

TEMPO DIGITAL TIME CREDITS TERMS OF USE

Os hoffech gael mynediad i'r polisi yma yn y Gymraeg, cysylltwch â ni ar hello@weretempo.org

1. TERMS OF USE

1.1. These are the Terms of Use for Tempo Time Credits Limited, a company incorporated in England and Wales (registered number No.06593956, and Registered Charity No. 1135143) with registered office at The Maltings, East Tyndall Street, Cardiff, CF245EA in relation to its DTC (Digital Time Credit) service.

1.2. These Terms of Use, together with the Sign Up Form where applicable, form the agreement between Tempo and the Members, Earn Partners and Recognition Partners (together the "System Users") of the DTC Service ("Agreement").

2. DEFINITIONS

2.1. Definitions used in the Sign Up Form will have the same meaning when used in these Terms of Use.

2.2. The following definitions apply to these Terms of Use.

DTC system: means Tempo's DTC software as a service developed and operated by Tempo and more fully described on the Tempo website. Its purpose is to record DTCs issued and redeemed.

DTCs: Digital Time Credits issued and redeemed on the DTC system operated by Tempo. Each DTC issued by an Earn Partner can be redeemed against the offers available from the Recognition Partners. These may be limited by volume and access time.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Confidential Information: has the meaning provided in clauses 10.1.

Sign Up Form: Tempo's electronic or paper form completed by;

- the Member (if under 16, with permission from a parent or guardian), indicating that they consent for the Earn partner to provide information and claim the DTC, on behalf of the Member;
- the Earn partner, indicating that they consent to provide information and claim the DTC on behalf of their Members.

Documentation: the data and documents:

- made available to the Member by Tempo (including by online means) which sets out a description of the Service and the instructions for the Service
- made available by the Member and loaded onto the DTC service by the Member or by the Earn partner, on behalf of the Member.
- made available by the Earn partner and loaded onto the DTC service by the Earn partner, on behalf of the Earn partner.
- made available by the Recognition Partner and loaded onto the DTC service by the Recognition Partner, on behalf of the Recognition Partner.

DPA 2018: means the Data Protection Act 2018, and related subordinate legislation, as may be amended, updated or re-enacted from time to time.

Earn partner: An organisation that is entitled to issue Time Credits by virtue of an agreement with Tempo.

Effective Date: the date of the Member or Earn Partner's submission of the Sign Up Form, or the Recognition partner's acceptance of the Terms of Use.

Initial Licence Term: means a period of 12 months commencing on the Effective Date.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Licence Term: has the period given in clause 13.1 (being the Initial Licence Term (12 months), together with any subsequent Renewal Period).

Normal Business Hours: (9.00 am to 5.00 pm) local UK time, each Business Day.

Registration Form: the transaction page of (www.tempotimecredits.org) where these Terms of Use are accepted.

Renewal Period: means a period of 12 months.

Results: means the results and data produced from the System User's use of the Service.

Software: the online software applications provided by Tempo as part of the Service.

Recognition Partner: An organisation that makes available services against which Time Credits can be redeemed by virtue of an agreement with Tempo.

Support Services Policy: Tempo's policy for providing support in relation to the Service.

System User: A Member, Earn Partner or Recognition Partner that is using an account to access the DTC system

Member: This is the person who, having completed a qualifying hour of volunteering for the Earn partner is issued with a DTC. That person will have a unique login.

Member Data: the data inputted by Member or the Earn partner, on behalf of the Member, for the purpose of claiming a DTC.

Website: means [www.tempotimecredits.org].

3. TIME CREDIT SECURITY AND DATA POLICY

3.1. Tempo grants to the System User from the Effective Date a non-exclusive, non-transferable right to permit the use the Service and the Documentation during the Licence Term.

3.2. Where the Service involves access to analytical data and/or reports via a password protected section of the DTC Website, or such other website notified to the System User for this purpose, then the System User undertakes that:

3.2.1. The System User's system password must be a minimum of 8 characters long, contain at least one capital, one lowercase letter and one number. That login and password must be kept confidential;

3.2.3. it shall provide an up-to-date list of current logins to Tempo within 5 Business Days of Tempo's written request at any time or times;

3.2.4. it shall permit Tempo to audit the Service in order to establish the name and password of each login. Such audit may be conducted no more than once per quarter, at Tempo's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the System User's normal conduct of business; and

3.2.5. if any of the audits referred to in clause 3.2.4 reveal that any password has been provided to any individual who is not entitled to use it, then without prejudice to Tempo's other rights, Tempo shall promptly disable such passwords and Tempo shall not issue any new passwords to any such individual.

