



TERMS AND CONDITIONS OF SUPPLY FOR TRADED SERVICES TO MAINTAINED SCHOOLS, ACADEMIES AND OTHER EDUCATION ESTABLISHMENTS

General Application of these Terms and Conditions (the 'Conditions')

These Conditions are for the supply of traded services (the 'Services') by Walsall Metropolitan Borough Council (the 'Council') to maintained schools, academies and other educational establishments (the 'Customer').

These Conditions shall apply to all Customers unless expressly stated below as either only applying or not applying to solely maintained schools, or to academies or to any other educational establishments.

1. Definitions

Unless otherwise agreed between the Parties (with such variations set out in the Order Acknowledgement), the following definitions shall apply:

'Agreement' means the legally binding contract between the Parties, for which the details of the Services, Fees and Charges will be set out in an Order Acknowledgment between the Parties and which will be subject to these Conditions;

'CEDR' means the Centre for Effective Dispute Resolution;

'Conditions' means these terms and conditions of supply for traded services to maintained schools, academies and other education establishments;

'Council' means Walsall Metropolitan Borough Council;

'Customer' means the maintained school, academy and other education establishment who has agreed to buy the Services;

'Data Protection Legislation' means the Data Protection Act 1998, the EU Data Protection Directive 95/46, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy including where applicable the guidance and codes of practice issued by the Information Commissioner;

'DBS' means the Disclosure and Barring Service (or its predecessors: the Criminal Records Bureau; and the Independent Safeguarding Authority);

'EIR' means the Environmental Information Regulations 2004;

'Fees and Charges' means the fees and charges that the Parties have agreed the Council shall charge and the Customer shall pay for the Services, more particulars of which are set out in the Order Acknowledgement;

'FOIA' means the Freedom of Information Act 2000;

'Force Majeure' means an irresistible force or compulsion, or an overwhelming power, including any other similar circumstances which are beyond the reasonable control of either Party, provided that Force Majeure shall not include either any strike or labour dispute involving any person acting on behalf of both Parties;

'Independent Person' means an accountant, surveyor or other professional person, dependent on the nature of the dispute and who will have not less than 10 years' experience in the subject matter of the dispute;

'Order Acknowledgment' means an official order placed by the Customer with the Council for the supply of the Services, in which the scope of those Services, the Fees and Charges and any variations to these Conditions agreed by the Parties are set out;

'Parties' means the Council and the Customer;

'Party' means the Council or the Customer;

'Services' means the services to be performed by the Council for the Customer pursuant to the Agreement (more particulars of which are set out in the Order Acknowledgement); and anything created or produced as a result of such services;

'Term' means the duration of the Agreement, specified in the Order Acknowledgment (and shall also apply to any agreed period(s) of extension of the Term);

'VAT' means Value Added Tax charged in accordance with the VAT Act 1994.

2. Terms of Agreement

2.1 In this Agreement:

2.1.1 References to words in the masculine gender shall include the feminine, and those in the singular shall include the plural and vice versa;

2.1.2 Clause headings are for convenience and do not affect this Agreement's interpretation;

- 2.1.3 Any reference to a statute, statutory provision or subordinate legislation shall be construed as referring to such legislation as amended and in force from time to time and to any legislation that (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation; and any subordinate legislation made under the same before (but not after) the date of this Agreement;
- 2.2 Where the Parties agree either: (i) variations to these Conditions; and/or (ii) more specific terms and conditions, those shall be set out in the Order Acknowledgment.
- 2.3 Where there is any disagreement about which terms and conditions shall take precedence, these Conditions shall take priority over any other arrangements, communications (whether verbal or written), or any other documents (including, but not limited to, purchase orders or other terms and conditions) between the Parties.
- 2.4 If any of the provisions of these Conditions (or any part of the Agreement) shall in whole or in part be held to be unlawful or unenforceable then the remainder of the provisions shall stand in full force and effect.
- 2.5 For the avoidance of doubt, any of the Customer's terms and conditions are expressly excluded in relation to the Council's supply of the Services.

3. Scope of Services

- 3.1 By accepting the Order Acknowledgment, the Customer agrees to the supply of the Services to it pursuant to this Agreement and confirms that the person appointed by it to enter into this Agreement has authority to do so.
- 3.2 The Council shall provide the Services to the Customer for the Term and upon payment of the Fees and Charges, in accordance with these Conditions.
- 3.3 The Parties may mutually agree to extend the Term by one Party serving written notice on other Party no less than 30 days before the expiry of the Term, such notice to state the agreed start date and duration of any extended term; and upon the other Party then giving written confirmation of this notice before any period of extension of the term begins (and this procedure shall also apply where the Parties agree to further extensions).
- 3.4 During any extension of the Term, the Parties' respective obligations under this Agreement shall continue in full force and effect until the expiry of any extended term.
- 3.5 Time shall not be of the essence for the Council's performance of the Services.
- 3.6 The Council shall not be in breach of this Agreement if its failure to supply the Services is as a result of an act of Force Majeure.
- 3.7 When specified by the Customer in the Order Acknowledgment, then prior to delivery of the Services, the Council shall comply with its own requirements in respect of DBS clearance for any Council officer, or member of its staff, or sub-contractor, or agent, or volunteer, or anyone

else acting on the Council's behalf in its delivery of the Services and the Council shall then ensure compliance with such DBS requirements throughout the Term.

