

Terms and Conditions of the Cornwall Council Made in Cornwall Scheme

1 Interpretation

1.1 In these terms and conditions:

<p>“Agreement” means the contract between (i) the Council and (ii) the Recipient;</p> <p>“Application” means an application to join the Scheme made by the Recipient to PP in the form as available on the PP webpages at www.cornwall.gov.uk/madeincornwall;</p> <p>“Brand Guidelines” means the brand guidelines as detailed on PP’s webpages at www.cornwall.gov.uk/madeincornwall;</p> <p>“Charges” means the charges for the Scheme as specified in the Specification;</p> <p>“Confidential Information” means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;</p> <p>“Council” means the Cornwall Council of New County Hall, Treyew Road, Truro, Cornwall, TR1 3AY;</p> <p>“Deliverables” means all documents, products and materials developed by the Council or its agents, sub-contractors, consultants and employees in relation to the Scheme in any form including the Scheme logo;</p> <p>“Eligibility Criteria” means the criteria which the Recipient’s Products need to comply with to be eligible for the Scheme as detailed on PP’s webpages at www.cornwall.gov.uk/madeincornwall;</p> <p>“Expiry Date” means the date the Agreement is terminated in accordance with these</p>	<p>“FOIA” means the Freedom of Information Act 2000;</p> <p>“PP” means the Council’s Public Protection Service;</p> <p>“Party” means the Council or the Recipient (as appropriate) and “Parties” shall mean both of them;</p> <p>“Pre-existing Material” means all documents, materials and information provided by the Council relating to the Scheme which existed prior to the commencement of the Agreement;</p> <p>“Products” means goods or services;</p> <p>“Membership Certificate” means the membership certificate awarded to the Recipient by PP following a successful Application to join the Scheme by the Recipient and assessment by PP;</p> <p>“Recipient” Means the person named as the Scheme member on the Membership Certificate;</p> <p>“Scheme” means the Made in Cornwall membership scheme run by PP in accordance with the Specification, Eligibility Criteria, Brand Guidelines and these terms and conditions;</p> <p>“Specification” means the specification for the Scheme as detailed on the PP webpages at www.cornwall.gov.uk/madeincornwall;</p> <p>“Term” means the period from the start date of this Agreement to the Expiry Date;</p> <p>“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and</p> <p>“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.</p>
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2 General

- 2.1 The Scheme is managed and administered by PP.
- 2.2 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 2.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both of the Parties.
- 2.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 2.5 Any waiver or relaxation of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver.

3 Basis of Agreement

- 3.1 Upon the receipt of the Application by the Recipient to join the Scheme, PP will arrange for an assessment of the Recipient's Products and processes which will involve a visit to the Recipient's premises where the Products are made. The Council's award of the Membership Certificate to the Recipient is subject to the satisfactory result of the assessment of the Recipient's Products and processes and their compliance with both the Eligibility Criteria and all relevant EU and UK legislation, regulations, statutory codes of practice or requirements and guidance published by any applicable statutory regulator from time to time in force.
- 3.2 The Application constitutes an offer by the Recipient to join the Scheme in accordance with these terms and conditions, the Specification and the Eligibility Criteria and the acceptance of such offer is strictly subject to the successful completion of the Application process by the Recipient and subsequent assessment of the Recipient's Products and processes. The Council fully reserves its right to reject the Recipient's Application to join the Scheme.
- 3.3 If the Application made by the Recipient to join the Scheme is successful, following an assessment of the Recipient's Products and processes conducted to PP's satisfaction, the acceptance of the Recipient's offer will be by the award of the Membership Certificate to the Recipient, which will be done as soon as reasonably possible. In the event that the Recipient is unsuccessful with their Application, any Charges paid by the Recipient in advance will be refunded.
- 3.4 The Recipient will pay any Charges owing to the Council before membership of the Scheme is commenced.

4 Term

- 4.1 The Agreement shall take effect from the date of the Membership Certificate and shall run until the following 31 December.
- 4.2 Unless the Agreement is terminated in accordance with clause 13 of these terms and conditions, it shall automatically continue for a further period or periods of 12 months from the 1 January each year.

