

## Terms & Conditions relating to the Licensing Pre-Application Advice Service

### Interpretation

1.1 In these terms and conditions:

**“Agreement”** means this contract between (i) the Council and (ii) the Applicant made up of these terms and conditions and Schedule 1;

**“Applicant”** means the person signing up to the Licensing Pre-Application Advice Service;

**“Confidential Information”** means all information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and Special Categories of Data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of clause 10 (Confidential Information; Disclosure of Information and Freedom of Information));
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing party;
- (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information;

**“Data Guidance”** means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Service Provider by the Council and/or any relevant Regulatory Body;

**“Data Protection Legislation”** means the General Data Protection Regulations and the Data Protection Act 2018 (together referred to as the Data Protection Legislation) and subordinate and subsequent legislation;

**“Deliverables”** means all documents, products and materials developed by the Council or its agents, sub-contractors, consultants and employees in relation to the Services in any form.

**“Disclaimer”** means the disclaimer set out in the Specification;

**“EIR”** means the Environmental Information Regulations 2004;

**“Expiry Term”** means when the Council has provided all the relevant advice relating to a Licensing Application or four months from payment of the Non-Refundable Fee, whichever is sooner;

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information

Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004;

**“Indirect Losses”** means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or any other basis;

**“Law”** means any law, statute, subordinate legislation bye-law, regulation, order, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements of any Regulatory Body or Relevant Authority with which the Service Provider is bound to comply;

**“Losses”** means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses;

**“Non-Refundable Fee”** means the non-refundable fee payable by the Applicant in accordance with clause 3.1

**“Party”** means the Council or the Applicant (as appropriate) and “Parties” shall mean both of them;

**“Personal Data”** has the meaning given to it in the Data Protection Legislation;

**“Personal Data Breach”** has the meaning given to it in the Data Protection Legislation;

**“Pre-existing Material”** means all documents, materials and information provided by the Council relating to the Services which existed prior to the commencement of the Agreement;

**“Services”** means the Licensing Pre-Application Advice Service to be supplied by the Council to the Applicant under this Agreement as set out within Schedule 1;

**“Specification”** means the specification for the Services (including as to quantity, description and quality) as set out in Schedule 1;

**“Special Categories of Data”** has the meaning given to it in the Data Protection Legislation;

**“Council”** means Wolverhampton City Council;

**“Term”** means the period from the start date of this Agreement to the Expiry Term;

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## 2 General

- 2.1 The Services are managed and administered by Wolverhampton City Council.
- 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 Purchase of the Licensing Pre-Application Advice Service**

- 3.1 The Applicant must pay the Non-Refundable Fee in advance to the Council and supply the required information under clause 8.5 in order for the Licensing Pre-Application Advice Service to be valid and form the start of the Term;
- 3.2 The Applicant will pay the Non-Refundable Fee to the Council in accordance with clause 7 before the Services are commenced.
- 3.3 The Council are under no obligation to commence work on the Service until the Applicant has complied in full with Clause 3.1

### **4 Supply of Services**

- 4.1 In consideration of the Applicant's agreement to pay the Non Refundable Fee, the Council shall supply the Services to the Applicant for the Term subject to and in accordance with the terms and conditions of this Agreement.
- 4.2 The Council shall provide the Services to the Applicant as set out in Schedule 1 and in accordance with this Agreement.
- 4.3 In supplying the Services, the Council shall:
- 4.3.1 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice; and
  - 4.3.2 ensure that the Services shall conform with all descriptions and specifications set out in the Specification.

4.4 The Council undertakes to ensure that only experienced and qualified officers as set out in Schedule 1 shall provide advice, that the advice will be impartial and that all reasonable steps will be taken to ensure that it is correct at the time at which it is given.

4.5 The Applicant should take independent legal and professional advice for any specific issues the Applicant may have regarding the Applicant's particular business.

## **5 Term**

The Agreement shall take effect on the start date of this Agreement which is when the Applicant provides all the required information under clause 8.5 and pays the Non-Refundable Fee in accordance with clause 3 and shall expire on the Expiry Term.

## **6 Statutory Duties**

6.1 Using the Services will not prejudice any future statutory inspection by or other duties of the Council or otherwise.

6.2 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 provision of the Services does not affect this duty in any way whatsoever.

