



STANDARD TERMS AND CONDITIONS

to the

BIG NORFOLK HOLIDAY FUN

FUNDING AGREEMENT



nplaw
Public Sector Legal Expertise

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Martineau Lane
Norwich, Norfolk
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(Ref: 74511)

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1. DEFINITIONS

In these Standard Terms and Conditions, the following definitions apply:

Agreement: means the funding agreement document setting out the terms and conditions agreed between the Commissioner and the Provider to deliver the Programme.

Application: means the Provider's completed application form to deliver the Programme submitted on-line to the Commissioner via its website, as set out in the Agreement.

BNHF: means Norfolk's local HAF called 'Big Norfolk Holiday Fun'.

Certificates: means DBS checks, First Aid certificates and Food Hygiene level 1.

Contract: means the Agreement, Standard Terms and Conditions and Application.

Data Protection Legislation: means all applicable UK data protection and privacy legislation in force from time to time which apply to a party's use of personal data.

Documents: means documents Providers submit to the Commissioner set out in Schedule 1.

End Date: the day on which the Programme ends as stated in the Agreement.

EveryMove: is the Commissioner's on-line system booking system.

Feedback Survey: means the Commissioner's BNHF feedback survey Providers complete.

Funding: means the maximum amount the Commissioner will pay the Provider to deliver the Programme, as stated in the Agreement.

Funding Claim: means a Provider's request for payment of the Funding, submitted to the Commissioner following the procedure set out in clause 3.9.

HAF: is the government funded holiday activity and food programme for specific activities.

Holiday Period: means the holiday period during which the Provider provides the Programme.

Logo: means BNHF's logo set out in Schedule 1.

Marketing Form: means the Commissioner's template form that Provider's use to submit their marketing information, a copy is at Schedule 1.

Party's Contact: each Party's nominated contact that for the Provider is stated in the Application and for the Commissioner is ProviderBNHF@norfolk.gov.uk

Personal Data: has the meaning given to it in the Data Protection Legislation.

Price: is the fixed amount the Commissioner will pay the Provider to deliver the Programme.

Policies: means the following policies; Safeguarding; Health and Safety; Inclusivity and Accessibility; and Safe Mobile phone policy.

Programme: means the BNHF government funded programme for free school meals children that the Provider will deliver.

Publication: means any announcement, comment, or publication of any publicity material by the Parties concerning the Programme.

Remedial Action Plan: means a plan to remedy a Provider's breach or breaches of the Contract's terms and condition.

Report Form: means the Commissioner's template form that some Providers use to submit their Reporting Information, a copy is at Schedule 1.

Reporting Information: means the Programme's reporting information that the Department of Education require, and which can be collected, either automatically from the 'Every Move' system registers, or manually from the Report Form, as stated in each Provider Agreement.

Staff: means the Provider's staff including any volunteers delivering the Programme.

Standard Terms and Conditions means these Standard Terms and Conditions that apply to all provider Contracts supplementing the Agreement.

Start Date: means the day on which the Programme starts as stated in the Agreement.

Venue: the location of the Provider's venue(s) where it will provide the Programme.

2. Duration and Purpose

- 2.1 The Provider will deliver the BNHF Programme during the Holiday Period on the basis of its Application.
- 2.2 The Funding is only to be used to fund the Programme during the Holiday Period.
- 2.3 The Holiday Period starts on the Start Date and ends on the End Date unless terminated earlier in accordance with these Standard Terms and Conditions.
- 2.4 The Provider shall deliver the Programme:
 - (a) in accordance with the Contract; and
 - (b) using all reasonable skill, care and diligence to promote the Programme, including employing sufficient Staff suitably qualified, experienced and trained; and
 - (c) in accordance with all UK legislation including health and safety legislation, Data Protection Legislation and the Policies); and
 - (d) without bringing the Commissioner into disrepute.
- 2.5 The Commissioner reserves the right to make changes to the Contract and Programme and will notify the Provider where it is required to do so by the Department of Education.
- 2.6 If the Provider wishes to amend its Application it shall submit its proposals to the Commissioner Party for its review and decision.
- 2.7 The Commissioner reserves the right at its discretion to extend the Contract for another Holiday Period based on the Commissioner's view of a Provider's performance of the Programme, and if extended the Parties shall enter into a new separate Agreement.

3. Funding Claim Procedure and Document Submission

- 3.1 Payment is dependent on Providers submitting Funding Claims and Documents to the Commissioner as set out in the detail below.

