

Subscription Terms and Conditions

These terms and conditions will be incorporated into the Agreement between:

- 1) **EES (formerly Essex Education Services) part of Essex County Council**
- 2) **You (the 'Client') for your chosen Services**

IT IS AGREED as follows:

1. Definitions and Interpretation

In this Agreement except where the context otherwise requires:

- 1.1.1 save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment, supplement, substitution, novation or assignment to such document from time to time;
- 1.1.2 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- 1.1.3 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.1.4 any obligation on a Party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
- 1.1.5 subject to any express provisions of this Agreement to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense;
- 1.1.6 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 1.1.7 in the event of any inconsistency between the provisions of the body of this Agreement and the Service Level Descriptor (SLD), the SLD shall take precedence unless stated otherwise;
- 1.1.8 references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons shall include their successors and assignees.

2. Specification of services

- 2.1 In consideration of the Fees as set out in the SLD, EES shall provide the Services to the Client, subject to the provisions of this Agreement and the relevant SLD.
- 2.2 Any SLD may be amended, varied, added to, replaced or terminated from time to time, in writing and signed by both Parties. Any changes shall be clearly identified, together with (where applicable) the additional or different level of Fees to be paid by the Client.

3. Duration of this Agreement

This Agreement and the rights and obligations of the Parties shall take effect on the Commencement Date (the meaning given to it in the SLD) and (subject to the provisions for termination set out in this Agreement) will continue from year to year unless or until terminated.

4. Performance of the Services

- 4.1 The Parties shall agree the time and place (if not specified in the SLD) for performance of the Services, subject to the availability of EES's staff and agents.
- 4.2 EES shall use reasonable endeavours to provide the Services in accordance with the estimate or timeline agreed by the Parties in the SLD or such other date or timeframe as agreed between the Parties.
- 4.3 EES further warrants that all obligations shall be performed and rendered by appropriately experienced, qualified and trained staff.
- 4.4 All resources supplied or requested are subject to availability and may be subject to a first-come-first-served basis. EES will always endeavour to provide the client with the exact resources requested or an appropriate alternative.

5. Fee and payment

- 5.1 The Client shall pay the Fees for the Services in accordance with this Agreement and the SLD. In the event of any inconsistency in relation to the Fees between this Agreement and the SLD, the SLD shall take precedence. Fees are subject to revision from time to time to take into account inflation and any other relevant factors. EES reserves the right to adjust pricing for new subscriptions.
- 5.2 Payment of the Fees for the Services shall be made within thirty (30) days of the date of invoice or (if different) as specified in the relevant SLD. Clients may be invoiced once per year or termly or within 30 days of the Services being provided or as otherwise specified by EES.
- 5.3 All amounts stated are exclusive of VAT, which shall be charged where applicable in addition at the rate in force at the date any payment is required from the Client.
- 5.4 If payment of any Fee is not received by any due date, EES shall be entitled:
 - 5.4.1 to charge interest on the outstanding amount at the rate prescribed under the Late Payment of Commercial Debts (Interest) Act 1998, accruing daily;
 - 5.4.2 to require that the Client make a payment in advance of any Services or part of the Services not yet supplied which shall be paid within 10 days of such demand (or if different) as specified in the SLD;
 - 5.4.3 not to provide any further Services or part of the Services; and/or
 - 5.4.4 not to provide any Reports (documentation, presentations or software) due on completion of the Services (until such payment is made).
- 5.5 All payments shall quote EES's invoice number and other reference numbers (where applicable).

- 5.6 Any discounts offered on book purchase cannot be guaranteed. The client will be informed in advance of purchase if standard discounts will not apply.

