

Edulincs

General terms and conditions

1. Definitions and Interpretation

1.1 Unless the context otherwise requires the following provisions shall have the meanings given to them below:-

Agreement means the binding agreement formed between the Council and the Client for the provision of the Services by the Client's acceptance of these terms and conditions, the provisions set out in Schedule 1 and details set out in the Order Form.

Charges means the money payable as set out in the Order Form by the Client to the Council for the Services rendered and/or additional services and paid in accordance with clause 5.

Client means the recipient of the Services from the Council.

Commencement Date means the date as identified in the Order Form on which the provision of the Services starts.

Confidential Information means any 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.

Council means Lincolnshire County Council, its officers and agents.

Environmental Information Regulations means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Expiry Date means the date identified in the Order Form when provision of the Services shall cease.

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 Commissioner or relevant government department in relation to such legislation.

GDPR means the General Data Protection Regulation (*Regulation (EU) 2016/679*).

Intellectual Property Rights means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

Law means any applicable law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Council is bound to comply.

Online Request means the online portal which enables the Client to:-

- (a) request information or a quote for a particular service following which the Client can order the Service if required; or
- (b) directly order a Service.

Order Form means the form which identifies the Parties, the Commencement Date, the Expiry Date, the Charges, the Services to be provided, notice period under clause 11.1 and any other requirements of the Client.

Party or Parties means each of the parties to the Agreement.

Request for Information shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

Schedule 1 means the document entitled "EduLincs General Terms and Conditions Schedule 1" which is accessed electronically by the Client and sets out Service specific conditions and Data Protection provisions and which is deemed to form part of these terms and conditions.

Service(s) means the service(s) set out in the Order Form.

Staff means all directors, officers, employees, agents, consultants and contractors of the Council and/or of any sub-contractor engaged in the performance of its obligations under this Agreement.

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

1.2 The interpretation and construction of the terms and conditions shall be subject to the following provisions:-

- (a) References to gender shall be taken to include both feminine and masculine gender.
- (b) References to words in the singular can include the plural and vice-versa.
- (c) References to individuals shall be treated as including the organisation they represent.
- (d) References to clauses, conditions, paragraphs and schedules are references to the conditions, paragraphs and schedules of the Agreement.
- (e) Clause headings are for ease of reference only and shall not affect the construction of the Agreement.
- (f) Reference to any enactment order, regulation or other similar instrument shall be construed (subject to the provisions of this Agreement) as a reference to an enactment, order, regulation or instrument for the time being in force, or as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

2. Period of Agreement

2.1 This Agreement shall take effect on the Commencement Date and shall expire on the Expiry Date. If no such Expiry Date is identified in the Order Form, the Agreement shall automatically be extended on a rolling basis on the anniversary of the Commencement Date as specified in Part 1 of Schedule 1, unless it is otherwise terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated.

3. Obligations of the Client

3.1 The Client shall provide all information and documentation reasonably requested by the Council within such timescales as required by the Council. The Client acknowledges and accepts that timescales may vary according to the specific Services provided.

4. Obligations of the Council

4.1 The Council shall:-

- (a) Provide clear details of the Services it is to provide in the Order Form.

- (b) use reasonable endeavours to resolve any issues relating to the Services upon notification from the Client;
- (c) deploy appropriately qualified or trained or experienced staff for all Services provided adhering to strict safer recruitment processes to ensure that the staff deployed in the Client's educational setting are suitable for the role and match up with the Client's expectations, attitudes and values; and
- (d) use reasonable endeavours to ensure that the Services meet the requirements set out in the Order Form.

5. Payment of the Charges

- 5.1 The Charges for the Services are as set out in the Order Form.
- 5.2 The Council shall issue an invoice for the Charges as specified in Part 1 of Schedule 1.
- 5.3 Subject to clause 5.4, the Client shall make payment within twenty eight (28) calendar days from the date of each invoice issued in accordance with 5.1 above.
- 5.4 If the payment of any sum due shall be delayed by the Client other than due to legitimate dispute, the Council shall be entitled to charge interest at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged. The Council shall also be entitled to charge for administration costs in addition to any interest charged at a rate of £20 per delayed invoice per calendar month or part thereof and all such amounts shall be payable to the Council as a debt.

6. VAT

- 6.1 All Charges are exclusive of VAT which will be levied and payable additionally.

7. Variations

- 7.1 Subject to the provisions of this clause 7, either Party may request a variation to the Agreement provided that such variation does not amount to a substantial modification to the Agreement. Such a modification is hereinafter referred to as "Variation".
- 7.2 Either Party may request a Variation by notifying the other Party in writing of the "Variation" and giving the receiving Party sufficient information to assess the extent of the Variation and to consider whether any change to the Charges is required in order to implement the Variation. The Party issuing the notice shall specify a time limit within which the receiving Party shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation except in cases of urgency, where notice shall be given as soon as reasonably practicable and responded to by the receiving Party within three (3) Working Days of receipt. If the receiving Party accepts the Variation it shall confirm the same in writing.
- 7.3 In the event that the receiving Party is unable to accept the Variation to the Services, or where the Parties are unable to agree a change to the Charges:-
 - (a) the Agreement shall continue without the Variation; or
 - (b) subject to the matter being referred to dispute resolution, the Agreement may be terminated with immediate effect, except where the Council has already delivered all or part of the Services or where the Council can show evidence of substantial work being carried out to fulfil the requirements of the Agreement and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at clause 12.

