data of participants and other individuals to be shared between the parties so that we may provide the Services under this Contract. This will shall be confined to the following categories of information relevant to the following categories of data subject:

- name;
- job title and/or role at your organisation, and
- any relevant training already received or required;
- feedback relating to the provision of the Services.

Specification: the description or specification of the Services and/or a quotation for the Services, provided in writing by us to you.

Supplier Materials: has the meaning set out in clause 4.1(f).

- 1.2. For rules of construction see Clause 15 and please note that a reference to writing or written includes faxes and e-mails.

2. SUPPLY OF SERVICES

- 2.1. We shall supply the Services to you in accordance with the Specification in all material respects.
- 2.2. We shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 2.3. We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and we shall notify you in any such event.
- 2.4. We warrant to you that the Services will be provided using reasonable care and skill.

3. BASIS OF CONTRACT

- 3.1. We will provide you with a Specification and your acceptance of the Specification by agreeing in writing the completed Order Form constitutes an Order (which is an offer by you to purchase the Services in accordance with these Conditions).
- 3.2. The Order is only accepted when we issue written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- 3.3. Any quotation given by us shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

4. YOUR OBLIGATIONS

- 4.1. You shall:
- (a) ensure that the terms of the Order and any information you provide in the Specification is complete and accurate;
 - (b) co-operate with us in all matters relating to the Services;
 - (c) provide us, our employees, agents, consultants and subcontractors, with access to your premises, office accommodation and other facilities as reasonably required by us;
 - (d) provide us with such information and materials as we may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - (f) keep and maintain all our materials, equipment, documents and other property (Supplier Materials) at your premises in safe custody at your own risk, maintain the Supplier Materials in good condition until returned to us, and not dispose of or use the Supplier Materials other than in accordance with our written instructions or authorisation.

5. CUSTOMER DEFAULT

- 5.1. If our performance of any of our obligations under the Contract are prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation (Customer Default):
- (a) we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations to the extent the Customer Default prevents or delays our performance of any of our obligations;
 - (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 5; and
 - (c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

6. CHARGES AND PAYMENT

- 6.1. The Charges for the Services are based on a trainer day rate as stated in Clause 6.3, unless otherwise agreed, and will be confirmed by us in writing or in the Specification. An additional flat rate of £25 (twenty-five pounds) per facilitator per day will be added to the Charges where the Services are to be provided in London (within the M25 ring road). Outside of London (the M25 ring road) Additional Charges are by agreement.
- 6.2. The Charges for the Services are due and payable as follows:
- (a) 100% on acceptance of the Order; and
 - (b) 100% of Additional Charges and Expenses to be paid within 30 days of the date of invoice after provision of the Services.
- 6.3. The Charges for the Services (subject to Clause 6.1) will be on a time and materials basis and:
- (a) calculated in accordance with our standard daily fee rate of £1,650 per day and any additional delegates over and above the agreed cohort size will be charged at

£275 per delegate per day. Should an additional delegate cancel, the cancellation rates in Clause 10 apply;

(b) on occasions where cohort numbers increase substantially beyond the number applicable for that workshop, an additional trainer may be required. In such cases, an additional daily fee of £1,650 will be payable. This will be agreed in advance

(b) our standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days; and

(c) we shall be entitled to charge an overtime rate of 25% per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom we engage on the Services outside the hours referred to in clause

(d) Course booklets are charged at £15 per delegate

(e) For the development of a bespoke programme, design work is chargeable at £1,650 per day. Design time will be estimated and discussed upfront.

- 6.4. We shall be entitled to charge you for any expenses reasonably incurred by the individuals whom we engage in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses (“Expenses”), and for the cost of services provided by third parties and required by us for the performance of the Services, and for the cost of any materials (“Additional Services”).
- 6.5. We shall invoice you on receipt of your Order. for the Services (or otherwise as we determine necessary).
- 6.6. You shall pay each invoice submitted by us:
 - (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 us, and time for payment shall be of the essence of the Contract.
- 6.7. All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT) and VAT is due at the same time as payment is due for the supply of the Services.
- 6.8. If you fail to make any payment due to us under the Contract by the due date for payment, then you shall pay interest on the overdue amount at the rate of 8% per annum accruing on a daily basis until paid. We reserve the right to not provide the Services until payment for the Charges has been received in full.
- 6.9. You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by us.
- 7.2. You acknowledge that, in respect of any third party Intellectual Property Rights, your use of any such Intellectual Property Rights is conditional on us obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.
- 7.3. All Supplier Materials are our exclusive property and if you (or your employees or contractors or associates) make any use whatsoever of any Supplier Materials in breach of Clause 7.2 you shall inform us immediately, provide details of such use and all revenue from such use and you shall be required to account to us (as a debt

owing) for all profits relating to such use together with all billing and accounting information such as we require to evidence the same.

