



Standard Terms and Conditions for the Provision of Services for Charge

Services for Schools and Academies

Support Services | Business Services | Pupil Services

Leicestershire County Council
County Hall
Glenfield
Leicester
LE3 8RA

These general terms and conditions apply to all applicable services between Leicestershire County Council (“LCC”) and the Customer. Such arrangements will be created with the completion of a separate Service Order, for services supplied under these general terms and conditions.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions have the following meaning unless inconsistent with the context. These general terms and conditions apply to all agreements between LCC and the Customer.

1.1.1 “Commencement Date” unless specifically agreed otherwise and in writing between both parties, shall be the date of the Service Order received from the Customer.

1.1.2 “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 which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either party;

1.1.3 “Lead Officer” means the person named in writing by each party that will act as the principal point of contact with the other party in the day to day operation of the Services.

1.1.3 “Services” means the services set out in the Service Order.

1.1.4 “Service Levels” means any appropriate service levels which apply to the provision of the Services as set out in the Service Order;

1.1.5 “Service Charges” means the charges to be paid by the Customer to LCC for the Services in accordance with the prices set out in the Service Order as varied by any subsequent notice or as may be agreed within the Service Order.

1.1.6 “TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations.

1.1.7 The further expressions (if any) defined in this agreement shall have the meaning so specified.

1.1.8 The headings are inserted for convenience only and shall not affect the construction of this agreement.

1.1.9 Unless the context requires otherwise:

1.1.9.1 words importing the singular number shall include the plural and vice versa;

1.1.9.2 words importing any particular gender shall include all other genders; and

1.1.9.3 references to persons shall include bodies of persons whether corporate or incorporate.

1.1.10 Any reference in this agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as the same may from time to time be amended, modified, extended, re-enacted or replaced (whether before or after the date of this agreement) and including all subordinate legislation made under it from time to time.

2. PERIOD OF AGREEMENT

2.1 The Service Order shall commence on the Commencement Date and shall continue in force until terminated in accordance with clause 8.

3. SERVICES TO BE PROVIDED

3.1 The Services to be provided and the rights and obligations to be discharged by LCC and the Customer are set out in one or more Service Orders signed by LCC and the Customer

3.2 LCC shall use its best endeavours to provide the Services in a professional and efficient manner and in accordance with such appropriate or relevant standards (if any) as may be set out in the Service Order.

3.3 The Customer shall be responsible for the accuracy of any documentation and information supplied to LCC by the Customer in connection with the provision of the Services and shall pay LCC any extra costs occasioned by any discrepancies, errors or omissions therein.

4. PAYMENTS

4.1 The Customer shall pay to LCC the charges as set out in the Service Order for providing the Services

4.2 The Customer shall pay to LCC in cleared funds within 30 days of receipt of an invoice. The invoice period will be established in the relevant Service Order. Any ad-hoc work undertaken in addition to the Service Order will be invoiced upon completion of that specific piece of work.

- 4.3. Value Added Tax will be chargeable and will be indicated at the current rate within any Service Order but will be subject to change without notice upon any subsequent revision to the current rate.

5. VARIATIONS

- 5.1 Notice of variation to the Terms and Conditions will be provided. The Service Order may be amended or deleted and any new services may be added at any time provided that both parties agree in writing.

6. STAFFING

- 6.1 The parties shall each nominate in writing to each other a Lead Officer who will act as the principal points of contact between the parties in the day to day provision of the Services.
- 6.2 Either party may change the identity of its Lead Officer at any time by informing the other party in writing.
- 6.3 The Customer warrants that there are no employees, workers, agents or otherwise who are employed, contracted or engaged by the Customer to carry out the Services that LCC will provide from the Commencement Date who will transfer to LCC in accordance with the relevant provisions of TUPE.

7. ASSETS AND PROPERTY

- 7.1 All rights in the property and equipment (including intellectual property) used in the provision of the Services shall be remain with the owner.
- 7.2 All intellectual property rights created in providing the Services shall vest in the creating party and each party grants the other a non-

exclusive royalty free licence to use any intellectual property rights created in the provision of the Services.

8. TERMINATION

8.1 Any or all Service Orders may be terminated

8.1.1 by mutual consent at any time documented in writing by the Lead Officer

8.1.2 by either party giving to the other 6 months notice in writing by the Lead Officer.

8.2 In the event that one party gives notice of its intention to terminate this agreement under any of its provisions both parties shall use their best endeavours to maintain the provision of the Services at its normal standard whilst the agreement is still in force.