3.3. The System User shall not access, store, distribute or transmit any computer viruses, or any material during the course of its use of the Service that:

3.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

3.3.2. facilitates illegal activity; or

3.3.3. in a manner that is otherwise illegal or causes damage or injury to any person or property; and Tempo reserves the right, without liability or prejudice to its other rights to the System User, to disable the System User's access to any material that breaches the provisions of this clause.

3.4. The System User shall not (except to the extent expressly permitted under the Agreement), attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

3.4.1. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

3.4.2. access all or any part of the Service and Documentation in order to build a product or service which competes with the Service and/or the Documentation; or

3.4.3. use the Service and/or Documentation to provide services to third parties; or

3.4.4. subject to clause 15.5, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party, or

3.4.5. attempt to obtain, or assist third parties in obtaining, access to the Service and/or Documentation.

3.5. The System User shall keep all password and log-in details used in the relation to the Service secure, and shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Tempo.

3.6. The rights provided are granted to the System User only and shall not be considered granted to any other person.

3.7. The System User shall adhere to Tempo's [Data Use and Data Management Policy](http://www.wearetempo.org) which can be found at www.wearetempo.org

4. SERVICES

4.1. Tempo shall, during the Licence Term, provide the Service and make available the Documentation to the System User, subject to the terms of the Agreement.

4.2. Tempo shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

4.2.1. planned maintenance carried out during agreed maintenance windows; and

4.2.2. unscheduled maintenance performed outside Normal Business Hours, provided that Tempo has used reasonable endeavours to give the System User at least 6 Normal Business Hours' notice in advance.

4.3. Tempo will provide the System User with Tempo's standard System User support services during Normal Business Hours, in accordance with Tempo's Support Services Policy in effect at the time that the Services are provided. Tempo may amend its Support Services Policy in its sole and absolute discretion from time to time.

4.4. Set-up and training services can be provided, on request, under separate agreement.

5. SYSTEM USER DATA AND RESULTS

5.1. The System User shall own all right, title and interest in and to all of the System User Data and all Results. The System User shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the System User Data. Subject to clause 5.3, Tempo do not monitor any System User Data posted or provided by the System User as part of the Service.

5.2. The System User shall be solely responsible for archiving and back-up of all System User Data and Results at all times, including during the provision of the Service.

5.3. If the System User Data includes any personal data (as that term is defined in the DPA 2018 and the DPA), then the parties acknowledge that for the purposes of the DPA 2018, Tempo is the data processor and the System User is the data controller, and the provisions of clause 5.4 shall apply.

5.4. The System User warrants that it has procured all necessary consents to the processing of their personal data. Tempo shall process such personal data only to the extent, and in such a manner, as is necessary for the purposes of the Agreement, and in accordance with the System User's instructions from time to time, and shall not process the personal data for any other purpose. Tempo shall ensure that appropriate security measures are used to protect against unauthorised use of, or access to, the personal data.

5.5. Notwithstanding clause 15.5, Tempo shall have the right to perform statistical analysis of the System User Data and Results for the creation of anonymised statistical data. This data will be used to benchmark with other System Users. This is a core element of the DTC service. For the avoidance of doubt, such anonymised data shall belong to Tempo and may be licensed to third parties.

5.6. Tempo shall not be responsible for any loss, damage or disclosure of System User Data caused by any third party or as a result of the System User's failure to comply with its obligations under the Agreement.

6. SYSTEM USER OBLIGATIONS

6.1. The System User shall provide Tempo with all necessary cooperation in relation to the Agreement and all necessary access to such information as may be required by Tempo in order to provide the Service, including but not limited to System User Data, security access information and configuration services.

6.2. The System User shall comply with all applicable laws and regulations with respect to its activities under the Agreement and shall carry out all other System User responsibilities set out in the Agreement in a timely and efficient manner.

6.3. The System User shall ensure that the System User's use the Service and the Documentation in accordance with the terms of the Agreement and shall be responsible for any System User's breach of the Agreement.

6.4. The System User shall obtain and shall maintain all necessary licences, consents, and permissions necessary to enable it to receive the Service from Tempo.