8. CONFIDENTIALITY & PUBLICITY

- 8.1. Other than as agreed at 8.3, a party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), our employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 8 shall survive termination of the Contract.
- 8.2. If you (or your employees or contractors or associates) disclose or use any of our confidential information (as referred to in Clause 8.1) in breach of Clause 8.1 you shall inform us immediately, provide details of such use and all revenue from such use and you shall be required to account to us (as a debt owing) for all profits relating to such use together with all billing and accounting information that we require to evidence the same.
- 8.3. Where you agree, we may issue a press release or publicity on our website or in our brochures stating that we have worked with you and if agreed, any testimonial that you provide us with. In these circumstances, you agree to provide us with a nonexclusive licence to use your name, brand and/or trademark or other Intellectual Property for the purposes of accompanying any such publicity.

9. LIMITATION OF LIABILITY: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 9.1. Nothing in these Conditions shall limit or exclude our liability for:
 - (a) death or personal injury caused by our negligence, or the negligence of our 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 (title and quiet possession).
- 9.2. Subject to clause 9.1:
 - (a) we shall under no circumstances whatever be liable to you, 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) our total liability to you 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 Charges for the Services for which we are liable.
- 9.3. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.4. This clause 9 shall survive termination of the Contract.

10. TERMINATION & CANCELLATION

10.1. Without limiting its other rights or remedies, either party may terminate the Contract

by giving the other party 1 months' written notice.

10.2. Without limiting its other rights or remedies, either 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 any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;

(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;

(c) 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;

(d) the other party (being an individual) is the subject of a bankruptcy petition or order;

(e) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above in this Clause;

(f) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

(g) the other party's financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(h) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

10.3. Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under this Contract on the due date for payment and fail to pay all outstanding amounts within 7 days after being notified in writing to do so.

10.4. Without limiting our other rights or remedies, we may suspend provision of the Services under the Contract or any other contract between you and us if you become subject to any of the events listed in clause 10.2(b) to clause 10.2(h), or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.

10.5. If you wish to cancel the Order, for whatever reason, we reserve the right at our sole discretion to levy the Charges based on reasonable costs and loss of business incurred by us caused by your cancellation. The following proportion of Charges will be levied depending on time of cancellation:

Cancellation within business days from date Services due to be delivered	Percentage of Charges to be paid by you
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30 to 14 business days prior to delivery date	25%
14 to 7 business days prior to delivery date	50%
Less than 7 business days prior to delivery date	100%

10.6 If we cancel the Order (for reason other than a Force Majeure Event), we will endeavour to provide you with alternative dates for the Services to be delivered. If you do not accept those alternative date(s), we reserve the right at our sole discretion to levy the Charges based on reasonable costs and loss of business incurred by us up to the date of our cancellation. The following proportion of Charges will be refunded depending on time of cancellation:

Cancellation within business days from date Services due to be delivered	Percentage of Charges already paid by you to be refunded
30 to 14 business days prior to delivery date	25%
14 to 7 business days prior to delivery date	30%
Less than 7 business days prior to delivery date	50%

11. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

(a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;

(b) you shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you 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 be unaffected, 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 survive termination shall continue in full force and effect.

12. FORCE MAJEURE

- 12.1. For the purposes of this Contract, Force Majeure Event means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving our workforce 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.
- 12.2. We shall not be liable to you as a result of any delay or failure to perform our obligations under this Contract as a result of a Force Majeure Event.
- 12.3. If the Force Majeure Event prevents us from providing any of the Services for more than 4 weeks, we shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.

13. DATA PROTECTION & DATA PROCESSING

- 13.1 All personal information that we may use will be collected, processed, and held in accordance with the GDPR. This clause sets out the framework for the sharing of personal data between us as data controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 13.2 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 13.3 Each party shall:
 - (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - (b) give full information to any data subject whose personal data may be processed under this Contract of the nature such processing. This includes giving notice that, on the termination of this Contract, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - (c) process the Shared Personal Data only for the Agreed Purposes;
 - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract;
 - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 - (g) not transfer any personal data received from the Data Discloser outside the

EEA unless the transferor:

(i) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and

(ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection and appropriate safeguards in place or one of the derogations for specific situations in Article 49 GDPR applies.

13.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

(a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;

(b) promptly inform the other party about the receipt of any data subject access request;

(c) provide the other party with reasonable assistance in complying with any data subject access request;

(d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;

(e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;

(g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;

(h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;

(i) maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the other party or the other party's designated auditor and

(j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

13.5 Indemnity. Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim

and sole authority to manage, defend and/or settle it.

14. GENERAL

14.1. Assignment and other dealings.

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

(b) You shall not, without our prior written consent, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of your rights or obligations under the Contract.

14.2. Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2 (a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3. Severance.

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.4. Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5. No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 14.6. Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.7. Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing by us.
- 14.8. Governing law. This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 14.9. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

15. WHOLE AGREEMENT

- 15.1. The Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on our behalf which is not set out in the Contract.
- 15.2. Any samples, drawings, descriptive matter or advertising issued by us, and any descriptions or illustrations contained in our catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 15.3. These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

16. CONSTRUCTION

- 16.1. In these Conditions, the following rules 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; and
 - (e) a reference to writing or written includes faxes and e-mails.