Part 1.General

- 3.2 The Commissioner will pay the Price stated in the Agreement in two instalments.
- 3.3 Funding Claims must contain certain details, and the details will be different if it is either the Providers **first OR second** Funding Claim. The details are:
- (a) the number of Programme sessions, **that will be OR that were**, delivered; and
 - (b) the amount and costs of funded meals, **that will be OR that were**, provided; and
 - (c) the number and type of nutritional education of healthy eating activities, **that will be OR that were**, provided; and
 - (d) the number of Staff, **that will OR that did**, deliver the Programme.
- 3.4 The Commissioner shall pay the Price within 30 days of receipt of both a valid and agreed Funding Claim and the Documents.
- 3.5 The Commissioner is an accountable authority for public money and reserves the right to request details of Funding Claims and Document content before making payment.
- 3.6 Providers can raise any cost queries with the Commissioner, both:
- (a) before submission and up to 30 days after submission:
before submission by email at ProviderBNHF@norfolk.gov.uk ; and
 - (b) for queries made 30 days after submission:
by email to Norfolk County Council at invoices@norfolk.gov.uk
- 3.7 Providers are responsible for their VAT and/or other tax liability so that the Commissioner will have no responsibility to HMRC for any outstanding tax sums.
- 3.8 The Commissioner reserves the right not to make payment where Providers do not follow the Funding Claim and Documents Submission procedure.

Part 2 Funding Claim and Document Submission Procedure

- 3.9 To receive payment of Funding Claims, Providers must follow the procedure below:
- a) Before the Programme:
Providers will submit 3 documents being, their:
 - (i) first Funding Claim, and
 - (ii) signed Agreement; and
 - (iii) Marketing Formto the Commissioner by email to ProviderBNHF@norfolk.gov.uk
 - b) The Commissioner shall review these 3 documents and either make payment or request further details.
 - c) After the Programme

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Providers will submit 3 more documents being, their:

- (i) second Funding Claim, and
 - (ii) Reporting, either by updating EveryMove registers or by completing the Report Form; and
 - (iii) Feedback Survey
- to the Commissioner by email at ProviderBNHF@norfolk.gov.uk
- d) The Commissioner shall review these 3 documents and either make payment or request further details.

Part 3 Advance Payment

3.10 The Commissioner pays the Price in two instalments: the first is an advance payment Funding Claim before the Programme; the second instalment Funding Claim is after the Programme and the amounts will be different for Providers depending on their use of EveryMove.

3.11 Providers who **use EveryMove** as the Programme's booking system **AND** for Reporting Information will be paid:

- (a) a minimum of 50% of the Price, as stated in the Agreement; and
- (b) the remaining Price percentage amount % after the Programme's End Date
- (c) all payments and Funding Claims are for free school meals children only and therefore exclude the number of fee-paying children at the Venue and their food costs when relevant.

3.12 Providers who **do not use EveryMove** as the Programme's booking system **AND** who submit a Report Form will be paid:

- (a) a maximum of 20% of the Price, as stated in the Agreement, and
- (b) the remaining Price percentage amount % after the Programme's End Date;
- (c) all payments and Funding Claims are for vulnerable children only and therefore are to exclude the number of fee-paying children at the Venue and their food costs when relevant.

4. EveryMove: Programme Booking System and Programme Reporting

4.1 All Providers are to use EveryMove to list the Programme, so the public know who provides the Programme and also to promote the Programme to residents.

4.2 Additionally, Providers shall use EveryMove as a booking system so residents can book Programme sessions directly and as a result the Commissioner will be able to collect the Reporting Information automatically from EveryMove registers.

4.3 Where a Provider does not use EveryMove as a Programme booking system, it shall agree a suitable alternative booking system with the Commissioner that shows Programme sessions available for booking, and also complete the Commissioner's Report Form to submit Reporting Information manually, and in line with clause 3.1 shall list the Programme on its' website.

4.4 Where applicable the Commissioner shall discuss and agree arrangements with Providers of organisations whose session are not available for public booking.

5. Marketing and Publicity

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- 5.1 The Provider shall market, publicise and promote their HAF Programme
- 5.2 The Provider shall submit its Marketing Form to the Commissioner when it submits its first Funding Claim.
- 5.3 The Commissioner has provided some marketing guidance for the Provider's use, as attached at Schedule 1 and on its website.
- 5.4 The Provider will acknowledge the Commissioner's support and involvement in all BNHF publicity material of any nature whatsoever, and include the following standard supporting wording: '***This Programme was supported by Active Norfolk***'.
- 5.5 The Provider will insert the BNHF Logo in all its publicity materials, as at Schedule 1.
- 5.6 Other than as expressly set out in these terms and conditions the Provider will not use the Logo without the Commissioner's prior written consent.