7.4 A request for a Variation by the Client shall be given due consideration by the Council but shall not constitute an automatic right to an amendment of provision by the Client.

7.5 Notwithstanding the provisions contained in this clause 7, in the interests of an effective, responsive service, the Council reserves the right to review aspects of the Agreement during the term thereof and implement reasonable changes taking into account the views of the Client before doing so.

8. Liability

8.1 Each Party shall indemnify the other against any claim for or in respect of death or personal injury of any person if and to the extent that it is caused by the negligence of such Party or any employee of such Party.

8.2 The Parties agree that it is reasonable that the Council shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any instructions given to the Council by the Client which are incomplete, incorrect, inaccurate, illegible, or arising from their late arrival or non-arrival, or any other fault of the Client. The Parties also agree that it is fair and reasonable for risk to be allocated and in the context of the Charges and the nature of the losses which the Client might suffer, that the Council's liability be limited in the manner set out in this clause 8.

9.3 The Council shall not be liable to the Client for any representation (unless fraudulent), implied warranty, condition or other term, any duty at common law, or any express terms of this Agreement, for any special, indirect or consequential loss including but not limited to loss of business, loss of contracts, loss of anticipated savings or revenue, or goodwill, or loss of or damage to or corruption of data or software.

8.4 The Council's liability for any other direct loss which the Client may suffer under or in connection with this Agreement in respect of each incidence or series of related incidents causing loss or damage shall not exceed the annual amount payable under the Agreement.

9. Protection of Information

9.1 Confidentiality

(a) The Council and the Client shall keep confidential all Confidential Information obtained under or in connection with the Agreement and shall not divulge any Confidential Information to any third party without the written consent of the Party in whom the ownership of the Confidential Information is vested unless obliged to do so under the FOIA or otherwise by Law.

(b) The provisions of this clause shall not apply to:-

- (i) any information in the public domain otherwise than by breach of the Agreement;
- (ii) information obtained from a third party who is free to divulge the same;
- (iii) any information which the Parties are required to disclose pursuant to a statutory obligation or a court order;
- (iv) information which is independently developed without access to the other Party's Confidential Information;
- (v) information which was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner.

(c) The Council and the Client shall divulge Confidential Information only to those employees, servants or agents who are directly involved with the Agreement and shall ensure that such

employees, servants or agents are aware of and comply with these obligations as to confidentiality.

- (d) The provisions of this clause shall survive the termination or expiry of the Agreement howsoever arising.
- (e) Notwithstanding the foregoing, the receiving Party shall be entitled to make any disclosure required by Law or other regulatory authority.

9.2 Freedom of Information Act 2000 (FOIA)

- (a) Each of the Parties acknowledges that the other Party is subject to the requirements of the FOIA and the EIR and each Party shall assist and cooperate with the other (at their own expense) to enable the other Party to comply with these information disclosure obligations.
- (b) Where a Party receives a "request for information" under either the FOIA or EIR (as defined under those Acts) in relation to information which it is holding on behalf of the other Party, it shall (and shall procure that its sub-contractors and agents shall):-
 - (i) transfer the request for information to the other Party as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;
 - (ii) provide the other Party with a copy of all information in its possession or power in the form that the other Party requires within five (5) Working Days (or such other period as may be agreed) of the other Party requesting that information; and
 - (iii) provide all necessary assistance as reasonably requested to enable the other Party to respond to a request for information within the time for compliance set out in the EIR or section 10 of the FOIA, as relevant.
- (c) If either Party determines that information must be disclosed pursuant to clause 9.2 (b), it shall notify the other Party of that decision at least two (2) Working Days before disclosure.
- (d) Each Party shall be responsible for determining at its absolute discretion whether the relevant information is exempt from disclosure or is to be disclosed in response to a request for information.
- (e) Each Party acknowledges that the other Party may be obliged under the FOIA to disclose Information:-
 - (i) without consulting with the other Party/Parties, or
 - (ii) following consultation with the other Party/Parties and having taken its/their views into account.

9.3 Data Protection

The Parties shall comply with the provisions set out in part 2 of Schedule 1.

10. Equal Opportunities

- 10.1 Throughout the term of the Agreement, the Council shall not discriminate on the grounds of gender, sexual orientation, marital status, religion, race, disability, colour, ethnic and national origin nationality or any other grounds prohibited by statute in terms of employment and service delivery. The Council shall and ensure its Staff shall comply with all relevant legislation including but not limited to the Equality Act 2010.

