

EDUKENT TERMS & CONDITIONS

EduKent is the trading services arm of Kent County Council which provides educational services.

EduKent is the single source for Schools and Academies to buy all of the support services they need to run a school effectively. From leadership development to catering contracts, EduKent is the place for quality educational support services and training. Developed in response to the rapidly changing educational environment, EduKent is designed to meet the needs of Schools and Academies by providing education support services, all in one place.

These Terms and Conditions govern the overall relationship between the Service Provider and the Customer with respect to the provision of the Ordered Services. These Services can be ordered either as Adhoc, Rolling, Fixed Term or Bespoke depending on the type of contract which the Customer requires. These Terms & Conditions also cover our Digital Content and Online Resources which are annexed at Appendix B of this agreement, and are also accessible via our Edu Kent website.

Any Schedules, Appendices or any documents annexed hereto shall form part of these Terms and Conditions, and shall have effect as if set out in full in the body of the EduKent Terms and Conditions

For the avoidance of doubt these Terms and Conditions shall apply to all the types of contract offered by The Kent County Council and EduKent.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions have the following meaning unless inconsistent with the context

"Addendum"	means the Contract Addendum attached to Appendix A of this Agreement.
"Ad-hoc Service"	means a specific one off service provision to be delivered in an agreed number of hours or days.
"Administrative Facilities"	means the customer provides reasonable office facilities in which to conduct business with the Service Provider.
"Bespoke Services"	means the services tailored to meet the specific needs of the customer.
"Commencement Date"	means the date agreed between the Service Provider and the Customer in writing as the commencement date for the Service.
"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, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information.
"Contract"	means the written agreement between the Service Provider and the Customer which governs the relationship between the parties with regards to the Ordered services. This Agreement can either be Adhoc, Rolling, Fixed Term, Bespoke, or Digital Content. These Terms and Conditions shall be attached to each specific agreement to form the Contract.

"The Customer"	means the School / Academy or other Organisation which enters into an agreement with the Service Provider.
"Delegated Services"	means the delegated services that EduKent Services provides for all Schools and education settings, including early years and childcare providers.
"Digital Content"	is a term used by EduKent to cover any Digital Media sold by us or any Online Resource. It means any software, or other Intellectual Property made available through the website which can be downloaded or accessed online.
"Digital Content and Digital Media"	Products provided in digital form, accessible on the EduKent website, or any associated websites of EduKent or its services, or that is distributed by electronic media such as data transfers, DVD, USB or CD. This includes but is not limited to information and images that are available for download, documentation, brochures, leaflets, videos or webinars/e-learning.
"Digital Content and Online Resources Agreement"	The Digital Content and Online Resources Agreement is annexed to Appendix B of this agreement.
"EduKent"	means the trading services arm of Kent County Council which provides educational services.
"EIR"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.
"Fixed Term Contract"	means a contract which shall terminate automatically on an agreed date, unless the parties agree to extend the contract for a further period, at the end of which the contract shall terminate automatically.

"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under such 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 regulations.
"Information"	has the meaning given under Section 84 of the Freedom of Information Act (FOIA).
"Intellectual Property Rights"	means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
"KCC"	means The Kent County Council
"Online Resource"	means Resources produced and accessible via the EduKent website or download area, including or not limited to documentation, brochures, leaflets, videos or webinars/e-learning.
"Packaged Rolling Service"	means the agreement shall continue until terminated in accordance with the notice and termination provisions of each individual service agreement as stated in Appendix A of this Agreement.
"Relevant Transfer"	means a relevant transfer for the purposes of TUPE.
"Requests for Information"	shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the EIR.

"Service Level Agreement" (SLA)	means the Agreement between the Service Provider and the Customer which defines the service levels to which the Services are provided.
"Services"	means the Services as described in the service information contained at the EduKent website www.edukent.co.uk
"The Service Provider"	means EduKent which is the department of KCC which enters into an agreement with the Customer
"Terms and Conditions"	means these Terms and Conditions as amended from time to time by The Kent County Council (KCC).
"Traded Services"	means traded services that EduKent Services provides for all Schools and education settings, including early years and childcare providers.
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) which implement the Acquired Rights Directive;
"Variation"	has the meaning given to it in clause 10 of this Agreement;
"VAT"	means value added tax chargeable under English law for the time being and any similar, additional tax.
1.2	References in these terms and conditions to clauses, sub-clauses, schedules, paragraphs, and appendices are (unless otherwise stated) references to clauses, sub-clauses, schedules, paragraphs, and appendices of these terms and conditions.
1.3	The schedules and appendices form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules and appendices.
1.4	Headings are for ease of reference only and shall not affect the interpretation or construction of these terms and conditions.
1.5	Reference to any Act of Parliament and to any orders or regulations or rules made pursuant to any Act or to any EC or EU Directive shall include reference to any modification re-enactment or replacement of the same.

