

# Food Safety and Standards Advice Service

## Terms and Conditions

- i. This document sets out the terms and conditions of the Authority providing a food safety and standards advice service to the Business in consideration of the Fee set out in clause 2.
- ii. These terms and conditions shall apply and be read in conjunction with the Schedule of Services Required signed by the Parties.

### 1. Interpretation

In this agreement:

- a) The “Authority” means Pembrokeshire County Council, its employees and its representatives.
- b) The “Business” means the business identified in the Schedule of Services Required which is a party to this Agreement and includes: the Business’ food business operator, any owner, other legal entity, employee and representative of or associated with the Business.
- c) “Confidential Information” means information, whether written or oral provided by the disclosing Party to the receiving Party and which (i) is marked as or stated to be confidential; or (ii) ought reasonably to be considered by the receiving Party to be confidential;
- d) “DPA” means the Data Protection Act 1998 as amended from time to time
- e) “Deposit” means the deposit defined in clause 2.3.
- f) “Fees” means the fees payable by the Business to the Authority, as calculated in accordance with clause 2 of this Agreement.
- g) “FOIA” means the Freedom of Information Act 2000 as amended from time to time;
- h) “Party” means the Authority or the Business as relevant to the context and “Parties” shall mean the two of them.
- i) “Schedule of Services Required” means the separate schedule listing the options of services provided by the Authority and noting the services selected by the Business (in the tick box column) and setting out the estimated time and costs for providing the advice required, or such subsequent or additional Schedule of Services Required as agreed in accordance with clause 4.3.
- j) “Service” means those of the food safety and standards advice service, required by the Business from the Authority and as further defined in clause 4.3.
- k) “Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## 2. Fees

- 2.1 The Business shall pay a minimum fee of £118.00 (plus VAT), or £157.53 (plus VAT) if a site visit is required to the Authority, and the funds for such fee shall be received and cleared prior to the Service being provided (**the “Minimum Fee”**). This fee covers up to the first 2 hours of the Service. Where the estimate of cost is for less than 2 hours, the Minimum Fee shall apply and no monies shall be repayable to the Business for the difference between the time spent and the Minimum Fee.
- 2.2 Any work which exceeds the 2 hour minimum, will be charged at a rate of £59 per hour (plus VAT).
- 2.3 Additional visits shall be charged at £39.53 + VAT (£47.44 incl. VAT) for travel time and mileage.
- 2.4 Where the Service is over the 2 hours minimum, a deposit of 80% of the estimated costs shall be paid to the Authority in advance of the commencement of the Service (**“the Deposit”**).
- 2.5 The Authority will maintain an accurate account of all work undertaken in accordance with this Agreement, including the time taken to the nearest ¼ hour, and will provide an invoice to the Business in respect of its fees, following the completion of the Service (**“the Invoice”**).
- 2.6 The Authority and the Business agree that the estimated costs for providing the Service by the Authority shall be as set out in the Schedule of Services Required or as varied in accordance with the provisions set out in the Schedule of Services Required.
- 2.7 The Business shall pay any additional charge over and above the Minimum Fee or Deposit (as relevant) due within 7 Working Days from the date of the Invoice.
- 2.8 If the total costs set out as due in the Invoice are less than the Deposit paid, then the Authority shall reimburse the difference between those total costs and the Deposit to the Business within 7 Working Days from the date of the Invoice.
- 2.9 The Business acknowledges and agrees that where it selects the ‘summary advice notes produced at the time of the visit’ option in the Schedule of Services Required, such service will not be based on a ‘detailed written advice report’ and is charged and only to be relied upon accordingly.

## 3. Scope and Condition Precedent

- 3.1 For the avoidance of doubt, nothing in this Agreement shall:
  - a) fetter the Authority's discretion to exercise any right or obligation which it is

entitled to exercise in law; nor

- b) require the Authority to act or cease to act in any way which is contrary to any legal requirements.

## **4. Authority's Obligations**

4.1 The Authority agrees that the Service shall be provided:

- a) by suitably qualified staff and in a professional and courteous manner;
- b) with reasonable skill and care;
- c) within a reasonable timescale as notified by the Authority to the Business from time to time; and
- d) without prejudice to other legal requirements or duties.