6. The Client's obligations

- 6.1 The Client acknowledges and agrees that for EES to be able to provide the Services the Client shall:
- 6.1.1 comply with the SLD and co-operate with EES as EES reasonably requires;
 - 6.1.2 provide to EES such information and documentation as EES reasonably requires in a timely manner through methods appropriate to the sensitivity of the data;
 - 6.1.3 make available to EES the facilities, resources, working space, well-maintained and accurate data, and staff as specified in the SLD and/or as EES reasonably requires from time to time;
 - 6.1.4 instruct the Client's staff and agents to co-operate and assist EES. EES will not tolerate any physical/verbal abuse or discriminatory behaviour towards its staff; and
 - 6.1.5 make every effort to take care of all items on loan as EES reserves the right to charge for any lost, damaged or overdue item.
- 6.2 EES may charge the Client for any additional reasonable costs and expenses incurred by EES caused by the Client's instructions, failure to provide instructions or failure to comply with Clause 6.1.

7. Reporting requirements

- 7.1 Where required in the SLD to provide Reports (documentation, presentations or software), EES shall supply one copy of the Reports to the Client. EES shall own all copyright, database and other intellectual property rights in the Reports and shall be entitled in discharging its wider role to draw upon the information and experience obtained during the course of providing the Services, subject to any such information not being attributed to the Client if so used.
- 7.2 EES shall maintain accurate records of the Services provided and retain them for the periods of time after delivery of the Services as detailed in the SLD. It is the Client's responsibility to retain records provided under these Services in compliance with its own data retention policy

8. Confidential information, Freedom of Information and Data Protection

- 8.1 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement and the Services. The Parties shall inform their officers, employees and agents of such obligation and use all reasonable endeavours to prevent their officers, employees and agents from making any disclosure to any person of any such Confidential Information. The Parties shall only use the Confidential Information for the purpose of performing their obligations under this Agreement.
- 8.2 The obligations of Clause 8.1 shall not apply to:
- 8.2.1 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

- 8.2.2 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Agreement for the performance of those obligations;
- 8.2.3 any information which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 8;
- 8.2.4 any disclosure to enable a determination to be made under any dispute resolution procedure or in connection with a dispute between a Party and any of its sub-contractors;
- 8.2.5 was developed by a Party (or on its behalf) who had no direct access to or use or knowledge of the Confidential Information;
- 8.2.6 is required to be disclosed by any legislation (including statutory orders and guidance) or by order of a court of competent jurisdiction or by decision of the Information Commissioner or Local Government Ombudsman; or
- 8.2.7 any disclosure of information to a Party's insurers, insurance advisers or professional advisers.

8.3 Freedom of Information

- 8.3.1 The Client acknowledges and agrees that EES is subject to legal duties under the Freedom of Information Act and the Environmental Information Regulations (the Acts), which may require EES to disclose on request information relating to this Agreement or otherwise relating to the Client.
- 8.3.2 The Client acknowledges and agrees that EES is required by law to consider each and every request made under the Acts for information.
- 8.3.3 The Client acknowledges and agrees that all decisions made by EES pursuant to a request under the Acts is solely a matter for and at the discretion of EES.
- 8.3.4 Notwithstanding anything in this Agreement to the contrary (including without limitation any obligations of confidentiality), EES shall be entitled to disclose information in whatever form pursuant to a request made under the Acts, save that in relation to any information that is Exempt Information EES shall use reasonable endeavours (but shall not be obliged) to consult the Client and shall not:
 - a. confirm or deny that information is held by EES; or
 - b. disclose information requested. to the extent that in EES's opinion the information is eligible in the circumstances for an exemption and therefore EES may lawfully refrain from doing either of the things described in clauses (a) and (b) of this clause 8.3.4.
- 8.3.5 In relation to information relating to the Client or the Agreement which the Client requests should be exempt under the Acts the Client shall indemnify EES for any and all costs (including legal fees) incurred by EES in:
 - a. assessing the application of any exemption under the Acts; and/or
 - b. responding to any notice under the Acts; and/or
 - c. lodging any appeal against a decision of the Information Commissioner in relation to disclosure where such costs are incurred pursuant to efforts by EES to withhold Exempt Information.

8.3.6 EES shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under the Acts of any Exempt Information or other information whether relating to this Agreement or otherwise relating to the Client.