2. THE PROVISION OF EDUKENT SERVICES

- 2.1 In respect of all Traded Services, the Service Provider will provide the Customer with the services or commence the agreed service on the days agreed when the order was made.
- 2.2 From the beginning of the new financial year which starts from 1st April 2017, these delegated services shall be automatically placed under a Rolling Contract unless the Customer writes to the Service Provider by the 1st December 2016 stating that they do not want their contract rolled forward.
- 2.3 Whilst the Customer may request that the Service be provided by named officers, the Service Provider reserves the right to deploy their officers to the customer's office to provide the service in relation to need and priority. It may therefore not be possible to comply with these requests.
- 2.4 The Customer shall provide the Service Provider with details of the person representing the Customer in respect of the service to be undertaken, together with any information relevant to the service requested by the Service Provider.
- 2.4.1 The Customer will provide free of charge all administrative facilities which are reasonably required by the Service Provider to provide the service.
- 2.4.2 The Service Provider warrants that where appropriate all officers working to deliver the Services to the Customer, will have been subject to a CRB check within 3 years of the date of the provision of the Service. In addition all officers are required to have certain qualifications and these qualifications will be verified in accordance with service requirements.

3. CHARGE, PAYMENT AND CHARGE INCREASES

Please note that under Direct Debit arrangements a Direct Debit notification will be issued to the Customer at the beginning of each month. The Customer will then have 10 working days to challenge any of the charges before payment is deducted from the Customer's bank account at the end of the calendar month as appropriate.

- 3.1 Where the Customer and the Service Provider require advice from other professionals and/or organisations and this is agreed in advance, the Customer shall be responsible for any costs and charges levied by such professionals and organisations.
- 3.2 Charges for rolling contracts will include any value added tax as appropriate. This shall be levied by the Service Provider with effect from the commencement date on a monthly basis depending upon the agreement made between the Service Provider and the Customer and shall be payable unless otherwise stated in accordance with your Direct Debit mandate agreement.
- 3.3 The Service Provider will give the School/Academy or Organisation 4 full calendar months notice of any price changes.
- 3.4 a) Charges for Ad hoc services shall be paid in full unless otherwise agreed and shall include any value added tax as appropriate under the Direct Debit mandate agreement.
- b) Charges for delegated services shall be paid in full unless otherwise agreed and shall include any value added tax as appropriate under the Direct Debit mandate agreement.

- 3.5 Charges for Bespoke, Fixed, or Rolling services shall be paid by agreement between both parties and shall include any value added tax as appropriate under the Direct Debit mandate agreement.
- 3.6 Charges for Digital Content and Online Services shall be in accordance with the Digital Content and Online Services agreement annexed at Appendix B.
- 3.7 The Charges are exclusive of Value Added Tax. If applicable the Customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law.
- 3.8 It is EduKent's responsibility to inform the Service Provider of any amendments to email contact details or Establishment name changes and visa versa.

4. LIMITATION OF LIABILITY AND INSURANCE

- 4.1 Neither the Customer nor the Service Provider excludes or limits liability to the other for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.
- 4.2 In respect of any claims of legal liability arising out of the wilful default of the Service Provider, its employees, servants or agents, the Service Provider will have unlimited liability for all reasonably foreseeable loss suffered by the Customer as a result of such act, omission or event giving rise to the claim.
- 4.3 Subject always to the provisions of Clauses 4.1 and 4.2, the aggregate liability of either the Customer or the Service Provider for each twelve (12) Month period commencing on the Service Commencement Date, or an anniversary thereof, for all Defaults for direct loss of or damage to the tangible property of the other shall in no event exceed £10,000 pounds.
- 4.4 Subject always to the provisions of Clauses 4.1 and 4.2, in no event shall either the Customer or the Service Provider is liable to the other for:
 - 4.4.1 Indirect or consequential loss or damage; and/or
 - 4.4.2 Loss of profits, business, revenue, goodwill or anticipated savings.
- 4.5 Subject always to the provisions of Clauses 4.1, 4.2 and 4.3 the provisions of Clause 4.4 shall not be taken as limiting the right of either the Customer or the Service Provider to claim from the other for:
 - 4.5.1 Additional operational and administrative costs and expenses;
 - 4.5.2 Any costs or expenses rendered nugatory; and
 - 4.5.3 damage due to the loss of data, but only to the extent that such losses relate to the costs of working around any loss of data and the direct costs of recovering or reconstructing such data, resulting directly from the Default of the other party.
- 4.6 The Customer and the Service Provider expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted, but if either of them thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