9. CONSEQUENCES OF TERMINATION OF THE AGREEMENT

9.1 There shall be a reconciliation of accounts at the termination of this agreement as agreed between the parties PROVIDED that any dispute shall be resolved in accordance with Clause 11.

10. LIABILITY

10.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or fraudulent misrepresentation or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

- 10.2 Subject to clauses 10.1 and 10.7, LCC will indemnify the Customer against all actions, claims and losses arising from the provision of the Services to the extent caused or contributed to by the negligence of LCC or its employees, agents or servants (including deliberate act or omission) PROVIDED that such indemnity shall apply to direct losses only.
- 10.3 Without prejudice to its obligations under Clause 10.2 LCC shall at all times take out and maintain adequate insurance to cover all sums which LCC is legally liable to pay in respect of or in consequence of accidental injury to or death of any person or for accidental damage to third party property insofar as such injury or death or damage arises from the provision of the Services.
- 10.4 LCC shall take out and maintain insurance in respect of Public Liability insurance for an amount not less than Five Million Pounds (£5,000,000.00). Where appropriate LCC will take out and maintain Professional Liability Insurance
- 10.5 Subject to clause 10.1, the Customer will indemnify LCC against all actions, claims and losses arising from the provision of the Services to the extent caused or contributed to by the negligence of the Customer or its employees, agents or servants (including deliberate act or omission) PROVIDED that such indemnity shall apply to direct losses only.
- 10.6 Subject always to Clause 10.1 and 10.7 each party's liability under this agreement shall in no event exceed the amount paid by the Customer to LCC for the Services (as determined at the date on which the liability arises) performed in that year (and for the purposes of this clause a

year shall be calculated with reference from the Commencement Date and each subsequent anniversary) and in no event shall either party be liable to the other for:

10.6.1 loss of profits, business revenue or goodwill; or

10.6.2 indirect or consequential loss

10.7 Insofar that the agreement is terminated by LCC as a result of a fundamental breach by the Customer the Customer shall be wholly responsible for and shall indemnify LCC from any third party claims arising out of any contract entered into between LCC and a third party for the provision of any part of this Service in the event of the termination of this agreement.

11. DISPUTES PROCEDURE

11.1 Any disputes arising which cannot be solved at an operational level within fourteen (14) days of written notification by either party shall be escalated to a senior manager in each organisation who will then meet to attempt to resolve the dispute in good faith. If the dispute cannot be resolved within twenty one (21) days of such escalation it may be referred by either party to arbitration.

11.2 Where a matter is referred to arbitration it shall be referred to a single arbitrator to be agreed between the parties or failing such agreement within fourteen (14) days to be nominated by the President for the time being of the British Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 (as amended). Unless otherwise agreed in writing the costs of arbitration shall be shared evenly and the decision of the arbitrator shall be final and binding on both parties.

- 11.3 Nothing in this dispute resolution procedure shall prevent a party from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 11.4 Notwithstanding any dispute between the parties LCC shall continue to provide the Services under the terms of this agreement and the Customer shall not be entitled to withhold or to unreasonably delay any payments for the Services until the dispute is resolved.

12. FORCE MAJEURE

- 12.1 Both parties shall be released from their obligations under this agreement in the event of a national emergency or war or prohibitive government regulation or industrial action or any other cause beyond the reasonable control of the parties which renders the performance of the agreement not reasonably practical and the agreement shall be terminated forthwith and all sums due under the agreement shall become payable immediately.

13. ASSIGNMENT

- 13.1 LCC may not assign the benefit of this agreement without the written consent of the Customer such consent will not however be unreasonably withheld or delayed and provided that the Customer shall be deemed to have consented to LCC using any third party named or referred to in a Service Order to provide any or all of the Services

14. OMBUDSMAN AND OTHER COMPLAINTS

- 14.1 Each party shall provide all reasonable assistance to the other in relation to complaints from third parties relating to the Services and access to all information reasonably required in the case of each party by the relevant monitoring officer, the relevant officer appointed under Section 151 Local Government Act 1972 or the relevant auditor appointed by the Audit Commission.
- 14.2 If a complaint of maladministration relating to the provision or failure to provide the Services is received it will be dealt with by LCC in consultation with the Customer provided that any outcome that involves additional expenditure for the Customer will be reported to the Customer and resolved under the disputes procedure if necessary in Clause 11.

