

EDUCATION SERVICES NOTTINGHAM Terms and Conditions

1. Purpose of this Agreement

1.1 The purpose of this Agreement is the provision by Nottingham City Council Education Services Nottingham to the Customer of the Services selected by the Customer and agreed to be provided by the Council.

2. Definitions

2.1 "Agreement" means these terms and conditions together with the document entitled Order Form and the relevant Service Specification(s) for the Services. Where there is conflict between these terms and conditions and the Service Specification the relevant Service Specification(s) will prevail. The Agreement is formed when the Council receive the customer's Order Confirmation Form.

2.2 "Commencement Date" means the date set out on the first page of the Order Form.

2.3 "Council" means Nottingham City Council whose address is Loxley House, Station Street, Nottingham, NG2 3NG.

2.4 "Customer" means the School or Academy named on the first page of the Order Form as having ordered the Services.

2.5 "Price" means the amount charged by the Council for the provision of Services as set out in the Order Form.

2.6 "Services" means the services to be provided by the Council as indicated in the relevant column in the Order Form.

2.7 "Service Specification" means the scope of the Services to be provided by individual Council service areas as stated on www.eduserve.co.uk

2.8 "Term" means the fixed period set out in the Order Form. Where no fixed period is specified the Term shall be an initial period of one year commencing from the Commencement Date and continuing after that until terminated by either party in accordance with clause 8.1.

2.9 "Equipment" means small items of equipment provided by the Council to the Customer.

3. Services

3.1 The Council agrees to supply and the Customer agrees to purchase the Services on the terms and conditions set out in this Agreement during the Term.

3.2 The Council will provide the Services to the Customer in accordance with the relevant Service Specifications.

4. The Council's Obligations

4.1 The Council will provide the Services deploying appropriately qualified or experienced staff who will at all times exercise reasonable care and skill.

4.2 The Council will use reasonable endeavours to complete the Services within any time limits specified in the Service Specification but time is not of the essence under this Agreement.

4.3 The Services may be delivered in advance of the Commencement Date quoted on the Order Form.

4.4 The Council will ensure that all Equipment supplied by the Council to operate the contract is safe to use and tested regularly in line with relevant Health & Safety guidance.

5. The Customer's Obligations

5.1 The Customer will provide the Council, in good time, with all necessary information required to perform the Services, and comply with any requirements set out in or implied by the relevant Service Specification(s).

5.2 The Customer will provide the Council with access to the locations set out in or implied by the relevant Service Specification(s).

6. Cost of the Services and Invoicing Arrangements

6.1 The Customer agrees to pay the Council the Price for the Services in the first instance in accordance with the prices set out in the Order Form. The Price for the Services may be subject to an annual increase to take effect from the 1st April in each year where the Customer is a school and from 1st September in each year where the Customer is an academy. All prices exclude VAT, which will be added (if applicable) at the relevant rate.

6.2 Invoices for the Services will be payable by the Customer within 30 days of receipt.

6.3 Payment will, preferably, be made via BACS payment on the given invoice from the Education Sales Database. However, where the Customer wishes to pay by cheque, this should be crossed and made payable to "Nottingham City Council" and sent to the following address:

Cashiers
Loxley House
Station Street
Nottingham
NG2 3NG

Please ensure that your invoice number is written on the back of your cheque.

6.4 If the Customer has paid for Services that the Council cannot provide, other than in situations where the Services cannot be provided because of some act, failure to act, time delay or negligence on the part of the Customer, the Customer will be refunded or not charged for the Services, only to the extent that the Council is able to secure such refund or cancel such charge.

7. Modifications and Variations

7.1 In exceptional circumstances, the Council may need to vary the nature or delivery of the Services during the course of this Agreement and will advise the Customer of its intention to do so.

7.2. This Agreement may be varied by mutual agreement at any time. Any such variation must be agreed in writing.

8. Termination / Cancellations

8.1 Where the Term is stated to be for a fixed period either party may cancel this Agreement by giving a minimum of six months' notice in writing to the other party. Where the Customer terminates the Agreement in accordance with this clause 8.1 the Customer shall reimburse the Council the cost of any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss to the Council by reason of the termination of the Agreement - this may include the costs of terminating in whole or part fixed term contracts such as software licence agreements. The Council shall take reasonable steps to mitigate such loss. Where the Council has indicated to the Customer at the commencement of the Agreement that the Price was offered at a discount because of the Customer agreeing to a fixed period the Council shall be entitled to recover where the Agreement is terminated before the end of the fixed period the aggregate of the difference between the discounted price and the non-discounted for the period from the Commencement Date to the date of termination.