6.3 Nothing in this Agreement prohibits the Council, or other local or central government authorities 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.

6.4 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.

## **7 Non-Refundable Fee and Payment**

7.1 The Applicant will be obliged to pay the Non-Refundable Fee at the demand of the Council and as set out within the Schedule 1.

7.2 Payment is to be made to Wolverhampton City Council via bank card over the phone or by bank transfer.

7.3 All amounts stated are inclusive of VAT.

7.4 If there is a dispute between the Parties as to the Non Refundable Fee, the Applicant shall pay the undisputed amount. Any disputed amounts shall be resolved through the dispute resolution procedure in clause 15.

7.5 If a payment of an undisputed amount is not made by the Applicant by the due date, then the Applicant shall pay the Council interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

7.6 In the event that the Applicant does not pay the Council in accordance with clauses 3.1 or 7.4 or 7.5 above then the Council has the right either not to commence or to cease providing the Services to the Applicant until the outstanding amounts including VAT and interest are settled in full. Subject to clause 12 below the Council will not bear any liability to the Applicant as a result of the cessation of the Services in accordance with this clause.

## **8 Applicant's obligations**

8.1 The Applicant must comply with its obligations set out within this clause 8 and the conditions and obligations as set out in the Specification in Schedule 1.

8.2 The Applicant shall:

8.2.1 co-operate with the Council in all matters relating to the Services;

8.2.2 provide the Council with reasonable access at reasonable times to its premises for the purpose of supplying the Services. The Applicant shall be responsible for maintaining the security of its premises in accordance with its standard security requirements;

8.2.3 promptly notify the Council of any health and safety hazards which may exist or arise at the Applicant's premises and which may affect the Council in the performance of its obligations under the Agreement;

8.2.4 inform the Council of all health and safety rules and regulations and any other reasonable security requirements that apply at the Applicant's premises;

8.2.5 provide, in a timely manner, such information as the Council may require, and ensure that it is accurate in all material respects.

8.3 If the Council's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Applicant, its agents, subcontractors, consultants or employees, the Council shall not be liable for any costs, charges or losses sustained or incurred by the Applicant that arise directly or indirectly from such prevention or delay.

8.4 The Applicant 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 Applicant'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 Applicant in writing.

8.5 In seeking to obtain the Services from the Council, the Applicant undertakes to provide details of the Applicant's business, including trading name/s, legal name, Companies House registration number and registered address, postal addresses (if different to the registered address), telephone numbers, email addresses, website addresses and the nature of the Applicant's business, as well as contact details for the person requesting the Services. The Services cannot be provided until this information is received.

8.6 The Retailer is obliged to comply with section 158 of the Licensing Act 2003 and will not provide any false statements when performing its obligations under this agreement or otherwise.

8.7 The Applicant will provide the necessary up-to-date and accurate information and true to the best of the Applicant's knowledge and belief about the Applicant's business in order for the Services to be provided. The Council will only provide the Services on the basis of the information provided by the Applicant. The Applicant bears full responsibility for ensuring that all information provided to the Council is complete, accurate, true and up-to-date. Any false declarations made by the Applicant may result in prosecution.

The Applicant cannot, under any circumstance transfer any rights on termination or otherwise under these terms to another premises or person.

## **9 Intellectual Property Rights**

9.1 As between the Applicant and the Council, all intellectual property rights and all other rights in the Deliverables shall be owned by the Council.

9.2 The Council licences all such rights to the Applicant free of charge and on a non-exclusive, worldwide basis to such extent as is necessary and to enable the Applicant to make reasonable use of the Deliverables and the Services. If this Agreement is terminated, this licence will automatically terminate.

9.3 The provision of the Services by the Council to the Applicant does not entitle the Applicant or the Applicant's business to claim any affiliation with or approval by Trade With Confidence or the Council. The Applicant is not permitted to use any Trade With Confidence or Council's logos.

## **10 Confidentiality; Data Protection and Freedom of Information**

10.1 Subject to clause 10.2 below, each Party shall:

10.1.1 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

10.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

10.2 The Council may disclose Confidential Information which it receives from the Applicant 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.

10.3 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 Applicant 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 Applicant 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.

10.4 The Council does not guarantee the confidentiality of information it holds. The Council may receive requests under the FOIA, the Environmental Information Regulations 2004 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.