5 Statutory Duties

- 5.1 The Recipient's membership of the Scheme will not prejudice any future statutory inspection by the Council or otherwise.
- 5.2 The Council is empowered to enforce a variety of civil and criminal statutes. The Council has a duty to investigate any allegations of breaches of such legislation and the Recipient's membership of the Scheme does not affect this duty in any way whatsoever.
- 5.3 Nothing in this Agreement prohibits the Council, or any other local or central government authority from taking legal action in line with statutory enforcement duties and in accordance with the Council's enforcement policy as amended from time to time.
- 5.4 The Council reserves the right to take enforcement action against any individual or business that neglects its legal obligations and/or deliberately sets out to harm the interests of consumers or other legitimate businesses. The criteria governing enforcement action are set out in the enforcement policy, the current version of which can be found [here](#).

6 Charges and Payment

- 6.1 The Charges for the Scheme shall be those as set out in the Specification. In the event that the Council agrees in writing to any variation to the scope of the Scheme, including but not limited to additional products, the Charges shall be agreed in writing between the Recipient and the Council.
- 6.2 Payment of the Charges is to be made to Cornwall Council.
- 6.3 All amounts stated are inclusive of VAT which shall be charged at the prevailing rate.
- 6.4 If there is a dispute between the Parties as to the Charges, the Recipient shall pay the undisputed amount. Any disputed amounts shall be resolved through the dispute resolution procedure in clause 14.
- 6.5 If a payment of an undisputed amount is not made by the Recipient by the due date, then the Recipient shall pay the Council interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.6 In the event that the Recipient does not pay the Council in accordance with clauses 3.4, 6.4 or 6.5 above then the Council has the right either to withhold membership of the Scheme or to terminate the Recipient's membership of the Scheme until the outstanding amounts including VAT and interest are settled in full. Subject to clause 11 below the Council will not bear any liability to the Recipient as a result of the

withholding of or cessation of the Recipient's membership of the Scheme in accordance with this clause.

7 Recipient's Obligations

- 7.1 The Recipient shall:
- 7.1.1 co-operate with the Council in all matters relating to the Scheme;
 - 7.1.2 provide the Council with reasonable access at reasonable times to its premises in connection with the Scheme, both for initial assessments and for subsequent inspections from time to time in respect of approved products. The Recipient shall be responsible for maintaining the security of its premises in accordance with its standard security requirements;
 - 7.1.3 promptly notify the Council of any health and safety hazards which may exist or arise at the Recipient's premises and which may affect the Council;
 - 7.1.4 inform the Council of all health and safety rules and regulations and any other reasonable security requirements that apply at the Recipient's premises;
 - 7.1.5 provide, in a timely manner, such information as the Council may require, and ensure that it is accurate in all material respects.
- 7.2 If the Recipient's membership of the Scheme is prevented or delayed and/or the Council is forced to withdraw the Recipient's membership of the Scheme due to any act or omission of the Recipient, its agents, subcontractors, consultants or employees, the Council shall not be liable for any costs, charges or losses sustained or incurred by the Recipient that arise directly or indirectly from such prevention, delay or withdrawal.
- 7.3 The Recipient shall be liable to pay to the Council, on demand, all reasonable costs, charges or losses sustained or incurred by the Council that arise directly or indirectly from the Recipient's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Agreement, subject to the Council confirming such costs, charges and losses to the Recipient in writing.
- 7.4 The Recipient undertakes to provide all details required in the Application and any assessment(s) including but not limited to the Recipient's business, trading name/s, legal name/s, postal addresses, telephone numbers, email addresses, website addresses and the nature of the Recipient's business, as well as contact details for the person making the Application to join the Scheme. The Membership Certificate cannot be awarded until this information is received. The Recipient further undertakes to provide all such reasonable information as may be requested by the Council from time to time in connection with the Recipient's continued membership of the Scheme.
- 7.5 The Recipient will provide the necessary up-to-date and accurate information and true to the best of the Recipient's knowledge and belief about the Recipient's business and Products in connection with the Recipient's membership of the Scheme.