- 3.8 The Council shall not be responsible under this Agreement for rectifying any service failure, or substandard or defective service provision (whether in whole or in part) which has arisen out of any contract which the Customer has entered into any third party contractor (subject only to any express written agreement by the Council to the contrary). The Customer must pay for all Services which are provided by the Council in these circumstances at the applicable Fees and Charges (regardless of what sums the Customer may have previously paid to its third party contractor for the same or similar or related work and services).

4. Fees and Charges

- 4.1 In consideration of the Council providing the Services in accordance with this Agreement, the Customer agrees to pay the Fees and Charges to the Council in accordance with the provisions of this Condition.
- 4.2 The Council's relevant service area shall raise invoice(s) for Services and the Customer shall pay such invoices within 28 days of the date of each invoice.
- 4.3 Subject to the Council's written agreement (to be clearly set out in the Order Acknowledgment), the Customer may have the option to pay the Fees and Charges by direct debit monthly in arrears.
- 4.4 If payment of the Fees and Charges is not made on the due date, the Council shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 5% above the Barclay's Bank plc base rate from time to time from the due date until the outstanding amount is paid in full.
- 4.5 Where the Council makes a payment to a third party on behalf of the Customer (a 'Recharge') which includes without limitation payments to HM Revenue & Customs and payment of employer's National Insurance Contributions, the Customer will be required to reimburse the Council for a Recharge on the seventh day of the month following the date of a Recharge (unless specified otherwise in the Order Acknowledgment).
- 4.6 All Fees and Charges are exclusive of any VAT, for which the Customer shall be additionally liable at the applicable rate from time to time.

5. Intellectual Property

- 5.1 Each Party shall retain exclusive rights in respect of all intellectual property rights to which it is entitled and nothing in this Agreement shall be construed as granting any right, title, interest or licence to or in respect of intellectual property rights of either Party to the other Party.

6. Data Protection

- 6.1 The Customer shall, at all times during and following the termination of this Agreement, comply with all relevant obligations of the Data Protection Legislation.
- 6.2 The Parties agree to use all reasonable efforts to assist each other to comply with the Data Protection Legislation.

7. Freedom of Information

- 7.1 The Customer acknowledges that the Council is subject to the FOIA, the EIR and Codes of Practice about the Discharge of the Public Authorities' Functions and the Management of Records.
- 7.2 The decision about whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Council and where the Customer is a maintained school, this decision shall be made by the Head of Service for the Council service area that is supplying the Services.
- 7.3 Where the Council is managing an FOIA data request, the Customer shall co-operate with the Council and shall respond within 5 working days of any request by the Council to it for assistance in determining how to respond to a request for disclosure.

8. Prevention of Corruption

- 8.1 The Council may terminate this Agreement and recover all of its loss from the Customer if the Customer, its employees or anyone else acting on the Customer's behalf does any of the following things:
 - 8.1.1 Offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Customer does not know what has been done); or
 - 8.1.2 Commits an offence under the Bribery Act 2010 or under legislation creating offences concerning fraudulent acts; or
 - 8.1.3 Commits any fraud in connection with this or any other Council contract, whether alone or in conjunction with Council Members, contractors or employees.
- 8.2 Any other part of these Conditions limiting the Customer's liability shall not apply to this Condition.

9. Notices

- 9.1 Any demand, notice, or other communication required to be given by either Party pursuant to this Agreement shall be sufficiently served if:
- 9.1.1 served personally on the other Party (at the address shown in the Order Acknowledgment) and if so sent shall be deemed to have been received by the addressee immediately upon his or her receipt; or
 - 9.1.2 sent by prepaid first class delivery post (at the address shown in the Order Acknowledgment) or the registered office or last known address of the Party to be served; and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting; or
 - 9.1.3 sent by a facsimile transmission, where, subject to proof to the contrary, it shall be deemed to have been received by the addressee immediately upon successful transmission.

10. Termination

- 10.1 If either Party (the 'Defaulting Party') commits a breach of this Agreement and has not remedied the breach to the satisfaction of other Party (the 'Complaining Party') within 30 days after the Defaulting Party's receipt of the Complaining Party's written notice specifying the breach and requesting it to be remedied; or the breach is not capable of remedy; or the breach is a fundamental breach of the Agreement, then the Complaining Party may, without prejudice to any accrued rights or remedies under the Agreement, terminate the Agreement by notice in writing, such notice to have immediate effect.
- 10.2 The Complaining Party shall be entitled to recover from the Defaulting Party the amount of any direct loss resulting from termination for breach pursuant to the Condition (such direct loss to include reasonable cost of the time spent by officers in terminating the Agreement).
- 10.3 This Agreement may also be terminated by the Council with immediate effect if:
- 10.3.1 the Customer convenes a meeting of its creditors;
 - 10.3.2 the Customer shall make a voluntary arrangement within Part 1 of the Insolvency Act 1986 or makes a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors;
 - 10.3.3 the Customer shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 10.3.4 a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any material part of the Customer's business or assets; or

10.3.5 a meeting is convened for the purpose of considering a resolution, or other steps are taken for the winding up of the Customer (otherwise than for the purpose of an amalgamation or reconstruction) or for the making of an administration order or other appointment of an administrator in respect of the Customer.