10.5 The Applicant shall not make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Council.

## **11 Information Governance and Data Protection**

11.1 The Parties must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations.

11.2 The Council will not keep information longer than is necessary and whilst in the Council's possession will safeguard the Applicant's personal information according to the requirements of the Data Protection Legislation.

11.3 The Council will use the information the Applicant has supplied only for the purposes of maintaining a record of the Services and invoicing. The information will be retained for 7 years.

## **12 Liability and Insurance**

12.1 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;
- iii. breach of section 158 Licensing Act 2003; or
- iv. 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.

12.2 Subject to clause 12.1 the Council shall not be liable to the Applicant, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:

- i. loss of profits;
- ii. loss of sales or business;
- iii. loss of agreements or contracts;
- iv. loss of anticipated savings;
- v. loss of or damage to goodwill;
- vi. loss of use or corruption of software, data or information;
- vii. any indirect or consequential loss.

- 12.3 In addition to the list in clause 12.2, the Council's liability is further limited as set out within the Disclaimer.
- 12.4 Subject to clauses 12.1 and 12.2, the Council's total aggregate liability to the Applicant, 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 Fee.
- 12.5 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.
- 12.6 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.

### **13 Force Majeure**

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.

### **14 Termination**

- 14.1 The Council may terminate the Agreement at any time by giving one (1) months' notice in writing to the Applicant and the Council are under no obligation to refund the Non-Refundable Fee.
- 14.2 Other than where Term is near the Expiry Term, the Applicant may terminate the Agreement by giving one (1) months' notice in writing to the Council and by providing such notice the Applicant agrees to forfeit the Non-Refundable Fee paid.
- 14.3 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.
- 14.4 If the Council terminates the Agreement pursuant to clause 14.3 above the Applicant shall immediately pay to the Council all of the outstanding unpaid Non Refundable Fee and interest.



14.5 For the purposes of clause 14.3, the Applicant 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.

14.6 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.

## **15 Dispute Resolution**

15.1 If the Applicant or the Applicant's business has any complaints or is not satisfied with the quality of the Services in the first instance the Applicant should telephone: 01902 551155 or email: [Licensing@wolverhampton.gov.uk](mailto:Licensing@wolverhampton.gov.uk).

15.2 In the event that any dispute is not resolved in accordance with clause 15.1, the Applicant shall then refer to Wolverhampton City Council's Complaints Procedure available on <https://www.wolverhampton.gov.uk/complaints> website and/or from the Applicant's local Council Office.

15.3 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.

## **16 Subcontracting**

The Council reserves the right to sub-contract the provision of the Services or any part thereof to any person and shall give written notice of any sub-contract to the Applicant.

## **17 Notices**

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, or such other address as that Party may from time to time notify to the other Party.

## **18 Severance**

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.

## **19 Governing Law and Jurisdiction**

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.

## **20 REVIEW**

These “Terms and Conditions” will be subject to an annual review.

For further help or information please contact:

Phone: 01902 551155

E-mail: [Licensing@wolverhampton.gov.uk](mailto:Licensing@wolverhampton.gov.uk)

## Schedule 1 – Specification

### Licensing Pre-application Advice service

City of Wolverhampton Council offer a Licensing Pre-application Advice service to support your licensing application made under the Licensing Act 2003.

All licence application forms are available through the [City of Wolverhampton Council website](#). We are currently offering Pre-application Advice on only **ONE** application which relates to the following:

- New Premises Licence
- Full Variation
- Personal Licence
- Temporary Event Licences
- Designated Premises Supervisor (DPS) Variation
- Exceptionally Large Events Licence (over 4999 people)

Our aim is to assist you in applying for the correct level of licensing to suit your needs and to help mitigate any problems which may arise during the application process.

We can help you to avoid common mistakes which can very often delay the progress of an application.

### Application determination

Our advice and any assistance provided cannot pre-determine the outcome of a licensing application, especially if representations are received and a Statutory Licensing Sub-Committee hearing is necessary. All advice given will not include views from other Responsible Authorities.

If representations are received and a hearing takes place before the Licensing Sub-Committee, the committee will consider the application and the representations on its own merits and determine the application accordingly. Licensing will not represent an applicant at a Statutory Licensing Sub-Committee hearing. It should be noted, however, that the applicant will still be invited to attend.

