

BSEL E-LEARNING – TERMS AND CONDITIONS OF USE

1. **INTERPRETATION**

In these terms and conditions:
"BSEL" shall mean Barnardo Social Enterprise Limited, company number 05934887 and registered address at Tanners Lane, Barkingside, Ilford, Essex, IG6 1QG.
"Business Day" shall mean any day other than a Saturday, Sunday or English bank or public holiday.
"Business Hours" shall mean 9am to 5pm on a Business Day.
"Charges" shall mean any and all charges payable by the Customer to BSEL under these terms and conditions.
"Customer" shall mean the individual or organisation permitted by BSEL to access the Site for use in accordance with these terms and conditions specified in the Purchasing Form.
"Data Protection Legislation" shall mean the Data Protection Act 1998 and any other national legislation relating to data protection and privacy.
"Document" shall mean any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
"Licence" shall mean the instrument by which a User shall access the Site by virtue of payment of a Licensing Fee to BSEL.
"Licensing Fee" shall mean the charges payable by the Customer in respect of access to the Site for a period of 12 (twelve) months set out at clause 5.
"Maximum Users" shall mean the maximum number of Licences provided by BSEL to the Customer.
"Proprietary Materials" shall mean all Documents, information and materials used, provided or originated by BSEL or its licensors in relation to the Services, whether originated by BSEL or its licensors in the course of the Services or otherwise, including precedent computer programmes, software, output data, including interpreted or analysed data, questionnaires, reports and specifications.
"Purchasing Form" shall mean the form, in written or online format, that the Customer shall complete and sign, which shall include such outlining: Customer information as reasonably required by BSEL to permit access to the Site, the total number of Users; and the Licensing Fee.
"Site" shall mean the web-based training solution(s) supplied to the Customer by BSEL.
"Users" shall mean individual employees of the Customers who have access to the Site by virtue of being granted a Licence.
2. **COMMENCEMENT AND DURATION**