5. DURATION OF AGREEMENTS

5.1 For Ad-hoc services

The duration of the agreement will be agreed by the Customer and the Service Provider when a service is ordered in accordance with the provisions of Clause 2.1.

5.2 For Packaged Rolling services

The agreement shall continue until terminated in accordance with the notice and termination provisions of each individual service agreement, or if not specified, in accordance with Clause 6 below.

5.3 For Fixed Term Contracts

The agreement shall terminate automatically on an agreed date, unless the parties agree to extend the contract for a further period, at the end of which the contract shall terminate automatically.

5.4 For Bespoke Contracts

For Bespoke contracts, the agreement shall continue until terminated in accordance with the notice and termination provisions of each individual service agreement, or if not specified, in accordance with Clause 6 below.

5.5 For Digital Content and Online Resources

For Digital Content and Online Resources contracts the agreement shall continue until terminated in accordance with the notice and termination provisions of the Digital Content and Online Resources, or if not specified, in accordance with Clause 6 below.

6. TYPES OF CONTRACTS/TERMINATIONS

Packaged Rolling Services

6.1 Unless otherwise stated with regards to "Packaged Rolling Services" the Customer shall give the Service Provider 4 full calendar months written notice in order to terminate this Agreement.

6.2 An individual contract, Service Level Agreement (SLA) or a delegated service agreement may also be terminated as follows:

6.2.1 By either party at any time on or after the first anniversary of the Commencement Date upon giving not less than 4 full calendar months notice in writing to the other Party or as otherwise stated in the Addendum depending on the service provided.

6.2.2 Forthwith by the Service Provider if the Customer fails to pay any sum due under these terms and conditions within two calendar months of the due date for such payment:

6.2.3 Forthwith by either party if the other commits any material breach of any term of these terms and conditions:

6.2.4 Forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the

other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

6.3 In the event of these terms and conditions being terminated for any reason whatsoever the Service Provider shall be entitled to immediately cease from providing the Services and the Customer shall immediately pay the Service Provider all arrears of payments to the date of termination and any other sums due under the terms of these terms and conditions.

6.4 Any termination of these terms and conditions pursuant to this Clause 6 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

Ad-Hoc Services

6.5 In respect of any Ad-Hoc Service for Training/Consultancy, provided any no show or short cancellation, even on funded courses, will mean that the Customer pays the full costs as below:

6.5.1 Payment or Deposit will be non-refundable unless otherwise agreed.

6.5.2 Less than one month but more than two weeks before the date, 50% of the full payment will be required.

6.5.3 Less than two weeks before the date the full payment will be required.

6.6 In respect of any other type of Ad-Hoc Service provided, in order to cancel the service, the customer shall provide the Service Provider with the appropriate written notice as agreed between the parties.

Fixed Term Contracts

6.7 A Fixed Term Contract is renewable for fixed term by agreement the contract terminates automatically on an agreed date, unless the parties agree to extend it for a further period, at the end of which it will terminate automatically.

6.7.1 Prior to the end of the fixed term period, discussions between the Service Provider and the Customer should begin to review the delivery of the service and determine if the contract is to be renewed for a further year.

6.7.2 The Service Provider may extend the Agreement before the end of the fixed term period as agreed in writing between the parties.

6.7.3 If at any time there is a cancellation to be made then the Customer shall give the Service Provider 4 full calendar months written notice in order to terminate this Agreement.