8.3.7 The Client shall assist EES as reasonably necessary to enable EES to comply with its obligations under the Acts.

8.4 Data Protection

8.4.1 In relation to all Personal Data, EES shall at all times comply with the Data Protection Act 2018 (DPA) as a Data Processor for the purposes of delivering services under this agreement. Essex County Council will act as Data Controller for EES where personal data is processed outside of the Data Processor role, including maintaining a valid and up to date registration or notification under the DPA and Record of Processing Activity covering the data processing to be performed in connection with the Services.

8.4.2 EES shall only undertake processing of Personal Data for which the Client is the Data Controller as reasonably required in connection with the Services.

8.4.3 EES shall not disclose Personal Data to any third parties other than:

a. to its officers, agents, employees and subcontractors to whom such disclosure is reasonably necessary in order for EES to carry out the Services; or

b. to the extent required under a court order, provided that disclosure under clause 8.4.3(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 8.4.3 and that EES shall give notice in writing to the Client of any disclosure of Personal Data which either EES or a sub-contractor is required to make under clause 8.4.3(b) immediately upon becoming aware of such a requirement.

8.4.4 EES shall bring into effect and maintain all appropriate technical and organisational security measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

8.4.5 Where instances occur of failures of the security measures, EES will make the Client aware of and provide relevant information about the incident without undue delay as required under GDPR Article 33(2).

8.4.6 EES shall inform the Client of an intention to introduce additional or replacement Data Processors to support the delivery of these Services and seek the Client's consent.

8.4.5 EES shall indemnify and keep indemnified the Client against all direct Losses incurred by it in respect of any breach of this clause 8.4 by EES and/or any act or omission of any sub-contractor which causes EES to be in breach of this clause.

8.4.6 The Client shall indemnify and keep indemnified EES against all direct Losses incurred by it in respect of any act or omission of the Client or any Client Related Party which causes EES to be in breach of this clause.

8.5 This Clause 8 shall survive expiry and/or termination of this Agreement.

9. Warranties, liability and indemnities

9.1 EES warrants that it will use reasonable care and skill in performing the Services.

- 9.2 EES expressly does not warrant that any result or objective whether stated in this Agreement or not shall be achieved, be achievable or be attained at all or by a given completion date or any other date.
- 9.3 Except in the case of death or personal injury caused by EES's negligence, EES's liability under or in connection with any Service provided pursuant to this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall not exceed the Fees paid to EES under this Agreement in relation to the Services.
- 9.4 Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.
- 9.5 The Client shall indemnify and hold harmless EES from and against all Claims and Losses arising from loss, damage, liability, injury to EES employees and third parties, infringement of third party intellectual property, or causation of third party losses by reason of or arising out of any information supplied by the Client to EES, its employees or consultants pursuant to this Agreement.
- 9.6 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

10. Expiry and Termination

- 10.1 Without prejudice to any other remedies or rights under this Agreement, this Agreement shall continue until terminated by either Party of not less than 3 months prior written notice. Refund of Fees paid by the Client is at the discretion of EES.
- 10.2 Without prejudice to any other remedies or rights under this Agreement, either Party may terminate this Agreement at any time by written notice to the other Party on the date specified in the notice if the Other Party is in material breach of its obligations under this Agreement and where a breach is capable of remedy, that breach is not remedied by the Other Party following receipt of a notice which specifies the breach and requiring the breach to be remedied within a specified timeframe.

11. Force majeure

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. As soon as practicable following such notification of delay or failure in performance, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the relevant circumstances facilitate the continued performance of this Agreement. If such circumstances continue for a continuous period of more than six (6) months, either Party may terminate this Agreement by giving thirty (30) days written notice to the other Party.