The Council will grant membership to the Scheme on the basis of the information provided by the Recipient and reserves the right to withdraw membership immediately should that information prove incorrect. The Recipient bears full responsibility for ensuring that all information provided to the Council is complete, accurate, true and up-to-date. Any false or misleading declarations made by the Recipient may result in prosecution.

- 7.6 The Recipient shall provide the Council with at least 48 hours' notice of site visit cancellations, failing which the Council shall be entitled to charge the Recipient for lost travel time at the rate of £70.00 per hour including VAT plus travel expenses at the rate of £0.40 per mile.
- 7.7 The Recipient should take independent legal and professional advice for any specific issues the Recipient may have regarding the Recipient's particular business.
- 7.8 The Recipient shall cover its own costs of participation in the Scheme.
- 7.9 The Membership Certificate shall be prominently displayed by the Recipient on the Recipient's business premises, where possible. Certificates which are no longer valid must not be displayed. Certificates remain the property of the Council and must be returned to the Council upon demand.
- 7.10 The Recipient shall promote their membership of the Scheme via their website, newsletters and any other marketing material produced by the Recipient (where appropriate).
- 7.11 The Recipient shall only provide Products for which they are qualified, experienced, competent and suitably equipped and shall have adequate procedures, including the training of relevant staff, to ensure the wellbeing of customers and other persons and shall not act in a discriminatory way.
- 7.12 The Recipient shall use the Scheme logo in accordance with the Scheme.

8 Intellectual Property Rights

- 8.1 As between the Recipient and the Council, all intellectual property rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Council.
- 8.2 The Council licences all such rights to the Recipient free of charge and on a non-exclusive, worldwide basis to such extent as is necessary and to enable the Recipient to make reasonable use of the Deliverables and the Scheme and such use of the Scheme logo by the Recipient shall be in accordance with the Brand Guidelines. If this Agreement is terminated, this licence will automatically terminate.
- 8.3 The Recipient acknowledges that, where the Council does not own any Pre-existing Materials, the Recipient's use of rights in the Pre-existing Materials is conditional on the Council obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Council to license such rights to the Recipient.
- 8.4 The provision of the Scheme by the Council to the Recipient does not entitle the Recipient or the

Recipient's business to claim any affiliation with or approval by Cornwall Council or the Council, save as to the extent provided for by the Scheme. The Recipient is not permitted to use any of Cornwall Council's or the Council's logos again, save as to the extent specifically provided for by the Scheme.

9 Confidentiality and Freedom of Information

- 9.1 Subject to clause 9.2 below, each Party shall:
- 9.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 9.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 9.2 The Council may disclose Confidential Information which it receives from the Recipient to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions or if disclosure is required by applicable law or by a court of competent jurisdiction.
- 9.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Recipient hereby gives its consent for the Council to publish the Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Council may consult with the Recipient to inform its decision regarding any redactions but the Council shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 9.4 The Council does not guarantee the confidentiality of information it holds. The Council may receive requests under the FOIA, the Environmental Information Regulations 1992 or any other applicable legislation or codes that govern access to information and the Council may be under an obligation to provide such information on request. Such information may include matters relating to, or arising out of this Agreement.

10 Data Protection

- 10.1 The Council will not keep information longer than is necessary and whilst in the Council's possession will safeguard the Recipient's personal information according to the requirements of the Data Protection Act 1998 or any equivalent legislation.
- 10.2 The Council will use the information the Recipient has supplied only for the purposes of maintaining a record of the Scheme and invoicing. The information will be retained for 7 years.