Bespoke Services

6.8 A Bespoke Service is tailored to meet the specific needs of the Customer. If at any time there is a cancellation to be made then the Customer shall give the Service Provider 4 full calendar months written notice in order to terminate this Agreement

Digital Content and Online Services

- 6.9 If the products are one-off services. We will begin the services on the date set out in the order. The estimated completion date for the services is as told to you during the order process.
- (a) If the product is a one-off purchase of digital content. We will make the digital content available for download by you as soon as we accept your order.
 - (b) If the products are digital content. We will supply the digital content to you until the subscription expires (if applicable)

7. CANCELLATION OR POSTPONEMENT OF AGREED APPOINTMENT

- 7.1 Every effort will be made to provide the Services in accordance with the terms of the agreement, however, if the Service Provider is unable to fulfil the terms of the agreement on the agreed date(s) due to illness or other unpreventable circumstance, the Service Provider will make reasonable adjustments as appropriate.
- 7.2 The Customer shall not be charged for cancelling a service where the Customer provides more than 14 days written notice to cancel the service. The exception to this is where the Ad-Hoc services or the service agreement states a different cancellation period.
- 7.3 Should the Customer fail to give at least 14 days written notice of circumstances that would prevent the fulfilling of the contract, the Service Provider reserves the right to charge under the terms of the agreement.
- 7.4 For the avoidance of doubt, if the service is being delivered as part of a service agreement, then the terms of the cancellation policy shall apply unless sufficient notice to cancel the service has been given, or the Service Provider waives the right to charge for the cancellation of the service due to the particular circumstances involved.

8. TUPE

- 8.1 The Customer and the Service Provider agree that the commencement of the provision of the Ordered Services by the Service Provider under this contract will not be a "relevant transfer" to which TUPE will apply in relation to any employees of the Customer. In such circumstances, the Customer and the Service Provider agree that none of the employees of the Customer shall transfer to the Service Provider by virtue of the operation of TUPE or the Acquired Rights Directive.
- 8.2 If any employee of the Customer claims, or it is determined by law that their contract of employment should be transferred from the Customer to the Service Provider pursuant to TUPE, or the Acquired Rights Directive then TUPE may apply, however that position shall be determined in accordance with the law at the relevant date as the case may be and this clause 8 is without prejudice to such determination.

9. FORCE MAJEURE

- 9.1 Neither the Service Provider nor the Customer shall be liable for any breach of agreement which result from causes beyond its reasonable control including but not limited to fire, strikes (of its own or other employees) insurrection or riots, embargoes, or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority (an "Event of Force Majeure").
- 9.2 The Service Provider and the Customer agree to give notice of the event as soon as practicable to the other and in any case within 3 days of becoming aware of the event giving details of the circumstances.
- 9.3 A party claiming force majeure must use all reasonable efforts to avoid or mitigate the effect of the force majeure.
- 9.4 If a force majeure event continues for more than 30 days, either party may give notice to the other to terminate this agreement.

10. VARIATIONS TO THE AGREEMENT

- 10.1 The Service Provider shall not be required to provide any additional services or to carry out variations or amendments to the rolling contract services unless agreement has been reached between the Customer and the Service Provider as to any increase in charge and/or Additional charges for such additions and/or variations to the rolling contract.
- 10.2 The Contract may only be varied or amended with the written agreement of both parties. The details of any variations or amendments shall be agreed in writing between the parties and shall not be binding upon the parties unless completed in accordance with such form of variation.
- 10.3 For the avoidance of doubt, any agreed variation or amendment described in Clause 10.1 shall be in writing, shall be expressed to be a variation to these terms and conditions in accordance with this Clause 10 and shall be signed by or on behalf of the Customer and the Service Provider.
- 10.4 The Service Provider reserves the right to modify or withdraw the Rolling Contracts or Ad-hoc services on the EduKent Website. The Service Provider does not have to offer an alternative package or Ad-hoc services and may need to increase or decrease its charges in line with its services requirements which may defer from the original charge that was published on the EduKent website.