### What's included in the Pre-application Advice service?

Our advice service will help you choose the correct type of licence, and can include:

- Advice and assistance on completing the application
- Advice on appropriate conditions
- Advice on Statutory Notices and Newspaper Advertisements
- Advice on polices that may need to be applied
- Identifying if security services may be required
- Advice on drawing up plans\* to accompany the application in accordance with the relevant regulations.

\*Please Note: This service does not include plans and plans must be provided by the Applicant.

## Benefits of the service

### Save time, money and have peace of mind

Applications are often delayed due to basic errors (incomplete forms, defective notices etc). You can avoid these common delays by using our Pre-application Advice service. We will make sure your application is correctly completed and that you only apply to the best of our knowledge, for the appropriate licence and fit for purpose for your requirements.

### Non-Refundable Fees

There are fixed fees for this service and cover the cost of administration and delivery of the service. All amounts stated are inclusive of VAT.

Costs are shown in the table below for each application type.

**Please note:** The Pre-application Advice Service fees are in addition to the relevant statutory application fees. More information and the statutory application forms are available on the [City of Wolverhampton Council website](#).

For some types of licence applications there are two cost elements to the Pre-application Advice service, which are detailed in the costs table and comprise:

#### 1. Initial consultation cost

We will spend a short amount of time asking you some basic questions to determine the right application for you and any possible complexities. Payment will be requested prior to the consultation and is non-refundable, regardless of whether or not you decide to proceed with our Pre-application Advice service.

#### 2. Pre-application Advice service cost

After the initial consultation, should you decide to proceed with our service, the payment for the service will be requested upfront and is non-refundable.

### Making payment

Arrangements will be made with you to take payment securely over the phone by credit or debit card or bank transfer.

Application type	Initial consultation cost	Pre-application Advice service cost	Total Cost (net VAT)	Total Cost (including VAT)
New premises application*	£66.00	£462.00	£528.00	£633.60
Designated Premises Supervisor (DPS) variation	N/A	£66	£66.00	£79.20
Full variation*	£66.00	£132.00	£198.00	£237.60

Temporary Event Notice (TEN)	N/A	£33.00	£33.00	£39.60
Major event (exceptionally large event with over 4999 people)	N/A	£198.00	£198.00	£237.60
Personal licence	N/A	198.00	£198.00	£237.60

*\*Initial consultation required*

**Disclaimer**

- This service is provided by Wolverhampton City Council Licensing Officers, who are experienced and qualified individuals within the Council's Licensing Department.
- Any views or opinions expressed by Council Officers are given in good faith, and whilst we will do our utmost to ensure this is technically correct, they are provided without prejudice to the formal consideration of any statutory inspection or applications.
- Other sources of professional advice are available and there is no legal requirement for your business to accept our service.
- Photographs and testimonials shown are with businesses permission.
- Fees and charges associated with this service are to cover costs and not for profit.
- Nothing in these terms and conditions bring any level of immunity to the Applicant from prosecution.
- You cannot apply for this service if you carry out a similar business to the service, for example solicitors, licensing consultants, legal advisors.

We operate impartially and free from conflicts of interest advice. Businesses should be aware that it is possible to obtain the same services as those offered by City of Wolverhampton Council elsewhere. We encourage businesses to make their own investigations with alternative providers as to whether the services are available elsewhere and to obtain the best value for those services.

The offer is valid for 12 months from the signing (and receipt) of these Terms and Conditions, or the Applicant's agreement to them.

**Please complete the form below, sign and date to confirm you have read and understood the Terms and Conditions.**

To provide this service City of Wolverhampton Council will collect and process personal information. We may check some of the information with other sources (e.g. government departments and other councils) to verify your identity and ensure that the information you have provided is accurate.

Your personal information is being processed because it is necessary for compliance with a legal obligation or for the performance of a task carried out in the public interest.

Please refer to our **Privacy and Cookies Notice** for further details on how we process your personal information and your rights. This is also available in other formats (e.g. print).

Applicant Full Name:

Business Address:

Applicant Home Address:

Applicant Daytime Contact Telephone Number:

Applicant Email Address:

Applicant Signature:

Date:

I agree to receive information in the future from the Trade with Confidence Team regarding offers and services.