

Tailored support and workplace training terms and conditions

19 June 2020

1. Definitions

1.1 In this contract, unless otherwise set out in the letter of understanding, the following definitions shall apply:

- 'business day' for England and Wales means a day other than a Saturday, Sunday or public holiday in England and Wales; for Scotland, it means a day other than a Saturday, Sunday or public holiday in Scotland
- 'charges' means the charges as set out in paragraph 7 and paragraph 8 (where relevant) of the letter of understanding and payable by the customer in accordance with Clause 7
- 'commencement date' means the date at the beginning of the letter of understanding
- 'contract' means the contract between the customer and the supplier for the supply of services in accordance with the letter of understanding and incorporating the terms
- 'customer' means the organisation identified as the customer at the beginning of the letter of understanding
- 'digital services' means services provided by the supplier to the customer that are delivered via a digital platform.
- 'expenses' shall have the meaning set out in Clause 7
- 'intellectual property rights' means 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
- 'lead contact' is the person identified as such in the letter of understanding
- 'supplier' is Acas National, 14 Westfield Avenue, Stratford, London, E20 1HZ
- 'supplier materials' has the meaning set out in Clause 5.1
- 'terms' means these terms and conditions
- 'training session(s)' means a training session or training sessions provided by the supplier to the customer as set out in paragraph 1 of the letter of understanding

2. Interpretation

2.1 A reference to a statute or statutory provision is a reference to it 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.

2.2 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.

2.3 A reference to writing or written includes email.

3. Basis of contract

3.1 The contract shall be deemed to be formed when both parties have signed the letter of understanding and where the letter of understanding has not been signed, the delivery of services have commenced.

3.2 Any samples, drawings, descriptive matter or advertising issued by the supplier, and any descriptions or illustrations contained in the supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the services to be delivered. They shall not form part of the contract or have any contractual force.

3.3 This contract is formed 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.

3.4 Any quotation given by the supplier shall not constitute an offer, and is only valid for a period of 20 business days from its date of issue.

4. Supply of services

4.1 The supplier shall supply the services to the customer in accordance with the letter of understanding in all material respects and the terms.

4.2 The supplier 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 the supplier shall notify the customer in any such event.

4.3 The supplier may, in its absolute discretion and without notice, change the advisor/trainer identified in the letter of understanding.

If the customer has any reason to be dissatisfied with the advisor/trainer either identified in the letter of understanding or provided pursuant to Clause 4.3, the customer can submit a complaint by using the Acas online complaints and comments form or contact our customer services team at events@acas.org.uk or on 0300 123 1150.

For the avoidance of doubt, the customer shall not be entitled to insist upon a change of advisor/trainer. In the event that the matter is not resolved to the satisfaction of the customer, the customer shall have the right to terminate the contract in accordance with Clause 10.3.

4.4 The supplier shall use its reasonable endeavours to ensure that any information provided by it in the provision of the services is accurate and current but the supplier accepts no liability for the accuracy of such information or for any consequences of the customer relying on its accuracy, except in the event of fraudulent misrepresentation.

4.5 The services provided by the supplier under this contract is specific to the customer. The supplier accepts no responsibility for any consequences arising from reliance upon advice provided by the supplier by any person other than the customer or for any purpose other than the services.

4.6 The supplier warrants to the customer that the services will be provided using reasonable care and skill.

5. Customer's obligations

5.1 The customer shall:

- (a) ensure that the information contained in the letter of understanding is complete and accurate
- (b) co-operate with the supplier in all matters relating to the services
- (c) provide the supplier, its employees, agents, consultants and subcontractors, with access to the customer's premises, office accommodation and other facilities as reasonably required by the supplier
- (d) 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
- (e) as far as it is reasonably practicable, prepare the venue where the services will take place and ensure that it complies with all applicable legislation
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the services are to start
- (g) keep and maintain all materials, equipment, documents and other property of the supplier ('supplier materials') at the customer's premises in safe custody at its own risk, maintain the supplier materials in good condition until returned to the supplier, and not dispose of or use the supplier materials other than in accordance with the supplier's written instructions or authorisation