11. WAIVER

- 11.1 The waiver by either party of a breach or default of any of the provisions of these terms and conditions by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

12. DISPUTE RESOLUTION

- 12.1 In the event of a dispute between the Customer and the Service Provider, the Customer shall notify the Head of Service of the provider unit in writing of the nature of the dispute with as much detail as possible. The Customer and the Service Provider' representatives shall use all reasonable endeavours to negotiate in good faith to resolve the dispute within 7 working days of the date of the written notification.
- 12.2 In the event that the dispute is unresolved within the time period stipulated in Clause 12.1 above the written notification and any additional information arising during the representatives' unsuccessful efforts to resolve the dispute in accordance with Clause 12.1 shall be forwarded to Service Provider's Director within the relevant KCC Directorate within the 5 working days immediately following the period stipulated in Clause 12.1 above.
- 12.3 The Director, Head of Service for the packaged Unit and the Customer's representative shall use all reasonable endeavours to negotiate in good faith to resolve the dispute within 7 working days of the date of the written notification and any additional information referred to in Clause 12.2 above.
- 12.4 If the dispute cannot be resolved in accordance with the procedure set out above then the dispute shall be referred to the Corporate Director of the relevant KCC Directorate for resolution. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR.
- 12.5 To initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting mediation. A copy of the request shall be sent to CEDR Solve. The mediation shall start not later than 14 days after the date of the ADR notice.
- 12.6 No party may commence any court proceedings or arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation, and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

13. FREEDOM OF INFORMATION

- 13.1 The Customer acknowledges that the Service Provider is subject to the requirements of the FOIA and the EIR and the Customer agrees that it shall in all respects assist and co-operate with the Service Provider so as to enable the Service Provider to comply with its obligations under the FOIA and EIR including but not limited to transferring any Requests for Information to the Service Provider as soon as practicable after receipt and in any event within two working days of receiving a Request for Information.
- 13.2 The Customer agrees that the Service Provider shall be responsible for determining at Service Provider's absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 13.2.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
- 13.2.2 is to be disclosed in response to a Request for Information;

- 13.2.3 It shall transfer to the Service Provider all Requests for Information that it receives as soon as practicable and in any event within 2 Working days of receiving a Request for Information;
 - 13.2.4 It shall provide the Service Provider with a copy of all Information in its possession, or power in the form that Service Provider requires within 5 Working days (or such other period as Service Provider may specify) of the Service Provider's request; and
 - 13.2.5 It shall provide all the necessary assistance as reasonable requested by the Service Provider to enable Service Provider to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.
- 13.3 The Customer acknowledges that the Service Provider may, acting in accordance with the Code of Practice issued under Section 45 of the FOIA be obliged under the FOIA or the EIR to disclose Information:
- 13.3.1 Without consulting the Customer; or
 - 13.3.2 Following consultation with the Customer and having taken its views into account.
- 13.4 The Customer acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that Service Provider may nevertheless be obliged to disclose Confidential Information in accordance with Clause 13.3 of this agreement.

14. DATA PROTECTION

- 14.1 The Customer and the Service Provider shall observe all of their obligations under the Data Protection Act 1998 which arise in connection with these terms and conditions.
- 14.2 The Customer shall indemnify and keep indemnified the Service Provider against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Customer of this clause 14.

15. CONFIDENTIALITY

- 15.1 Subject to the provisions of Clause 13 each party:
 - 15.1.1 shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly;
 - 15.1.2 and 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 these terms and conditions or except where disclosure is otherwise expressly permitted by the provisions of these terms and conditions.
- 15.2 The provisions of this Clause shall not apply to Confidential Information which:
 - 15.2.1 is part of the public domain or becomes public knowledge otherwise than by any breach of these terms and conditions by the Customer;

- 15.2.2 which must be disclosed pursuant to a statutory legal or parliamentary obligation placed upon the party making the disclosure including any requirements for disclosure under the FOIA or the EIR pursuant to a Request for Information;
- 15.2.3 information or documents disclosed to professional advisors for the purpose of taking advice
- 15.2.4 is shown by written record to have been known to the Customer at the time of disclosure of it by or on behalf of the Customer; or
- 15.2.5 is hereafter disclosed to Service Provider by a third party with a lawful right to make such disclosure.

16. SAFEGUARDING

- 16.1 The Service Provider reserves the right to pass on any information received during the provision of services to the appropriate authority if the officer providing the service has concerns that pupil or pupils may be at risk of harm whether within the Customer environment, in the home or wider community. Wherever possible the officer will work with the Customer's appropriate Child Protection Co-ordinator.

17. SEVERANCE CLAUSE

- 17.1 If any provision of these terms and conditions is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of these terms and conditions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 17.2 The Customer and the Service Provider hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.
- 17.3 If the Customer and the Service Provider acting in good faith are unable to achieve the aims expressed in Clause 16.2 above within 28 days from and including the date of any finding referred to in Clause 16.1 above the dispute resolution procedure described in Clause 11 shall not apply but Service Provider shall be entitled to terminate these terms and conditions forthwith and the provisions of Clause 6.2 shall apply.

