

Standard Terms and Conditions

1. Interpretation

“Charges” means the charges for the Services in accordance with the option offered by Us and accepted by You as set out in the Services for Schools Directory;

“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 and Special Categories of Data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

(i) was public knowledge at the time of disclosure;

(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) is independently developed without access to the Confidential Information;

“Consent Notice” means the consent of an individual to the sharing of their Personal Data for the provision of the Services;

“Data Controller” has the meaning given to it in the Data Protection Legislation;

“Data Guidance” means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding

information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to You by US and/or any relevant Regulatory Body;

“Data Processor” has the meaning given to it in the Data Protection Legislation;

“Data Protection Legislation” means the General Data Protection Regulations and the Data Protection Act 2018 (together referred to as the Data Protection Legislation) and subordinate and subsequent legislation;

“Data Protection Officer” has the meaning set out in the Data Protection Legislation;

“Data Subject” has the meaning given to it in Data Protection Legislation;

“Deliverables” means all documents, products and materials developed by Us or our agents, sub- contractors, consultants and employees in relation to the Services in any form;

“EIR” means the Environmental Information Regulations 2004;

“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 Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004

“Indirect Losses” means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other

consequential or indirect loss of any nature, whether arising in tort or on any other basis;

“Information Commissioner” means the UK’s regulatory body charged with enforcing Data Protection Legislation;

“Information Governance Lead” means the individual responsible for information governance and for providing You with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;

“Joint Data Controller” shall have the meaning given it in the Data Protection Legislation;

“Law” means any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body or Relevant Authority with which You are bound to comply;

“Losses” means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses;

“Party” means either Us or You (as appropriate) and “Parties” shall be construed accordingly;

“Personal Data” has the meaning given to it in the Data Protection Legislation;

“Personal Data Breach” has the meaning given to it in the Data Protection Legislation;

“Privacy Notice” means the information that must be provided to a Data Subject under the Data Protection Legislation;

“Right of Access, Rectification or Erasure Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access, rectify or erase their Personal Data;

“Services” means the services to be provided by Us to You, a description of which is set out in the Services for Schools Directory as amended from time to time;

“Services for Schools Directory” means a directory setting out the services for schools which can be purchased by You through the Services for Schools web portal at www.cornwall.gov.uk/sfs and which will be provided by Us in accordance with these terms;

“Special Categories of Data” has the meaning given to it in the Data Protection Legislation;

“Term” means the period from the start of the academic year to end of the academic year unless otherwise agreed between the Parties;

“Us and We” means Cornwall Council, New County Hall, Truro, Cornwall TR1 3AY;

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

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

2. Your Obligations

2.1 You will:

2.1.1 give Us clear instructions;

2.1.2 co-operate with Us in all matters relating to the Services;

2.1.3 deal with all queries in a prompt and courteous manner;

2.1.4 notify Us of any restrictions or issues which You are aware of which may impact on our ability to provide the Services;

2.1.5 notify Us immediately if You become aware of any conflict of interest or other reason which You believe will restrict Us from providing the Services;

2.1.6 provide, in a timely manner, such information as We may require, and ensure that it is accurate in all material respects.

2.2 If the performance of our obligations is prevented or delayed by any act or omission on Your part, Your agents, subcontractors, consultants or employees, We shall not be liable for any costs, charges or losses sustained or incurred by You that arise directly or indirectly from such prevention or delay.

2.3 You shall be liable to pay to Us, on demand, all reasonable costs, charges or losses sustained or incurred by Us that arise directly or indirectly from Your fraud, negligence, failure to perform or delay in the performance of any of Your obligations, subject to Us confirming such costs, charges and losses to You in writing.

3. Supply of Services

3.1 In consideration of Your agreement to pay the Charges, We will supply the Services to You for the Term subject to and in accordance with these terms.

3.2 In supplying the Services, We will:

3.2.1 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice;

3.2.2 ensure that the Services shall conform with all descriptions and specifications set out in the Services for Schools Directory; and

3.2.3 provide all equipment and other items as are required to provide the Services.

3.3 We undertake to ensure that only experienced and qualified officers provide advice, that the advice will be impartial and that all reasonable steps will be taken to ensure that it is correct at the time at which it is given.

4. Charges and Payment

4.1 You shall pay all Charges for the Services within thirty (30) days of the date of our invoice, without any set-off, counterclaim or deduction. The Charges for the Services shall be the option offered by Us and accepted by You as set out in the Services for Schools Directory.

4.2 If there is a dispute between the Parties as to the Charges, You shall pay the undisputed amount and the dispute shall be resolved through the dispute resolution procedure set out in clause 11.

4.3 If a payment of an undisputed amount is not made by You by the due date, then You shall pay to Us interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

4.4 In the event that You fail to pay Us in accordance with clauses 4.1, 4.2 and 4.3 above then We have the right either not to commence or to cease providing the Services until the outstanding amounts including VAT and interest are settled in full. Subject to clause 8 below We will not bear any liability to You as a result of the cessation of the Services in accordance with this clause.

4.5 We reserve the right to charge You additional sums if, due to circumstances reasonably unforeseen by Us, additional work is necessary. In the event that this occurs, We shall agree any extra charges with You in advance, before the additional work is provided.

5. CONFIDENTIALITY; DATA PROTECTION AND FREEDOM OF INFORMATION

5.1 CONFIDENTIALITY

5.1.1 Except where otherwise provided for in this Agreement, Confidential Information is owned by the Party that discloses it (the “Disclosing Party”) and the Party that receives it (the “Receiving Party”) has no right to use it.