In consideration of the Customer agreeing to pay BSEL the Charges, BSEL shall provide an agreed number of Licences to the Customer, subject to and in accordance with these terms and conditions.
3. **HOSTING**
- 3.1 BSEL shall make all reasonable endeavours to ensure that the Site is available for access by the Users at all times during Business Hours.
- 3.2 BSEL shall have no liability in respect of any unavailability of the Site arising from any of the following:
 - 3.2.1 scheduled maintenance (not exceeding eight Business Hours in a calendar month) of which BSEL has given the Customer not less than 7 (seven) days' prior notice;
 - 3.2.2 circumstances beyond the reasonable control of BSEL; or
 - 3.2.3 any "denial of service" attack or other criminal, malicious or abusive activity by a third party.
4. **LICENSING**
- 4.1 The Customer is permitted to use the Site only as set out in this clause 4.
- 4.2 The Customer shall use the Site only for its internal business purposes, and in particular (without limitation) the Customer shall not resell, sublicense or otherwise provide access to the Site for any person other than the employees of the Customer.
- 4.3 The Customer shall make the Site available to not more than the Maximum Users.
- 4.4 The Customer shall not and shall ensure that its Users do not:
 - 4.4.1 use the Site for any illegal or immoral purpose;
 - 4.4.2 post or transmit to or from this Site any material:
 - a) that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance or inconvenience;
 - b) for which the Customer has not obtained all necessary licences and/or approvals or
 - c) which constitutes or encourages conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in the UK or any other country in the world; or
 - d) which is technically harmful (including, without limitation, computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data); or
 - 4.4.3 engage in any behaviour that may impair the performance, corrupt the content or otherwise reduce the functionality of the Site.
- 4.5 Any such use shall result in immediate termination of the applicable Licence(s) and the Customer's right to access the Site. BSEL shall not be liable for any loss or damage arising as a result of any such termination and the Customer shall not be entitled to a refund of any prepaid Licensing Fee.
- 4.6 Links to third party websites on the Site are provided solely for the Customer's convenience. If the Customer uses these links, the Customer leaves the Site. BSEL has not reviewed any of these third party websites and does not control and is not responsible for these websites or their content or availability. Accordingly, BSEL does not endorse or make any representations about them, or any material found there, or any results that may have been obtained from using them. If the Customer decides to access any of the third party websites linked to this Site, the Customer does so entirely at its own risk.
5. **CHARGES AND PAYMENT**
- 5.1 The Customer shall pay BSEL in consideration of the Licensing Fee, the amount specified on the Purchasing Form.
- 5.2 All amounts payable by the Customer are exclusive of VAT, charged at the prevailing rate, which BSEL will add to its invoices, and the Customer shall pay.
- 5.3 The Customer shall pay each invoice submitted by BSEL, in full and in cleared funds, with 30 (thirty) days of receipt.
- 5.4 In addition to the Licensing Fee payable to BSEL pursuant to clause 5.1, if a User accesses the Site on more than 3 (three) separate calendar months in the course of the term of the Licence, BSEL reserves the right to charge the Customer an additional fee of not more than £3 per month, per User.
- 5.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay BSEL on the due date, BSEL may:
 - 5.5.1 claim interest and/or compensation at the rates specified under the Late Payment of Commercial Debts (Interest) Act 1998; and/or
 - 5.5.2 suspend or terminate the Customer's access to the Site and/or applicable Licence(s) until payment in full has been made.
- 5.6 All sums payable to BSEL under these terms and conditions shall become due immediately on termination, despite any other provision. This clause 5.6 is without prejudice to any right to claim for interest under the law, or any such right under these terms and conditions.
- 5.7 BSEL may, without prejudice to any other rights it may have, set off any liability of the Customer to BSEL.
6. **INTELLECTUAL PROPERTY RIGHTS**
- 6.1 All Intellectual Property Rights relating to the Services are owned by and shall be owned by BSEL or its licensors.
- 6.2 For the avoidance of doubt, and without limitation to BSEL Intellectual Property Rights in the Proprietary Material, no licence is granted to the Customer to create copies or offline versions of any Proprietary Materials, or to use Proprietary Materials for any purpose other than that expressly permitted under these terms and conditions.
7. **CONFIDENTIALITY**
- 7.1 Both parties shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one party to the other, its employees, agents or sub-contractors and any other confidential information concerning the disclosing party's business or its products which the other party may obtain.
- 7.2 Both parties shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging its obligations under these terms and conditions, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the parties.
- 7.3 This clause 7 shall survive termination of these terms and conditions, however arising.
8. **NATURE OF THE SERVICES**