15. CONFIDENTIALITY, FREEDOM OF INFORMATION AND DATA PROTECTION

- 15.1 Each party:-
- 15.1.1 shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
 - 15.1.2 shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the agreement or except where disclosure is otherwise expressly permitted by the provisions of the agreement.
- 15.2 Each party shall take all necessary precautions to ensure that all Confidential Information obtained from the other party under or in connection with the agreement:

- 15.2.1 is given only to such of the receiving party's employees and professional advisors, sub-contractors or consultants engaged to advise it in connection with the agreement as is strictly necessary for the performance of the agreement and only to the extent necessary for the performance of the agreement;
 - 15.2.2 is treated as confidential and not disclosed (without the other party's prior approval) or used by any of the receiving party's employees or such professional advisors, sub-contractors or consultants otherwise than for the purposes of the agreement.
- 15.3 The provisions of Clauses 15.1 and 15.2 shall not apply to any Confidential Information received by one party from the other if:
- 15.3.1 It is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of the agreement; or
 - 15.3.2 The information came from a source not connected with the agreement and that source is not under any obligation of confidence in respect of the information; or
 - 15.3.3 The information was known to the receiving party before the date of the agreement and the receiving party was not under any obligation of confidence in respect of the information; or
 - 15.3.4 A party is required by law to disclose it (but only to the extent of any such required disclosure); or
 - 15.3.5 The parties agree in writing that it is not confidential.
- 15.4. Both LCC and the Customer shall comply with all requirements of the Data Protection Act 1998 and any regulations made under it or any amendments or re-enactments thereof.

15.5 Each party acknowledges that the other is subject to and has obligations under the Freedom of Information Act 2000 (the "FOIA"). Each party shall comply with all requests made by the other party necessary (including but not limited to providing requested documentation and making staff available to be interviewed) to allow that other party to meet its legal obligations.

15.6 The provisions of this clause 15 shall survive the expiry or earlier determination of this agreement.

16. WAIVER

16.1 The failure of either of the parties at any time or from time to time to require performance of any provision of the agreement shall in no way affect its right to enforce such provision at a later time. No waiver by either of the parties of any condition or breach of any term contained in this agreement whether by conduct or otherwise in any one or more instances shall be deemed to be construed as a further or continuing waiver of any such condition or breach.

17. NOTICES

17.1 Any notice to be given by either of the parties shall be served by personal delivery or by pre-paid recorded delivery post or facsimile transmission to the address or number of the party to be served as set out in the agreement or as may be notified for the purpose from time to time. Any such notice shall be deemed to be effectively served;

(i) In the case of service by pre-paid recorded delivery post two working days after it has been placed in the post.

(ii) In the case of service by facsimile transmission on the next following working day (subject to the obtaining of a successful transmission receipt).

18. ANTI-CORRUPTION

18.1 Either party shall be entitled to terminate this agreement and to recover from the other party the amount of any loss resulting from such cancellation if that other party, its employees or agents with or without its knowledge:

(i) has offered, given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything in relation to the obtaining or carrying out of this agreement, or

(ii) has shown or not shown favour or disfavour to any person in relation to this agreement , or

(iii) shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward, the receipt of which is an offence under Subsection (2) of Section 117 of the Local Government Act 1972.

19. THIRD PARTY RIGHTS

19.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 any Service Agreement entered into, is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

20. SEVERABILITY

20.1 If any provision of these Terms and Conditions, or any Service Order, is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of the agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this agreement.

21. NON SOLICITATION AND OFFERS OF EMPLOYMENT

21.1 Except to the extent that the provisions of TUPE apply, the Customer shall not, for the duration of the agreement and for twelve (12) months following the termination of this agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of LCC any person employed by LCC in the provision, administration and/or contract management of the Services without LCC's prior written approval.

22. HEALTH AND SAFETY

22.1 It is the responsibility of LCC to ensure that Health and Safety requirements are met and appropriate risk assessments are carried out to enable the Services to be delivered.

22.2 LCC shall adopt safe systems of work and comply with all health and safety requirements in accordance with LCC's Health and Safety policy.

22.3 Where the Services or any part of the Services are to be carried out at the Customer's premises the Customer undertakes that the premises at

which the Services are to be provided are fully compliant and will be maintained in accordance with all Health and Safety requirements to enable LCC to carry out the Services in compliance with any statutory duty or otherwise placed upon it.

- 22.4 In the event that a claim arises against LCC as a result of the Customer's failure to comply with its duty as described in clause 22.3 then the Customer shall fully indemnify LCC in respect of any such claim or claims and any costs or expenses (including legal costs and expenses) arising whether directly or indirectly out thereof.

23. JURISDICTION

- 23.1 This agreement shall be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England.