11. Termination of the Agreement

- 11.1 Without prejudice to any other provision contained in the Agreement, either Party may terminate the Agreement without cause by giving the other Party notice in accordance with the notice period set out in Part 1 of Schedule 1.
- 11.2 This Agreement may be terminated forthwith by either Party on written notice if the other Party is in material breach of the terms of the Agreement and in the event of a breach being capable of being remedied fails to remedy the breach within thirty (30) calendar days of receipt of notice thereof in writing. The right of termination under this clause 11.2 may furthermore only be invoked after exhausting the complaints / dispute resolution process as set out in clause 12.
- 11.3 Either party may terminate the Agreement forthwith on written notice if the other Party shall become unable to pay its debts, insolvent or bankrupt or make an arrangement with its creditors or go into liquidation.
- 11.4 The Council may terminate the Agreement if the Client fails to pay any amount due to the Council within ninety (90) calendar days of the date of the invoice sent to the Client.
- 11.5 Termination of the Agreement shall not prejudice any rights of either Party which have arisen on or before the date of termination.

12. Complaints / Dispute Resolution

- 12.1 If the Client is dissatisfied with the Services provided it shall submit a complaint in writing to Lincolnshire County Council, County Offices Lincoln, LN1 1YG edulincs@lincolnshire.gov.uk within five (5) Working Days of the matter coming to the attention of the Client.
- 12.2 Upon receipt of a written complaint by the Council as referred to in clause 12.1 the matter shall be dealt as follows:-
- (a) **Stage 1:** Any complaint shall be investigated by the service manager of the Council responsible for the provision of the Services.
 - (b) **Stage 2:** Should the matter remain unresolved after the expiry of a period of twenty (20) calendar days, the complaint shall be referred to mediation in accordance with the provisions set out in clause 12.3.
- 12.3 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other reputable mediation body to appoint a Mediator.
 - (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from Centre for Effective Dispute Resolution or other reputable mediation body to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

- (d) Both Parties agree to co-operate fully with any Mediator appointed and to bear their own costs and one half of the fees and expenses of the Mediator unless otherwise agreed at Mediation.
 - (e) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - (f) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
 - (g) If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 12.4 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

13. Force Majeure

- 13.1 Neither Party shall be liable for failure to perform its obligations under the Agreement if such failure results from circumstances beyond the Party's reasonable control including but not limited to industrial action, fire, flood, riot, war, Act of God, pandemic, lightning, aircraft impact, explosion, civil commotion, malicious damage, storm, tempest, earthquake, legal enactment or governmental or other regulation. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement for the duration of such Force Majeure and to ensure that any failure is kept to a minimum.
- 13.2 Any act, event, omission, happening or non-happening shall only be considered as force majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its agents or employees.
- 13.3 If either Party shall become aware of circumstances identified in clause 13.1 above which give rise to or which are likely to give rise to any failure or delay on its part, it shall forthwith notify the other Party by the most expeditious method then available and shall inform the other Party of the period it is estimated that such failure or delay shall continue.
- 13.4 Where as a result of any event beyond the reasonable control of a Party as described in this clause the Agreement has not been performed for a period exceeding two (2) calendar months or it appears impossible or unlikely that the whole or a substantial part of the Agreement shall be capable of performance for a period exceeding two (2) months, then the non-defaulting Party may elect to terminate the Agreement upon two (2) weeks' written notice without any liability on that Party.

14. Notices

- 14.1 Any notice to be served on either Party by the other under this Agreement shall be sent by prepaid recorded delivery or registered post to the address of the relevant Party shown at the head of the Agreement or electronic mail (provided that a confirmatory copy is at the same time despatched by recorded post) prior to 4.00 pm on any weekday except for Christmas Day Good Friday and any statutory bank holiday. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

14.2 Each of the Parties shall give notice to the other of the change or acquisition of any address or telephone or e-mail address at the earliest possible opportunity but in any event within forty-eight (48) hours of such change or acquisition.

15. Assignment

15.1 The Client shall not assign, transfer, novate or in any other way dispose of this Agreement or any part of it without the prior written approval of the Council.

15.2 The Council shall be permitted to assign, transfer, novate, sub-contract or in any other way dispose of this Agreement or any part of it without the prior written approval of the Client. Sub-contracting any part of this Agreement shall not relieve the Council of any of its obligations or duties under this Agreement.

16. Waiver

16.1 The failure by either Party to enforce at any time or for any period one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

17. Severance

17.1 If any provision of this Agreement is declared by a court or other competent authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such provision had not originally been contained in it. In the event of any such deletion, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in the place of the provision so deleted.

18. Remedies Cumulative

18.1 Except as otherwise expressly provided by the Agreement all remedies available to either Party for breach of the Agreement cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

19. Survival

19.1 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

20. Third Party Rights

20.1 The Contracts (Rights of Third Parties) Act 1999 does not apply in relation to this Agreement or any agreement, arrangement, understanding, liability or obligation under or in connection with this Agreement.

21. Governing Law and Jurisdiction

21.1 Subject to the provisions of Clause 12, the Client and the Council accept the exclusive jurisdiction of the English courts and agree that this Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.