5.2 If the supplier's performance of any of its obligations under the contract is prevented or delayed by any act or omission by the customer or failure by the customer to perform any relevant obligation (a 'customer default'):

- (a) the supplier 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 it from the performance of any of its obligations to the extent the customer default prevents or delays the supplier's performance of any of its obligations
- (b) the supplier shall not be liable for any costs or losses sustained or incurred by the customer arising directly or indirectly from the supplier's failure or delay to perform any of its obligations as set out in this Clause 5.2
- (c) the customer shall reimburse the supplier on written demand for any costs or losses sustained or incurred by the supplier arising directly or indirectly from the customer default

6. Alternative delivery mutual obligation

6.1 Where for reasons beyond either parties control the required service cannot be delivered face to face, the parties may mutually agree an alternative digital platform for delivery.

6.2 In advance of digital training, the supplier and customer will make best endeavours to ensure that the agreed platform is accessible and capable of delivering/receiving the service to an acceptable standard.

6.3 Neither party shall be liable for fault or failure of the agreed platform that may occur during the delivery of the service, should it be deemed outside of the parties control.

6.4 Should there be a fault or failure of the platform during delivery of the service, both parties will mutually agree alternative arrangements for delivery of the service.

7. Charges and payment

7.1 Where agreed by the parties, the supplier shall be entitled to charge the customer for any expenses reasonably incurred by the individuals whom the supplier engages in connection with the services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the supplier for the performance of the services, and for the reasonable cost of any materials and preparation work and/or meetings where those materials, that work or those meetings is incurred solely for the provision of the services to the customer. For the avoidance of doubt, the following rates shall apply:

- (a) where private transport is the most appropriate means of travel, mileage shall be charged at 45p per mile
- (b) a charge to cover each evening meal shall be payable, rate as agreed between the parties
- (c) all other expenses shall be charged at the standard market rate

7.2 The supplier shall invoice the customer on completion of the services.

7.3 The customer shall ensure that each invoice submitted by the supplier is paid in full within 30 days of the date of the invoice using the payment methods outlined in clause 7.7.

7.4 All amounts payable by the customer under the contract 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 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 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.

7.5 If the customer fails to pay any undisputed charges properly invoiced under this agreement, the supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

7.6 The customer 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). The supplier may at any time, 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.

7.7 Payment of the charges can be made in the following ways:

- (a) online by credit or debit card using the WorldPay link given on the customers invoice, or
- (b) by BACS using the following details:
 - 60-70-80
 - 10012389

7.8 Without prejudice to any other rights or remedies under this contract, the supplier may seek recovery of an unpaid invoice by commencing legal proceedings.

8. Intellectual property rights

8.1 All intellectual property rights in items created by the supplier (or by a third party on behalf of the supplier) specifically for the purposes of, or arising out of or in connection with the services shall be owned by the supplier.

8.2 Subject to Clause 8.3, any materials provided for or during the performance of the services are protected by Crown Copyright (except where clearly stated otherwise). Re-use of the training materials is permitted in accordance with the terms of the Open Government Licence, which can be viewed on the [national archives](#).

8.3 The customer acknowledges that, in respect of any third party intellectual property rights used in the services or embedded in the materials provided pursuant to Clause 8.2 (where identified as belonging to a third party), 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.

9. Limitation of liability

9.1 Nothing in the contract 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
- (c) any other liability which cannot be limited or excluded by applicable law

9.2 Subject to clause 9.1, the supplier shall not be liable to the customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the contract for:

- (a) loss of profits
- (b) loss of sales or business
- (c) loss of agreements or contracts
- (d) loss of anticipated savings
- (e) loss of use or corruption of software, data or information
- (f) loss of damage to goodwill
- (g) any indirect or consequential loss

9.3 Subject to Clause 9.1, the supplier's total liability to the customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the contract shall be limited to 100% of the total charges payable under the contract.

10. Postponement and cancellation

10.1 The supplier and the customer shall have the right to postpone or cancel the services in accordance with this Clause 10.

10.2 The customer may postpone our services by serving written notice no later than 14 days before the agreed start date of the services to be postponed.