18. GOVERNING LAW

- 18.1 These terms and conditions shall be governed by, construed and interpreted in accordance with the Law of England and Wales and the Customer and the Service Provider hereby submit to the non-exclusive jurisdiction of the English Courts.

19. ENTIRE AGREEMENT

- 19.1 These Terms and Conditions and the ***(Fixed Term/Bespoke/Rolling/Ad-Hoc, Digital Content and Online Resources)*** to be deleted as appropriate (together, the Contract) constitute the whole agreement between the parties and supersede all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to their subject matter."
- 19.2 Each party acknowledges that, in entering into these terms and conditions it is not relying on and shall have no rights or remedies (whether in tort under statute or otherwise) in respect of any statements collateral or other warranties assurances undertakings or representations (whether innocently or negligently made) by the other party to these terms and conditions.
- 19.3 Nothing in these terms and conditions shall exclude or limit the liability of either party arising out of fraud fraudulent misrepresentation or fraudulent concealment.

20. RIGHTS OF THIRD PARTIES

- 20.1 Nothing in these terms and conditions is intended to confer on any person any right to enforce any terms of these terms and conditions which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

21. NOTICES

- 21.1 Any notice, demand or communication in connection with this Contract will be in writing and may be delivered by hand, prepaid recorded delivery first class post or facsimile addressed to the recipient at its registered office, or any other address (including a facsimile number) notified to the other party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent.
- 21.2 The notice, demand or communication will be deemed to have been duly served: if delivered by hand, at the time of delivery;
- 21.3 If delivered by post, 2 Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or if delivered by facsimile, at the time of transmission, provided that the notice was transmitted by fax to the fax number of the party.

22. CONTRACT ADDENDUM

- 22.1 The parties shall abide by the Terms and Conditions in the Contract Addendum, incorporated by reference and attached at Appendix A and B of this Agreement.
- 22.2 Other Services provided by EduKent which have a slight variation to the EduKent Terms and Conditions are annexed to Appendix A of this agreement.
- 22.3 The Digital Content and Online Resources agreement is annexed at Appendix B of these terms and conditions.

APPENDIX A CONTRACT ADDENDUM

Unless otherwise stated "Rolling Contracts" run on a rolling basis and a 4 full calendar months written notice is required in order to terminate this Agreement.

KCC Insurance Scheme

This contract is negotiated on an annual basis and a school is not allowed to terminate the Agreement mid year and is tied in for the full Financial Year.

Client Services

The following packages have a minimum commitment of 12 full calendar months from the date the school signs up:

- Catering Contract Management Package A
- Catering Service Monitoring Package B
- Single Site Catering Contract Management Package C
- In House Catering Support Package D
- Cleaning Contract Management Cleaning Package A
- Single Site Cleaning Contract Management Package B
- Cleaning and Caretaking Support Package C

EIS

Please refer to the EIS website (www.eisit.uk) for the Terms and Conditions which cover their services. Please note that there is a separate Terms and Conditions document for the schools broadband service.

Schools Personnel Service (SPS)

SPS provides all customers with a contract and all customers are bound by the terms within these. Notice periods are as follows:

- For rolling contracts six full calendar months written notice is required to downgrade or terminate a contract a school changes status, package upgrades can be processed with immediate effect upon written request. Six full calendar months written notice is also required for the cessation of the service in whatever form, this includes school closures and amalgamations.
- For fixed term contracts cancellation and downgrading between packages is not permitted during a fixed term contract, package upgrades can be processed with immediate effect upon written request.

Kent-Teach

The Kent-Teach monthly advertising service is offered on a rolling basis. Customers are required to provide six full calendar months written notice to terminate the contract. Six full calendar months written notice is also required for the cessation of the service in whatever form, this includes school closures and amalgamations.

Property Group – Classcare

It is intended that this scheme will run for a period of 3 years. The Service Provider is obliged to give 6 full calendar months written notice of any impending termination of the scheme. On completion of the three year period, any surplus monies will be refunded to the Customer pro rata based on the usage of the scheme. All ring fenced monies will be refunded or can be rolled forward into any proposed new scheme. Entry is a matter of choice and Schools are entitled to join the scheme at any time, up to six months before termination of the scheme, but may be subject to a premises inspection which could result in the exclusion of certain works.