5.1.2 Subject to clauses 5.1.3 and 5.1.4, the Receiving Party agrees:

(a) to use the Disclosing Party’s Confidential Information only in connection with the Receiving Party’s performance under this Agreement;

(b) not to disclose the Disclosing Party’s Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and

(c) to maintain the confidentiality of the Disclosing Party’s Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

5.1.3 The Receiving Party may disclose the Disclosing Party’s Confidential Information:

(a) in connection with any dispute resolution under clause;

(b) in connection with any litigation between the Parties;

(c) to comply with the law;

(d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party’s duty set out in clause 5.1.2;

(e) to comply with a regulatory bodies request.

5.1.4 The obligations in clause 5.1.1 and clause 5.1.2 will not apply to any Confidential Information which:

(a) is in or comes into the public domain other than by breach of this Agreement;

(b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or

(c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

5.1.5 The obligations in clause 5.1 and clause 5.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of ours or of any committee, sub-committee or joint committee of ours or is related to an executive decision of ours and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), We shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that

Confidential Information and in doing so shall give due weight to Your interests and where reasonably practicable shall consider any representations made by You.

5.2 INFORMATION GOVERNANCE AND DATA PROTECTION

5.2.1 The Parties must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations.

5.2.2 Whether or not a Party or Sub-Contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and any further Data Guidance. The Parties acknowledge that a Party or Sub-Contractor may act as both a Data Controller and a Data Processor, or a Joint Data Controller.

5.3 FREEDOM OF INFORMATION AND TRANSPARENCY

5.3.1 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

5.3.2 If You are not a public authority, You acknowledge that the We are subject to the requirements of the FOIA and will assist and co-operate with Us to enable Us to comply with our disclosure obligations under the FOIA. Accordingly You agree:

(a) that this Agreement and any other recorded information held by You on our behalf for the purposes of this Agreement are subject to the obligations and commitments of Us under the FOIA;

(b) that the decision on whether any exemption to the general obligations of public access to information applies to

any request for information received under the FOIA is a decision solely for Us;

(c) that if You receive a request for information under the FOIA, it will not respond to such request (unless directed to do so by Us) and will promptly (and in any event within 2 working days) transfer the request to Us;

(d) that We, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning You and this Agreement either without consulting with You, or following consultation with You and having taken its views into account; and

(e) to assist Us in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an authority within 5 working days of such request and without charge.

5.3.3 You shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) in relation to its security policies, procedures and control of Confidential Information, Personal Data and Special Categories of Data.

5.3.4 You shall be responsible for any costs associated with compliance with the provisions of this clause 5.

5.4 You shall indemnify Us and shall keep the Us indemnified against Losses and Indirect Losses suffered or incurred by Us as a result of any breach of this clause 5.

6. Intellectual Property Rights

6.1 All intellectual property rights and all other rights in the Deliverables shall be owned by Us.

6.2 We licence all such rights to You free of charge and on a non-exclusive, worldwide basis to such extent as is necessary and to enable You to make reasonable use of the Deliverables and the Services.

6.3 The provision of the Services by Us to You does not entitle You or Your business to claim any affiliation with or approval by Us. You are not permitted to use any of our logos without express written consent.

7. Liability and Insurance

7.1 Neither Party limits or restricts in any way its liability for:

7.1.1 death or personal injury caused by its negligence;

7.1.2 fraud or fraudulent misrepresentation; or

7.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1 We shall not be liable to You, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the provision of the Services for:

7.2.1 loss of profits;

7.2.2 loss of sales or business;

7.2.3 loss of agreements or contracts;

7.2.4 loss of anticipated savings;

7.2.5 loss of or damage to goodwill;

7.2.6 loss of use or corruption of software, data or information

any indirect or consequential loss.

7.3 Subject to clauses 7.1 and 7.2, our total aggregate liability to You, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the provision of the Services shall be limited to 125% of the Charges.

7.4 Each of the Parties agree that they will at their own cost effect and maintain appropriate policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Parties pursuant to these terms.

8. Force Majeure

8.1 Neither Party shall have any liability to the other for any delays or failures in performance of their obligations which result from circumstances beyond the reasonable control of the Party affected. Each Party 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.

9. Termination

9.1 Either Party may terminate a Service with immediate effect on written notice to the other Party if the other Party:

9.1.1 is in material breach of any of its obligations which is not capable of remedy;

9.1.2 repeatedly breaches any of the terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms;

9.1.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the other Party receiving notice specifying the breach and requiring it to be remedied.

9.2 If We terminate a Service pursuant to clause 9.1 above You shall immediately pay to Us all of the outstanding unpaid Charges and interest.

9.3 For the purposes of clause 9.1, You shall be deemed to be in material breach of Your obligations if You have not paid any undisputed amounts within 30 days of them falling due.

9.4 Termination of a Service(s) shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties which either expressly or by implication have effect after termination.

9.5 Termination of a Service pursuant to clause 9.1 shall not cause the automatic termination of the remaining Services which shall continue to be provided by Us to You in accordance with these terms unless otherwise agreed by the Parties.

10. Dispute Resolution

10.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the provision of the Services.

10.2 In the event that the dispute is not appropriately resolved, You may refer the dispute to our Complaints Procedure available on our website.

10.3 Either Party may exercise any remedy it has under applicable law.

11. Subcontracting

11.1 We reserve the right to sub-contract the provision of the Services or any part thereof to any person and shall give written notice of any sub-contract to You.

12. Notices

12.1 Any notice to be given in accordance with these terms shall be in writing and shall be sufficiently served by personal delivery, or by being sent by first class post in a registered letter to the address of the relevant Party.

13. Prevention of Bribery

13.1 You warrant and undertake to Us that You will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

14. Governing Law and Jurisdiction

14.1 The relationship and contract between Us and You is governed by English law. Any dispute or legal issue arising in connection with the provision of the Services shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

15. Review

15.1 These terms will be subject to an annual review.