6. Policies, Certificates and Insurance

- 6.1 The Provider shall provide the Programme in line with the Policies.
- 6.2 The Provider shall take out and maintain during the Holiday Period, public liability insurance to the value of £10,000,000.00 unless otherwise agreed with the Commissioner.
- 6.3 The Provider shall be responsible for any and all other insurance it is required and/or that it considers necessary for its business.
- 6.4 The Provider shall provide copies of the Policies, Certificates and Insurance to the Commissioner when requested.

7. Monitoring and Reporting

Part 1 Monitoring

- 7.1 The Commissioner will monitor the Programme during the Holiday Period and collect Reporting Information from the Provider.
- 7.2 The Provider will notify the Commissioner promptly of any breach of these terms and conditions.
- 7.3 The Provider will notify the Commissioner promptly of any safeguarding incident reported to the LADO and/or any accident or injury resulting in hospitalisation and/or death occurring whilst the Provider is carrying out the Programme.
- 7.4 The Commissioner may carry out unannounced visits to assess and confirm:
 - (a) the use of the Funding; and
 - (b) the quality of the Programme delivery; and
 - (c) that Programme delivery is in line with the Application and Contract; andthe Provider shall co-operate with the Commissioner and allow access to the Venue.
- 7.5 Where the Commissioner considers there has been a breach of Contract, it shall notify the Provider and may either require the Provider:
 - (a) to remedy the breach within an agreed time period; or

(b) submit a Remedial Action Plan, within an agreed time-period for the Parties to agree.

- 7.6 Where on any subsequent visit the Commissioner considers the breach of Contract has not been remedied or the Remedial Action Plan has not been implemented, either in full or in part, the Commissioner reserves its right to give the Provider immediate written notice of suspension and/or termination, at its discretion in order to safeguard the Programme and/or the attending children and/or the Funding.

Part 2 Reporting

- 7.7 Providers shall use EveryMove to book sessions which allows the Commissioner to extract Reporting Information automatically where records are kept up to date.
- 7.8 In exceptional circumstances where a Provider is unable to use EveryMove to submit Reporting Information, it shall request an exemption from the Commissioner.
- 7.9 Where Providers have an exemption, they shall use and complete the Commissioner's manual Reporting Form attached at Schedule 1, and submit this to the Commissioner by email to Providerbnhf@norfolk.co.uk, when submitting their second Funding Claim.
- 7.10 The Provider shall supply to the Commissioner within a reasonable time any information and/or data as the Commissioner may reasonably require in order to monitor the Programme and the Contract.

8. Audit and Evaluation

- 8.1 To evaluate the Programme and audit spending of public money the Provider shall:
- (a) keep financial records of all Funding used for the Programme including but not limited to any fees, costs or other payments invoiced to the Commissioner and submit these records to the Commissioner within 10 working days of a request; and
 - (b) keep financial records for three years following the Programme's End Date.
- 8.2 The Provider shall provide copies of any such records to the Commissioner when requested to do so for the purposes of audit and evaluation.

9. Representations and Warranties

The Provider represents and warrants to the Commissioner that:

- 9.1 it has the power to enter into and perform the Contract;
- 9.2 it is of sound financial standing with sufficient resources and that no other event or circumstance exists which, has or is likely to have, a material adverse effect on its ability to perform its obligations under the Contract;
- 9.3 neither it nor any Staff member has offered, promised or given any bribe or inducement or made any improper threat or colluded with another other person in connection with the Contract;
- 9.4 that the information in the Application was at the time it was submitted:
- (a) complete, true and accurate in all material respects;
 - (b) prepared on the basis of reasonable assumptions;

- (c) is not misleading in any material respect, nor rendered misleading by a failure to disclose other information;
 - (d) it has satisfied itself as to the correctness of that information; and
 - (e) there has been no material adverse change to the Application since its submission except where it has informed the Commissioner of that change;
- 9.5 that its Certificates, Policies and Insurance are up to date and will be kept up to date at all times during the Holiday Period; and
- 9.6 each of the representations and warranties in this clause 9 are repeated by the Provider during the Holiday Period.