Six full calendar months written notice is required from a School which wishes to withdraw from this scheme,

Schools wishing to join partway through the year will be charged pro-rata. Schools wishing to leave the scheme will still pay their annual contribution.

Legal Services – Schools' Legal Scheme

The Service is not provided on a rolling Contract.

The Scheme is priced according to the number of students on the roll of the School/ Academy/College and the Scheme covers the whole Academic Year

Health and Safety – CLEAPSS Radiation Protection Service (RPA) and Schools Science Services

RPA-must be committed to a 3 year membership. Charges are payable annually, due on the 1st April every year.

Health and Safety

Staff providing services, under the health and safety section, is members of the Institution of Occupational Safety and Health, and will follow the Code of Conduct of this Chartered body. This includes issues such as: not disclosing information prejudicial to the school's business; avoiding professional judgement being influenced by any conflict of interest; and where professional advice is not followed, taking steps to ensure that persons neglecting their advice are formally made aware of potential adverse consequences. For full details, see Code of conduct at www.iosh.co.uk.

Inclusion Support Service Kent (ISSK) formally MCAS

The ISSK packages have a minimum commitment of 12 full calendar months from the date the school signs up.

Schools Financial Services

The Schools Financial Services Core Financial Support Package is an annual contract with a commitment of 12 full calendar months. All other packages are subject to 4 full calendar months written notice to terminate the agreement (Terms & Conditions 6.1).

APPENDIX B

CONTRACT ADDENDUM

DIGITAL CONTENT AND ONLINE RESOURCES

This Digital Content and Online Resources agreement annexed to Appendix B shall form part of EduKent Terms and Conditions and shall have effect as if set out in full in the body of the EduKent Terms and Conditions of Contract

1. Meaning of Key Terms

"Agreement" means the contract between you and us for the sale and purchase of Digital Content and Online Resources, which includes these terms and conditions and the EduKent website privacy policy.

"Digital Content" is a term used by EduKent to cover any Digital Media sold by us or any Online Resource. It means any software, or other Intellectual Property made available through the website which can be downloaded or accessed online.

"Digital Content and Digital Media" means - Products available in digital form on the EduKent website, or any associated websites of EduKent or its services, or that is distributed by electronic media such as data transfers, DVD, USB or CD. This includes but is not limited to information and images that are available for download, documentation, brochures, leaflets, videos or webinars/e-learning.

"Intellectual Property Rights" means all intellectual property rights produced by EduKent and/or all intellectual property rights produced within its services, remain the property of EduKent, and are not to be distributed or replicated without prior permission from EduKent – including but not limited to text, brochures, leaflets, documentation, images, designs, symbols, logos, videos or webinars/e learning.

"Online Resource" – means resources produced and accessible via the EduKent website or download area, including and not limited to documentation, brochures, leaflets, videos or webinars/e-learning.

"purchase price" means the price of purchasing our Digital Content as stated on the website from time to time or in official communications from EduKent, which may include negotiated purchase prices, offers or sales.

"services" means using the website, completing online forms, purchasing digital content, and any related activities.

"website" means www.edukent.co.uk, via which we sell digital content.

"we" "us" and "our" refer to EduKent, part of Kent County Council.

"you" and "your" refer to you, the purchaser and any organisation on behalf of which Digital Content is purchased by you from the EduKent website.

"your organisation" means the organisation which you represent when purchasing Digital Content from us via the EduKent website.

2. Agreement & Basis of Sale

By submitting an order form, you are agreeing to enter into an agreement with us to purchase Digital Content in accordance with these terms and conditions of sale. You confirm that you have authority to bind any organisation on whose behalf you purchase at the advertised price or negotiated price.

Our website **terms and conditions** and **privacy policy** shall also apply to your purchase of any Digital Content from EduKent.

Each order form submitted by you to purchase Digital Content via the EduKent website shall be deemed to be an offer by you to purchase digital content from us in accordance with these terms and conditions. No order submitted by you shall be deemed to be accepted by us until you receive a confirmation email from us

Our acceptance of your order will take place when we email you to accept it, at which point a contract will come into existence between you (as the customer) and us (EduKent).

Our order form which contains your account information enables you to download or access Digital Content from the EduKent website.