10.3 Subject to Clause 10.4, the customer may cancel the services by serving notice in writing. Where:

(a) notice is served 14 days or more before the agreed start date, no charges shall be payable for the cancelled services but the supplier may, in its absolute discretion, charge for any expenses, or

(b) notice is served less than 14 days before the agreed start date the charges and any expenses shall be payable for the cancelled services, or

(c) notice is served within 14 days of the supplier postponing the services pursuant to Clause 10.7 no charges or any expenses shall be payable in respect of the cancelled services

10.4 Where cancellation relates to an individual training session or service within a series of training sessions or services then the payment obligations set out at 10.3 above shall apply only to the individual training session(s) or service(s) that have been cancelled.

10.5 The supplier may cancel or postpone the services at any time before the start of the services by serving notice in writing on the customer.

10.6 Subject to Clause 10.8 , where the supplier cancels the services no charges or expenses shall be payable.

10.7 Subject to Clause 10.8, where the supplier postpones the services the customer shall have the right to cancel the services, subject to the notice period and payments set out at Clause 10.3(c).

10.8 Where cancellation relates to an individual training session or service within a series of training sessions or services then only the charges and expenses incurred for that particular training session or service shall cease to be payable. All charges and expenses related to the remaining training sessions or services shall remain payable subject to this Clause 10.

10.9 For the avoidance of doubt, the supplier shall not be liable to pay any costs incurred by the customer where the supplier cancels or postpones the services.

10.10 Where Acas is unable to deliver the service face to face, the parties may mutually agree an alternative digital platform for delivery.

11. Termination

11.1 Without limiting its other rights or remedies, either party may terminate the contract by giving the other party 14 days written notice.

11.2 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 seven (7) days of that party being notified in writing to do so

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business

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

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the contract has been placed in jeopardy

11.3 Without limiting its other rights or remedies, the supplier may terminate this contract where any invoice remains unpaid for more than 30 days from the date on the invoice.

11.4 Without limiting its other rights or remedies, the supplier may suspend provision of the services under the contract or any other contract between the customer and the supplier if the customer becomes subject to any of the events listed in clause 11.2(b) to clause 11.2(d) or the supplier 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 contract on the due date for payment.

12. Consequences of termination

12.1 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 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 them; until they 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 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

(d) clauses which expressly or by implication survive termination shall continue in full force and effect

13. General

13.1 Force majeure

Neither party shall be in breach of this contract nor liable for delay in performing, or failure to perform, any of its obligations under this contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13.2 Assignment and other dealings

(a) The supplier may at any time assign, transfer, mortgage, 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, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the contract.

13.3 Confidentiality

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.3(b).

(b) Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3, and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority
- (iii) with the written permission of the other party

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the contract.

13.4 Personal information

We will use the personal information you provide us:

(a) to deliver the services to you

(b) to process your payment for the services, and

(c) to give you information about any of the services we offer, but you may stop receiving this at any time by contacting our customer services team at events@acas.org.uk or on 0300 123 1150

13.5 Your personal information will be processed in line with data protection legislation and in accordance with our privacy policy which is hereby incorporated into this Agreement. Our [privacy policy](#) can be accessed online or provided on request.

13.6 Acas attaches significant importance to the evaluation of its services. It will evaluate services following delivery based on completed evaluation forms. Acas agrees to share the outcome of that evaluation with you. In addition, Acas or its research contractor may approach you to carry out a further evaluation of the impact of the training at a later date.

13.7 We will only share your personal information with third parties where the law requires us to do so.

13.8 Entire agreement

(a) 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.

(b) 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.

13.9 Amendment or variation

No amendment or variation of the contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.10 Where an amendment or a variation to the terms of the contract results in a change to the charges, the supplier shall inform the

customer as soon as reasonably practicable and, if agreed, these shall become the new charges.

13.11 Waiver

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy, or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

13.12 Severance

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.

13.13 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 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, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

(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 13.13(a); if sent by pre-paid first class post or other next working day delivery service, at 9am 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 email, 1 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.

13.14 Third parties

No one other than a party to the contract shall have any right to enforce any of its terms.

13.15 Governing law

The contract, 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, or Scotland, as appropriate.

13.16 Jurisdiction

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