6.5. The System User shall ensure that their system complies with any relevant specifications provided by Tempo from time to time and be solely responsible for procuring and maintaining its network and internet connections.

6.6. The System User shall ensure that all information entered on the DTC system is accurate and up to date.

6.7. The System User shall comply with any requests relating to the DPA 2018 or “subject access requests”.

7. TEMPO OBLIGATIONS

7.1. Tempo undertakes that the Service will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2. The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to Tempo’s instructions, or modification or alteration of the Service by any party other than Tempo or Tempo’s duly authorised contractors or agents. If the Service does not conform with this undertaking, Tempo will, at its expense, use all reasonable commercial endeavours to correct any such nonconformance promptly, or provide the System User with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the System User’s sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding this, Tempo:

7.2.1. does not warrant that the System User’s use of the Service will be uninterrupted or error-free; or that the Service, Documentation and/or the information obtained by the System User through use of the Service will meet the System User’s requirements; and

7.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the System User acknowledges that the Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3. The Agreement shall not prevent Tempo from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

7.4. Tempo warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.

7.5. Tempo will ensure that any information entered on the DTC system is accurate and up to date as possible.

8. RIGHTS IN THE SERVICES

8.1. All Intellectual Property Rights in the Service are owned by, or validly licensed to, Tempo.

8.2. Software and Documentation provided in relation to the Service are provided solely in relation to the System User’s use of the Services in accordance with the Agreement and are not provided, or to be used, for any other purpose.

9. PAYMENT

9.1. Members and Recognition Partners shall not be charged for the use of the DTC system;

9.2. Earn partners shall be charged a licence fee of £1.00 per annum for the use of the DTC system, which may be paid on behalf of the Earn partner by a funder if the Earn partner is part of a funded Time Credits programme.

10. CONFIDENTIALITY

10.1. Each party (Receiving Party) shall keep in strict confidence any information that is proprietary or confidential and is either clearly labelled as such or which ought reasonably to be treated as confidential, including all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business or its products or its services which the Receiving Party may obtain (“Confidential Information”).

10.2. Notwithstanding the terms of clause 10.1 above, Tempo shall be entitled to reference the System User as being a Member, Earn Partner or Recognition Partner in relation to its marketing activities.

11. INDEMNITY

11.1. The System User shall defend, indemnify and hold harmless Tempo against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the System User’s use of the Service and/or Documentation, provided that:

11.1.1. the System User is given prompt notice of any such claim;

11.1.2. Tempo provides reasonable co-operation to the System User in the defence and settlement of such claim, at the System User's expense; and

11.1.3. the System User is given sole authority to defend or settle the claim.

11.2. Tempo shall defend the System User, and if applicable, its officers, directors and employees against any claim that the Service or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the System User for any amounts awarded against the System User in judgment or settlement of such claims, provided that:

11.2.1. Tempo is given prompt notice of any such claim;

11.2.2. the System User provides reasonable co-operation to Tempo in the defence and settlement of such claim, at Tempo's expense; and

11.2.3. Tempo is given sole authority to defend or settle the claim.

11.3. In the defence or settlement of any claim, Tempo may procure the right for the System User to continue using the Service, replace or modify the Service so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 2 Business Days' notice to the System User without any additional liability or obligation to pay liquidated damages or other additional costs to the System User.

11.4. In no event shall Tempo, its employees, agents and sub-contractors be liable to the System User to the extent that the alleged infringement is based on:

11.4.1. a modification of the Service or Documentation by anyone other than Tempo; or

11.4.2. the System User's use of the Service or Documentation in a manner contrary to the instructions given to the System User by Tempo; or

11.4.3. the System User's use of the Service or Documentation after notice of the alleged or actual infringement from Tempo or any appropriate authority.

11.5. The foregoing and clause 12 state the System User's sole and exclusive rights and remedies, and Tempo's entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

12. LIMITATION OF LIABILITY

12.1. This clause 12 sets out the entire financial liability of Tempo (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the System User in respect of:

12.1.1. any breach of the Agreement however arising;

12.1.2. any use made by the System User of the Service; and

12.1.3. any representation, statement or derelictual act or omission (including negligence) arising under or in connection with the Agreement. 12.2. Except as expressly and specifically provided in the Agreement:

12.2.1. the System User assumes sole responsibility for its use of all data, and for conclusions drawn from such use. The System User acknowledges that Tempo has not undertaken any verification of data and accepts no responsibility for, and makes no warranty or representation in respect of, the data, their accuracy or completeness.