The Customer acknowledges that all information provided by means of the Site or otherwise pursuant to the Services is general information intended for internal training purposes only and for no other purpose. In particular, but without limitation, it is not intended to constitute legal or other professional advice, and BSEL shall not be liable for the Customer taking (or refraining from taking) any action or making any decision in reliance upon any such material.
9. **LIMITATION OF LIABILITY**
- 9.1 This clause 9 set out the entire liability of BSEL (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer including in respect of:
 - 9.1.1 any breach of these terms and conditions;
 - 9.1.2 any use made by the Customer of the Services, Documents, Proprietary Materials, the Site or any part of them; and
 - 9.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms and conditions.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these terms and conditions.
- 9.3 Nothing in these terms and conditions limits or excludes the liability of BSEL:
 - 9.3.1 for death or personal injury resulting from negligence;
 - 9.3.2 for any damage or liability incurred as a result of fraud or fraudulent misrepresentation by BSEL;
 - 9.3.3 for any liability incurred by the Customer as a result of any breach by BSEL of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982; or
- 9.3.4 in respect of any other liability which cannot be excluded or limited under statute.
- 9.4 Subject to clause 9.3, BSEL shall have no liability, whether for negligence, breach of contract, misrepresentation or otherwise, for any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise):
 - 9.4.1 loss of profits, loss of business, loss of goodwill, loss of reputation, loss of anticipated savings, loss of goods, loss of contract, loss of opportunity or loss or corruption of data or information, whether direct, indirect or consequential in nature; or
 - 9.4.2 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 9.5 Subject to clause 9.3, BSEL's total aggregate liability, whether for negligence, breach of contract, misrepresentation or otherwise, for all claims arising in any period of 12 (twelve) months shall be limited to the greater of:
 - 9.5.1 £5,000; or
 - 9.5.2 the Charges paid or payable by the Customer in that period of 12 (twelve) months.
10. **DATA PROTECTION**
- 10.1 BSEL may collect and process the following data about the Customer and its Users in accordance with these terms and conditions:
 - 10.1.1 information that the Customer and its Users provide by filling in forms including on the Site and information provided at the time of registering to use the Site, subscribing to BSEL's service, posting material or requesting further services;
 - 10.1.2 if the Customer or its Users contact BSEL, BSEL may keep a record of that correspondence; and
 - 10.1.3 details of the Customer's and its Users' visits to the Site and the materials and information accessed, for the following purposes:
 - a) to ensure that content from the Site is presented in the most effective manner for the Customer and its Users;
 - b) to provide the Customer and its Users with information, products or services that they request from BSEL or which BSEL feels may interest the Customer and its Users, and where Users have consented to be contacted for such purposes;
 - c) to allow the Customer and its Users to participate in interactive features of BSEL's service, when they choose to do so; and
 - d) to notify the Customer and its Users about changes to BSEL's service.
- 10.2 BSEL may disclose data about the Customer and its Users to its affiliated entities for the purposes stated above. BSEL shall not otherwise disclose Users' personal data to any third parties except that BSEL may disclose Users' personal data to third parties if BSEL is under a duty to disclose or share Users' personal data in order to comply with any legal obligation, or in order to enforce or apply these terms and conditions or other agreements, or to protect the rights of BSEL, its customers, or others.
- 10.3 The Customer agrees to indemnify and keep indemnified BSEL from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation any direct or indirect consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any breach by the Customer of the Data Protection Legislation.
11. **FORCE MAJEURE**

BSEL shall have no liability to the Customer under these terms and conditions if it is prevented from or delayed in performing its obligations under these terms and conditions or from carrying on its business by acts, events, omissions, or accidents beyond its reasonable control, including, but not limited to strikes, lock-outs or other industrial action disputes (whether involving the workforce of BSEL or any other party), failure of a utility service or transport network, an act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
12. **VARIATION**

No variation of these terms and conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.
13. **WAIVER**
- 13.1 A waiver of any right under these terms and conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 13.2 Unless specifically provided otherwise, rights arising under these terms and conditions are cumulative and do not exclude rights provided by law.
14. **SEVERANCE**
- 14.1 If any provision (or part of a provision) of these terms and conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 14.3 The parties agree, in the circumstances referred to in clause 14.1 and if clause 14.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of these terms and conditions shall be suspended while an attempt at such substitution is made.
15. **ASSIGNMENT**
- 15.1 Subject to clause 15.2, neither party shall, without the prior written consent of the other (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions.
- 15.2 BSEL may at any time sub-contract all or any of its rights or obligations under these terms and conditions without the Customer's consent, provided that any such sub-contracts do not have a materially adverse effect on the provision of the Services.
16. **DISPUTE RESOLUTION**
- 16.1 In the event of any dispute arising between the parties, the parties shall refer the dispute to their respective managing directors, who shall endeavour to resolve the dispute as soon as reasonably practical.
- 16.2 If the parties are unable to resolve the dispute by negotiation within a reasonable time, then (if both parties are willing to do so) the parties may attempt to settle by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure
17. **JURISDICTION**

These terms and conditions and any dispute or claim arising out of or in connection with them or their subject matter, shall be governed by, and construed in accordance with, the law of England and Wales and the parties submit to the exclusive jurisdiction of the English Court.