8.2 Where the Term is not a fixed period neither party shall be entitled to terminate the Agreement in the initial period of one year. Either party may give not less than three months' notice to terminate the Agreement provided that the notice shall not expire earlier than the anniversary of the Commencement date.

8.3 Where the Term is not for a fixed period the Customer may terminate the provision of a Service on giving 14 days' notice in writing if the annual increase in the Price for the Service notified in accordance with clause 6.1 is more than 5%. The right to terminate shall be exercised within 14 days of being notified of the increase to the Price for the Service.

8.4 In the event that the Council is unable to provide all or any part of the Services, other than in situations where such Services cannot be provided because of some act, failure to act, time delay or negligence on the part of the Customer, it will refund or not charge for that part of the Services it cannot provide.

8.5 If a party is in breach of a material term of this Agreement and, despite written notice from the other party, fails to remedy such breach within 30 days, then the other party will be entitled to terminate this Agreement with immediate effect.

8.6 At the end of the Agreement any Equipment supplied to the Customer must be returned promptly to the Council, a charge will be levied for any items broken or not returned.

9. Safeguarding

9.1 The Council will, whenever required by the Customer for the Safeguarding of children and young people, produce to the Customer evidence that appropriate safeguarding of anyone employed or engaged in the performance of the Services has taken place. This may include but is not limited to current Disclosure and Barring Service (in this Agreement referred to as DBS) clearance.

10. Confidentiality

10.1 The parties will keep confidential all information pertaining to the Services and this Agreement, unless otherwise agreed.

10.2 All information processed under this Agreement will be dealt with in accordance with the Council's information sharing guidance, the common law duty of confidentiality, any guidance from the Information Commissioner's Office on information sharing, the Data Protection Act 1998 and the Freedom of Information Act 2000.

11. Health and Safety

11.1 The Council and any of its personnel will, when using the Customer's premises or facilities, comply with the Customer's policies and procedures relating to security and workplace health and safety.

12. Intellectual Property Rights

12.1 All intellectual property rights in any material supplied by either party to the other will remain the property of the supplying party, subject to any exceptions set out in this Agreement.

12.2 On the termination, cancellation or expiry of this Agreement each party will at the request of the other, immediately return to the requesting party all materials, work or records held in relation to the Services, including any back-up media.

13. Dispute Resolution

13.1 Concerns relating to the Services provided under this Agreement should be raised in writing in the first instance with the Pupil & Schools Services Manager who will resolve the issue(s) with the customer.

13.2 If the Service is unable to resolve the issue(s) within one month of the concern being referred to it, the matter will be escalated to the Pupil & Schools Services Manager who will resolve the issue(s) with the parties or escalate accordingly.

13.3 Where disputes arise that cannot be settled within the above resolution process the matter will be escalated to the Head of Service who will meet with relevant service leads. A final review and written outcome will be made to the complainant within 14 days.

14. Limitation of Liability

14.1 Except for liability which cannot be excluded or limited by law the aggregate liability of the Council to the Customer in contract, tort (including

negligence), under statute or otherwise, for any Liabilities arising from or in any way connected with the Services will be limited to the full costs of the Services paid by the Customer under the Agreement..

14.2 However, the Council will not be liable if such Liabilities are due to the Customer providing false, misleading or incomplete information or documentation or due to the acts or omissions of any person other than any person connected to the Council. The Council shall not be liable to the Customer, for any indirect or consequential loss or damage (including loss of profits) suffered by the Customer

15. Insurance

15.1 The Council will maintain insurance coverage with a reputable insurer at levels which the Council considers appropriate for the Services and commensurate with a business of the Council's size and risk profile.

16. General

16.1 The invalidity or unenforceability of any provision of this Agreement will not affect the continuation in force of the remainder of this Agreement.

16.2 The rights granted to either party under this Agreement will not be waived except in writing. Any waiver of any of such rights or of any breach of this Agreement by either party will not be construed as a waiver of any other rights or of any other or further breach.

16.3 This Agreement is personal to the parties and neither party may assign its rights under it to any other person without the consent of the other.

16.4 The headings to the clauses contained in this Agreement are for convenience only and will not affect its construction or interpretation.

17. Governing Law and Jurisdiction

17.1 This Agreement will be governed and construed in accordance with the laws of England and will be subject to the exclusive jurisdiction of the English courts.