10. Review and Clawback and Suspension and Termination

- 10.1 The Commissioner will review the Provider's delivery of the Programme.
- 10.2 The Commissioner reserves the right to terminate the Contract and/or suspend the Funding and/or recover all or a part of the Funding paid where the Provider:
- (a) does not comply with the Programme or the Contract;
 - (b) cancels Programme sessions after receiving payment of its first Funding Claim;
 - (c) misuses the Funding;
 - (d) receives an overpayment from the Commissioner for any reason whatsoever;
 - (e) becomes bankrupt or insolvent or has a receiver or administrative receiver appointed over any part of its business or passes a resolution for winding up or enters in any voluntary arrangement with its creditors or ceases or threaten to cease to carry on business; and/or
 - (f) commits an offence under the Bribery Act 2010 or section 117(2) of the Local Government Act 1972 relating to this or any other contract with the Commissioner.
- 10.3 Where the Commissioner's own Funding is stopped for any reason by central Government, the Commissioner may at its discretion repay to the Provider any expense and/or loss it incurred as a result by delivering the Programme.

11. General

11.1 Liability and Indemnity

The Provider shall indemnify and keep indemnified the Commissioner against all losses and liabilities and claims arising out of any of the following:

- (a) any failure by the Provider to comply with the Contract;
- (b) in respect of any injury or damage to any person or property arising out of the Provider's delivery of the Programme; and/or
- (c) any actual or alleged non-compliance of the Programme with any UK Law.

11.2 Freedom of Information

The Provider acknowledges that the Commissioner is subject to the requirements of the Freedom of Information Act 2000 (the "FOIA") and shall assist and cooperate with the Commissioner promptly and free of charge to enable the Commissioner to comply with its FOIA disclosure requirements.

11.3 Confidentiality

- (a) The Parties agree they will not at any time, disclose to any person any Confidential Information they may have been passed except as permitted by clause 11.3b below.
- (b) Each Party may disclose the other Party's Confidential Information to its Staff and employees or advisers ensuring its Staff and employees or advisors, comply with this **Error! Bookmark not defined.**11.3; and as may be required by law or governmental authority.
- (c) The Parties shall not use the other Party's confidential information for any purpose other than under the Contract and to deliver the Programme.

11.4 Dispute Resolution

If any dispute arises between the Parties in connection with the Contract the Parties shall discuss matters in good faith and follow the procedure below:

- (a) representatives of each Party shall meet to try to resolve the issue;
- (b) if the dispute is not resolved, the Parties shall refer the dispute to their senior staff and/or authorised signatories to try to resolve the issue;
- (c) if the dispute is not resolved at that time, either Party may give the other seven (7) days' notice to resolve the dispute through Alternative Dispute Resolution ("ADR") in accordance with Centre for Effective Dispute Resolution's mediation procedure;
- (d) If the Parties fail to settle their dispute at mediation or a Party fails to participate in the ADR procedure the dispute may be referred to the Courts.

11.5 Notices

- (a) Except as stated elsewhere, all notices under the Contract shall be in writing and sent to the Parties' representatives.
- (b) Notices may be delivered either personally, or by 1st class letter, or by email and shall be deemed to have been served:
 - (i) where posted, at 12pm on the second working day after posting;
 - (ii) where emailed, at the time of transmission if sent between 9am and 5pm on a working day or the next working day if sent after 5pm or on a weekend.

11.6 Assignment

The Provider shall not assign or dispose of the Contract without the Commissioner's prior written consent.

11.7 Variation

No variation of this Contract is valid unless it is in writing and signed by both Parties.

11.8 Third Party Rights and Agency

- (a) This Contract is made for the benefit of the Parties to it only and is not intended to benefit, and/or be enforceable by anyone else.
- (b) The Provider is an independent organisation and nothing in this Contract is intended to, or creates a partnership or any employment relationship with the Commissioner, or authorises the Provider to act as agent for the Commissioner or to have authority to act in the Commissioner's name.

11.10 Governing Law and Jurisdiction

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The Contract shall be governed by and construed in accordance with English Law and the Parties submit to the exclusive jurisdiction of the English courts.

Schedule 1: Programme Documents

Click on each link to see the related documents

Part 1: Marketing

1) [Marketing Guidance](#)

2) Marketing Form – Template

Please note the Marketing Form template will be forwarded to you on receipt of your signed contract Agreement. It forms the basis for our marketing of your activities on Everymove and in the PDF Catalogue we put on line.

3) [BNHF Logo](#)



Part 2: Templates

1. Agreement – Template

The Agreement Template that Providers will sign is embedded below and is at the following link:

embed once agreed

2. [Reporting Form - Template](#)

To be submitted by those Providers who it is agreed will not use EveryMove.

3. [Feedback Survey - Template](#)

The Feedback Survey Template to be submitted by all Providers