For the avoidance of doubt, nothing in this Agreement shall fetter in any way the Authority's discretion and/or obligation to take whatever action it deems appropriate in the circumstances including, but not limited to, appropriate enforcement action in accordance with its enforcement policy. This Agreement does not prevent the Authority from taking any such enforcement action that it deems appropriate and such enforcement action may be carried out by the same employees or representatives of the Authority who have been involved in the Authority's provision of the Service under this Agreement. Where the Authority deems such enforcement action to be appropriate, the Authority will inform the Business of this (including clarifying the nature of its employees or representatives' roles in that regard).

4.2 The Business agrees that it will provide the Authority with such information and assistance as the Authority may reasonably require in order to enable or facilitate the Authority to deliver the service agreed.

4.3 The Authority and the Business agree that the Service shall be provided to the Business as set out in the Schedule of Services Required and/or any supplemental Schedule of Services Required agreed between the parties.

## **5. Scope of Advice and Liability**

5.1 The Business agrees that:

- a) the fundamental reason for the provision of the Service by the Authority is to provide advice to the Business in relation to requirements of food law;
- b) the Service provided by the Authority to the Business may not prevent enforcement action being taken against the Business. Such enforcement action may be taken during the same visit and by the same officers as those involved in the provision of the Service, but time spent on enforcement action shall be

recorded separately to time spent delivering the Service;

c) the advice or guidance provided by the Authority as part of the Service may become obsolete or outdated after receipt; and

d) the duty in relation to compliance with food law is the responsibility of the Business.

5.2 Except as expressly stated in this Agreement, all terms, conditions, warranties and representations that would otherwise be applied or implied (by statute or otherwise) in, or in relation to this Agreement are excluded to the fullest extent permissible in law.

5.3 Neither party excludes or limits liability to the other party for fraud, nor for death or personal injury caused by its negligence (as defined in the Unfair Contract Terms Act 1977), nor for any other liability for which it is not possible to exclude or limit liability by operation of law.

5.4 The Authority's liability to the Business arising out of or in connection with this Agreement (whether in contract, tort, negligence or otherwise) shall be limited to the amount paid by the Business for the Service in any one year.

5.5 In no event shall either party be liable to the other under or in connection with this Agreement (whether in contract, tort, negligence or otherwise) for any indirect or consequential loss or damage, or for any of the following losses (whether direct or indirect):

a) any loss of profits;

b) loss of business;

c) loss of opportunity;

d) loss of revenue;

e) loss of goodwill;

f) loss of anticipated contracts; and/or

g) loss of anticipated savings.

5.6 The Business agrees and acknowledges that employees and representatives of the Authority provide advice in that capacity only, and that (subject to clause 5.3) the Business shall have no right of remedy against an Authority employee directly.

## **6. Confidentiality**

6.1 Subject to clause 6.2, each Party shall:

a) 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

- b) not use or exploit the disclosing Party's Confidential Information in any way except for the purposes of the Agreement.

6.2 Notwithstanding clause 6.1, a Party may disclose Confidential Information which it receives in relation to this Agreement from the other Party:

- a) where disclosure is required by applicable law or by a court of competent jurisdiction;
- b) to its auditors or for the purposes of regulatory requirements;
- c) on a confidential basis, to its professional advisers;
- d) to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010; or
- e) where the receiving Party is the Authority, to its employees on a need to know basis to enable performance of the Authority's obligations under this Agreement provided that the Authority shall procure that any employees to whom it discloses Confidential Information pursuant to this clause 6.2 (e) shall observe the Authority's confidentiality obligations under this Agreement.

## **7. Freedom of Information**

7.1 The Business acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 as amended (the "EIR") and shall:

- a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the EIR.

7.2 The Business acknowledges that the Authority may be required under the FOIA and/or the EIR to disclose all or part of this Agreement, information concerning the Business or the Service (including commercially sensitive information) without consulting or obtaining consent from the Business. If able to do so, in accordance with any relevant guidance issued under the FOIA and/or the EIR, the Authority will seek to consult with the Business before any disclosure is made.

7.3 Notwithstanding any other provision in this Agreement, the Authority shall be responsible for determining whether all or part of this Agreement, or any information relating to the Business or the Service relating to this Agreement, is exempt from disclosure in accordance with the FOIA and/or the EIR. The Business acknowledges and agrees that the Authority is responsible for determining in its

absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or is to be disclosed in response to a Request for Information.