12. Continuing Obligations

Save as otherwise expressly provided in this Agreement:

- 12.1 termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the date of termination; and

12.2 termination of this Agreement shall not affect the continuing rights and obligations of EES and the Client under clause 3 (Duration of this Agreement), Clause 8 (Confidential Information, Freedom of Information and Data Protection), Clause 10 (Expiry and Termination), Clause 24 (Notices), Clause 25 (Law and jurisdiction), Clause 26 (Third parties) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

13. Amendments This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

14. Assignment Neither Party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party provided that EES may however assign, subcontract or delegate all of its rights and obligations under this Agreement to any person to which it transfers, subcontracts or delegates any part of its functions or responsibilities provided that such person undertakes in writing to the Client to be bound by the obligations of EES under this Agreement.

15. Responsibility for Related Parties

Subject to the provisions of this Agreement, the Client shall be responsible as against EES for the acts and omissions of the Clients Related Parties (an officer, agent, contractor, employee or sub-contractor) as if they were the acts and omissions of the Client and EES shall be responsible as against the Client for the acts and omissions of EES Related Parties (an officer, agent, contractor, employee or sub-contractor) as if they were the acts and omissions of EES.

16. Complaint/Dispute resolution

The Parties shall attempt to negotiate a settlement where a dispute arises in relation to any aspect of the Service through the normal day to day contacts. Where those processes have been exhausted and no resolution has been reached, the Parties may escalate the matter to the Client's Representative (Head Teacher) and EES's Representative (Head of Services) who shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter. Where the Parties are unable to agree the matter, the matter may be referred to a mutually agreed adjudicator or other person whose decision shall be final.

17. Corrupt Gifts and Fraud

If the Client or any Client Related Party (or anyone employed by or acting on behalf of any of them) or any of its or their agents commits any Prohibited Act (offering, giving to, agreeing Essex Education Services Email: EES@essex.gov.uk Tel: 0845 200 8600 Fax: 0872 113 5220 to give EES staff any gift or consideration of any kind as an inducement or award), then EES shall be entitled to terminate this Agreement and recover from the Client the amount of any Loss resulting from such termination.

18. Entire agreement

This Agreement contains the whole agreement between the parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

19. Waiver

No failure or delay by EES in exercising any right, power or privilege under this Agreement shall

impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

20. Agency, partnership etc.

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

21. Further assurance

Each Party to this Agreement shall, at the request and expense of the other, execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.

22. Severance

If any provision of this Agreement 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 this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

23. Announcements

No Party shall issue or make any public announcement or disclose any information regarding this agreement unless prior to such public announcement or disclosure it furnishes the other Party with a copy of such announcement or information and obtains the approval of the other Party to its terms. However, no Party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law.

24. Notices

- 24.1 Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail or e-mail (confirmed by first class mail), to the address of the relevant Party, or such other address as that Party may from time to time notify to the other Party in accordance with this clause 24.
- 24.2 Notices sent as above shall be deemed to have been received three (3) working days after the day of posting (in the case of inland first class mail), or on the next working day after transmission (in the case of e-mail messages).
- 24.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

25. Law and jurisdiction

The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

26. Third parties

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement, this Agreement 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.

27. Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

28. Insurance

A copy of the insurance policies held by EES shall be made available on request.

29. Health and Safety and Security

Whilst on the Client's premises, EES shall comply with all reasonable health, safety and security instructions given to it by the Client or any authorised representative of the Client.

30. Intellectual Property Rights (IPR)

Subject to any pre-existing third party rights, all IPR generated under this Agreement shall vest in and be the property of EES.

31. Cancellation

Any cancellation of Services in the SLD should be in writing and EES reserve the right:

- 31.1 to charge the Fees as set out in the SLD for visits cancelled with less than 10 working days notice.
- 31.2 to charge the Fees as set out in the SLD or to charge an administration fee of £35 per person for training cancelled with less than 10 working days notice.
- 31.3 to charge the Fees as set out in the SLD or to charge an administration fee of up to £100 for meetings cancelled (not deferred).
- 31.4 to charge an administration fee of £50.00 or any bookbus visit cancellations that occur with less than 10 working days' notice.
- 31.5 to charge for any items not returned to the service provider within 90 days of terminating the Agreement.