11. Indemnity and Insurance

11.1 The Customer shall indemnify the Council and keep the Council indemnified against:

11.1.1 injury or death to any Council employee or anyone else acting on the Council's behalf to provide the Services; and

11.1.2 all actions, claims, demands, proceedings, changes, costs, damages and expenses whatsoever;

to the extent that any event set out in 11.1.1 and 11.1.2 above arises out of an act, default or negligence of the Customer, its employees, anyone acting on its behalf or anyone else at the Customer's premises.

12. Variation

12.1 The Council shall notify the Customer in writing of any variation required in respect of this Agreement beyond the Council's control, including any changes to the Services and/or the Fees and Charges, as soon as reasonably practical after the Council becomes aware of any such required variations.

13. Waiver and Remedies

13.1 Any waiver, concession or extra time given is limited to the specific circumstance for which it was given and does not affect any other rights a Party may have.

14. Dispute Resolution

14.1 The Parties shall act in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Agreement.

14.2 If the Customer has any concerns or complaints about levels or quality of the Services, it should refer such concerns to the Council service area providing the Services in the first instance.

14.3 For maintained schools, where contact with the Council service area pursuant to Condition 14.2 fails to result in a satisfactory resolution, then the maintained school should inform the Council's Head of Service for the relevant service area providing the service in writing, who shall investigate such a dispute within 14 days of the Customer's written notification to him or her.

14.4 For all Customers, if a mutually satisfactory resolution cannot be reached within 14 days of a dispute being notified in writing by one Party to the other, the Parties shall comply with the procedures set out in the remainder of this Condition:

14.4.1 The issue shall be discussed at a meeting, at which the authorised representative of each Party will attend, within 14 days;

14.4.2 If the dispute is not resolved within 14 days after the above meeting, the issue shall be referred to senior managers for both Parties;

14.4.3 If the Parties' senior managers fail to resolve the dispute after 14 of its referral to them, either Party may refer the dispute to an Independent Person or in accordance with the CEDR Model Mediation Procedure;

Independent Person

14.5 The Independent Person is to be appointed by agreement between the Parties or, in the absence of agreement, any dispute over the appointment of the Independent Person is to be referred at the request of either Party involved to the President or other senior available officer of the relevant professional body who may appoint an Independent Person to determine the dispute and the Parties involved in the dispute agree to accept the appointment of such Independent Person.

14.6 The Independent Person is to act as an expert who will make an expert determination of the dispute, for which:

14.6.1 all of the Parties' submissions or evidence are to be in writing unless the Parties agree within 14 days of the Independent Person's appointment that this requirement does not apply;

14.6.2 the date of the Independent Person's award will be deemed to be the date on which a copy of the award is served on the Parties;

14.6.3 the Independent Person will not be entitled to order the rectification, setting aside or cancellation of this Agreement or any other deed or document;

14.6.4 the Independent Person will not be entitled to direct that the recoverable costs of the independent determination, or any part of it, be limited to a specified amount; and

14.6.5 the Independent Person will not be entitled to require that security be provided in respect of the costs of the independent determination.

Mediation

14.7 If the Parties elect to use the CEDR Model Mediation Procedure:

14.7.1 If the Parties do not agree on the identity of the mediator then either Party

may ask CEDR to appoint a mediator;

- 14.7.2 Any agreement reached as a result of mediation shall be final and binding upon the Parties, but if the dispute has not been settled within 14 days of the mediation starting then either Party may instigate court proceedings.

Fees and Costs

- 14.8 The fees and disbursements of any Independent Person or mediator appointed pursuant to this clause shall be borne between the Parties in such share as the Independent Person or mediator shall determine and in default of determination shall be borne by the Parties in equal shares.
- 14.9 Use of the above dispute resolution procedures shall neither delay nor take precedence over any use of this Agreement's default or termination procedures and do not apply to disputes in relation to matters of law which will be subject to the jurisdiction of the courts.

15. Entire agreement

- 15.1 This Agreement constitutes the entire agreement between the Parties relating to the Services and replaces and supersedes all previous communications, representations and agreements between the Parties (except for any fraudulent pre-contractual misrepresentations made by a Party upon which the other Party can be shown to have relied).

16. Survival

- 16.1 Any provisions of this Agreement that expressly or by implication are intended to do so shall survive the termination of this Agreement for whatever reason.

17 Third Party Rights

- 17.1 Save unless expressly provided for in this Agreement, no term of this Agreement is intended for the benefit of any third party and the Parties do not intend that any term of this Agreement should be enforceable by a third party either under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

18.1 Governing Law and Jurisdiction

- 18.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 18.2 Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any matter arising under or in connection with this agreement or the legal relationships established by this Agreement.