12.2.2. Tempo shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Tempo by the System User in connection with the Service, or any actions taken by Tempo at the System User's direction;

12.2.3. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and

12.2.4. the Service and Documentation are provided to the System User on an "as is" basis.

12.3. Subject to clause 12.4, in no event shall Tempo be liable for any loss of business, loss of profit, loss or corruption of data or for any indirect or consequential loss and Tempo's total aggregate liability arising under the Agreement or otherwise relating to the Service shall be limited to the total Fees paid by the System User during the 12 month period preceding the date on which the claim arose.

12.4. Nothing in these Terms of Use shall limit or exclude Tempo's liability for:

12.4.1. death or personal injury caused by negligence;

12.4.2. fraud or fraudulent misrepresentation; or

12.4.3. any other liability that cannot be excluded or limited by law.

13. TERM AND TERMINATION

13.1. The Agreement shall, unless otherwise terminated under the remaining provisions of this clause 13, commence on the Effective Date and continue for the Initial Licence Term (12 months) and, thereafter, the Agreement shall be automatically renewed for successive Renewal Periods unless:

13.1.1. either party notifies the other party of termination, in writing, at least [30 days] before the end of the Initial Licence Term or a Renewal Period, in which case the Agreement shall terminate upon the expiry of the Initial Licence Term or applicable Renewal Period; or

13.1.2. otherwise terminated in accordance with the provisions of the Agreement.

13.2. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other if:

13.2.1. the other party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

13.3. Without limiting its other rights or remedies, Tempo may terminate the Agreement with immediate effect by giving written notice.

13.4. On termination of the Agreement for any reason:

13.4.1. all licences granted under the Agreement shall immediately terminate;

13.4.2. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and

13.4.3. the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

14. DISPUTE RESOLUTION

14.1. In the event the parties are unable to resolve a dispute between them arising out of or relating to the Agreement, and except for claims for interdict or other similar relief, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by the Centre for Effective Dispute Resolution and the mediation will take place in England. The mediation agreement referred to in the Model Procedure shall be governed by English law.

14.2. If the dispute is not settled by mediation within 10 days of commencement of the mediation or within such further period as the parties may agree in writing, the parties shall be free to seek to resolve the dispute by such other means subject always to clause 16.

15. GENERAL

15.1. Tempo reserves the right to amend the Agreement from time to time and will email any such changes to the System User or make such terms available on the Website. The System User's continued use of the Service will be deemed acceptance of any new terms.

15.2. If Tempo choose to waive any particular right it has under the Agreement on any particular occasion this does not prevent it from exercising that right on another occasion.

15.3. If any part of the Agreement is held by a court of law (or similar forum) to be invalid or unenforceable, this shall not affect the validity or enforceability of the rest of the Agreement.

15.4. Tempo shall have no liability to the System User under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control.

15.5. The System User is not entitled to transfer or assign its rights and obligations under the Agreement to anyone else without Tempo's prior written permission.

15.6. Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15.7. All notices required or permitted under the Agreement will be in writing which shall include email. Any notice shall be deemed to have been duly received:

15.7.1. if delivered personally, when left at the address;

15.7.2. if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting; or

15.7.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;

15.7.4. if sent by email or fax, at the time of transmission if no failed delivery message is received by the sender. All notices shall be addressed to the parties at their respective addresses or email address to the primary corporate addresses set forth in the Agreement, or such other address, fax number of email address as advised subsequently by either party.

15.8. For the purposes of the Contracts (Rights of Third Parties) Act 1999, no person other than a party to the Agreement shall have any rights to enforce any term of the Agreement.

16. LAW AND JURISDICTION

16.1. The Agreement, including the Sign Up Form referencing these Terms of Use, constitutes the complete and exclusive understanding and agreement between System User and Tempo regarding its subject matter and supersedes all prior or other agreements or understandings, written or oral, relating to its subject matter (including any proposal Tempo may have issued to the System User). Each party acknowledges that, in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to the Agreement or not) other than as expressly set out in the Agreement.

16.2. If there are any disputes arising out of use of the Service or relating to the Agreement, then these will be governed by the laws of England. If either party requires to raise court proceedings in relation to any such dispute, then the courts of England shall have exclusive jurisdiction under the Agreement in relation to those proceedings.