11 Liability and Insurance - THE RECIPIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 11.1 Nothing in the Agreement limits or excludes the Council's liability for:
- i. death or personal injury caused by its negligence;
 - ii. fraud or fraudulent misrepresentation; or
 - iii. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or any other liability which cannot be limited or excluded by applicable law.
- 11.2 Subject to clause 11.1 the Council shall not be liable to the Recipient, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:
- iv. loss of profits;
 - v. loss of sales or business;
 - vi. loss of agreements or contracts;
 - vii. loss of anticipated savings;
 - viii. loss of or damage to goodwill;
 - ix. loss of use or corruption of software, data or information;
 - x. any indirect or consequential loss.
- 11.3 Subject to clauses 11.1 and 11.2, the Council's total aggregate liability to the Recipient, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to 125% of the Charges.
- 11.4 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 Agreement.
- 11.5 Each of the Parties agrees that they will at their own cost effect and maintain appropriate policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Parties pursuant to this Agreement. The Recipient further agrees to have adequate public liability insurance to cover their business activities.

12 Force Majeure

- 12.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

13 Termination

- 13.1 Either Party may terminate the Agreement at any time by giving one (1) month's notice in writing to the other Party.
- 13.2 Without prejudice to the other remedies or rights a Party may have, either Party may terminate the Agreement with immediate effect on written notice to the other Party if the other Party:
- i. is in material breach of any obligation under the Agreement which is not capable of remedy;
 - ii. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
 - iii. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the other Party receiving notice specifying the breach and requiring it to be remedied.
- 13.3 If the Council terminates the Agreement pursuant to clause 13.2 above the Recipient shall immediately pay to the Council all of the outstanding unpaid Charges and interest.
- 13.4 For the purposes of clause 13.2, the Recipient shall be deemed to be in material breach of its obligations if it has not paid any undisputed amounts within 28 days of them falling due and/or if it fails to provide the information required by the Council in accordance with clauses 7.4 and 7.5.
- 13.5 The Recipient's membership of the Scheme may be reviewed or revoked by the Council if:
- 13.5.1 the Recipient's business changes ownership; there is no automatic right of transfer and the Council may require a new Application be made;
- 13.5.2 enforcement action is commenced against the Recipient, the Recipient's business, its agents, subcontractors, consultants or employees;
- 13.5.3 there are circumstances which the Council believes (at its absolute discretion) that it is necessary to review and/or revoke the Award and terminate the Recipient's Scheme membership.
- 13.5.4 if any circumstances in 13.5.1 to 13.5.2 occur, then the Recipient must notify the Council immediately.
- 13.6 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under any provision of the Agreement that either expressly or by implication has effect after termination.
- 13.7 If the Agreement is terminated by the Recipient pursuant to clause 13.1 above, the Recipient shall not be entitled to a refund of any Charges already paid. Should the Council terminate the Agreement in accordance with clause 13.1, any refund of any Charges already paid by the Recipient shall be at the Council's absolute discretion.

14 Dispute Resolution

- 14.1 If the Recipient or the Recipient's business has any complaints or is not satisfied with the Scheme in the first instance the Recipient shall contact Liz Rickard on telephone: 01872 327955 or email: madeincornwall@cornwall.gov.uk.
- 14.2 In the event that any dispute is not resolved in accordance with clause 14.1, the Recipient shall then refer to Cornwall Council's Complaints Procedure available on Cornwall Council's website and/or from the Recipient's local Council Office.
- 14.3 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and may agree to alternative dispute resolution, such as mediation. Either Party may exercise any remedy it has under applicable law.

15 Subcontracting

- 15.1 The Council reserves the right to sub-contract the provision of the Scheme or any part thereof to any person and shall give written notice of any sub-contract to the Recipient.
- 15.2 The Recipient's membership of the Scheme is not transferrable without the written consent of the Council.

16 Notices

- 16.1 Any notice to be given under the Agreement shall be in writing and shall be sufficiently served by personal delivery, or by being sent by first class post in a registered letter to the address of the relevant Party set out in the Application or Certificate, or such other address as that Party may from time to time notify to the other Party.

17 Severance

- 17.1 If any provision or part-provision of the Agreement 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 Agreement.

18 Governing Law and Jurisdiction

- 18.1 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

19 REVIEW

- 19.1 These "Terms and Conditions" will be subject to an annual review in line with annual rates and fees.

For further help or information please contact:

Telephone: Liz Rickard: 01872 327955

E-mail: madeincornwall@cornwall.gov.uk.

Website: www.cornwall.gov.uk/madeincornwall