## **8. Protection of Personal Data and Security of Data**

- 8.1 The Authority shall comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with this Agreement.
- 8.2 Notwithstanding the general obligation in clause 8.1, where the Authority is processing 'personal data' on behalf of the Business as a 'data processor' (the aforementioned and foregoing wording in quotes being as defined by the DPA), the Authority shall take reasonable steps to:
- a) ensure that it has in place appropriate technical and organisational measures to ensure the security of the 'personal data' (and to guard against unauthorised or unlawful processing of 'personal data' and against accidental loss or destruction of, or damage to, the 'personal data'), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA, having regard at all times to the state of technological development and the cost of implementing any measures;
  - b) provide the Business with such information as the Business may reasonably request to satisfy itself that the Authority is complying with its obligations under the DPA;
  - c) promptly notify the Business of any breach of the security requirements of the Business as referred to in clause 8.2(a); and
  - d) ensure that it does not knowingly or negligently do or omit to do anything which places the Business in breach of the Business' obligations under the DPA.

## **9. Termination**

- 9.1 Without limiting their other rights or remedies, the Agreement may be terminated by either Party upon provision of 4 weeks' notice in writing to the other Party.
- 9.2 Without limiting its other rights or remedies, the Authority may terminate the agreement with immediate effect by giving written notice to the Business if:
- a) the Business 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 or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- b) the Business commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 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 the Business (being a company);
- d) the Business (being an individual) is the subject of a bankruptcy petition or order;
- e) a creditor or encumbrancer of the Business attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Business (being a company);
- g) the holder of a qualifying charge over the assets of the Business (being a company) has become entitled to appoint or has appointed an administrative receiver;
- h) a person becomes entitled to appoint a receiver over the assets of the Business or a receiver is appointed over the assets of the Business;
- i) any event occurs, or proceeding is taken, with respect to the Business in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause a) to clause g) (inclusive);
- j) the Business suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- k) the Business' financial position deteriorates to such an extent that in the Authority's opinion the Business' capability to adequately fulfil its obligations under the agreement has been placed in jeopardy; or
- l) the Business (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.

9.3 Without limiting its other rights or remedies, the Authority may terminate the agreement with immediate effect by giving written notice to the Business if the Business fails to pay any amount due under this agreement on the due date for payment.

9.4 On termination of the agreement for any reason the Business shall immediately pay to the Authority all of the Authority's outstanding unpaid invoices and, in respect of Services supplied but for which no invoice has yet been submitted, the Authority

shall submit an invoice, which shall be payable by the Business immediately on receipt.

- 9.5 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **10. Dispute Resolution**

10.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

10.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 10.1, the dispute may, by agreement between the Parties, be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

10.3 If the Parties fail to appoint a mutually agreed Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, a mediator shall be nominated by the Centre for Effective Dispute Resolution (CEDR). To initiate the mediation, a party must serve notice in writing (Alternative Dispute Resolution [ADR] notice) to the other party to the dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 20 days after the date of the ADR notice.

10.4 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the relevant dispute.

## **11. General**

11.1 Each of the Parties represent and warrant 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 this Agreement, and that this Agreement is executed by its duly authorised representative.

11.2 A person who is not a party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him or her, without the prior written agreement of the Parties.

11.3 This Agreement cannot be varied except in writing signed by a duly authorised



representative of both the Parties.

- 11.4 This 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 this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 11.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 11.6 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 11.7 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement (whether under this Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 11.8 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, that provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## **12. Notices**

- 12.1 Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, first class post, or recorded delivery to the address of the relevant Party set out above, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 12.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

## **13. Prevention of Bribery And Corruption**

13.1 The Business shall not:

13.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Authority, or any other public body or person employed by or on behalf of the Authority, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Agreement;

13.1.2 engage in and shall procure that all Business employees, consultants, agents or sub-Contractors or any person acting on the Business' behalf shall not commit, in connection with this Contract, a prohibited act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption; and

13.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.

13.2 The Business shall respond promptly to any of the Authority's enquiries regarding any breach, potential breach or suspected breach of this clause and the Business shall co-operate with any investigation in connection with a potential breach.

13.3 If the Business, its employees, consultants, agents or sub-contractors or any person acting on the Business' behalf, in all cases whether or not acting with the Business' knowledge breaches this clause or the Bribery Act 2010 in relation to this Agreement the Authority shall be entitled to terminate this Agreement by written notice with immediate effect.

## **14. Governing Law and Jurisdiction**

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