It is your responsibility to ensure that the information you provide to us is accurate and complete, and we will not be liable for any errors in, or omissions from, your order form. We will be unable to accept an order from you until a complete and correct order form is submitted to EduKent.

No variation to these terms and conditions shall be binding unless agreed in writing by EduKent.

We recommend that you print a copy of these terms immediately before you pay for Digital Content for future reference. However, should you need a copy of the terms applicable to your purchase at some point in the future, please email us at edukent@kent.gov.uk

3. Price of the digital content & terms of payment

The purchase price of the Digital Content shall be the price quoted on the EduKent website from time to time. We reserve the right to change prices for Digital Content at any time and do not provide price protection or refunds in the event of a price drop or promotional offering. We reserve the right to change options relating to digital content from the Website without prior notice.

The purchase price is exclusive of value added tax (where it is applicable) which will be payable in addition to that sum in the manner and at such rate as prescribed by law from time to time, and which shall be added to the purchase price.

Payment shall be due by Direct Debit or Invoice. For non-UK customers, no access to resources shall be sent to you until payment of the purchase price in full, and in cleared funds, is received by us. Where access is given to resources prior to the invoice date, EduKent trusts you as a customer to pay the invoice for the Digital Content. If invoices remain unpaid, EduKent reserves the right to remove your access to the resource and to recover the cost of the resource from you directly, or using a third party debt-collection agency on our behalf.

You are not entitled to make any deduction from, set-off, or retention of, the amounts due under these terms and conditions unless you have a valid court order requiring an amount equal to such deduction, set-off or retention to be paid by us to you.

If we are unable to provide you with the Digital Content for any reason (other than due to an error or technical issues on your part, for example, you providing us with an incorrect e-mail address) within 14 days of your payment being received by us, you will be entitled to a refund of the purchase price. For the avoidance of doubt, if we refund the purchase price to you, we will be under no obligation to provide you with the digital content.

4. Delivery of the digital content

We will send an email to the email address that is linked to your account on the EduKent website (or the email address to which you submitted on your order form (if you are a new customer)), which will contain the information to your account where you will be able to download or access the Digital Content.

You will also be able to download or access the digital content from the website directly by logging in to your account, once your order has been processed by us.

We will not be liable to you in any manner or be deemed to be in breach of the agreement because of any delay in delivery of the digital content if the delay or failure was due to any cause beyond our reasonable control ("force majeure condition").

Without prejudice to the generality of the preceding paragraph, force majeure conditions shall include, but shall not be limited to: governmental actions, war or threat of war, national emergency, riot, civil disturbance, sabotage, insurrection or requisition; act of God, fire, explosion, flood, tempest, epidemic or accident; import or export regulations or embargoes or compliance with any governmental, parliamentary or local authority order, rule, regulation, direction or bye-law; strikes, lock outs or other industrial actions or trade or labour disputes (including actions or disputes involving the Seller's workforce); power and/or network failures.

5. IMPORTANT INFORMATION ABOUT OUR LIABILITY TO YOU – Limit of our liability

Nothing in these terms and conditions limits any liability that we may have to you in respect of any loss caused by our fraud, fraudulent misrepresentation or reckless disregard of our professional obligations or in any other situation where the law prohibits us from excluding or limiting our liability to you, including in respect of any death or personal injury resulting from our negligence.

In all other cases, we limit our liability for any claims made in respect of our negligence and/or breach of contract (including in respect of any omission) or in any other way arising from any digital content that you purchase and the provision of any related services to you or your organisation to a maximum of £1 million in aggregate.

Except as expressly stated in these terms and conditions, we do not give any representation, warranties or undertakings in relation to the Digital Content or any related services. Any representation, condition or warranty which might be implied or incorporated into these terms and conditions by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we will not be responsible for ensuring that the digital content will be suitable for your purposes.

Please note:

The extent to which any loss or damage will be recoverable by you or your organisation from us will also be limited so as to be in proportion to our contribution to the overall fault for such loss or damage, taking into account any contributory negligence by you and/or your organisation and any negligence by you and/or your

organisation's other advisers and/or any third party responsible to you and/or your organisation and/or liable in respect of such loss or damage.

We accept no liability towards any third parties who may have access to or who may use the digital content in any way, including any advisers who may be advising you or your organisation, even if that adviser has purchased the digital content.

6. Electronic communication

We will use ordinary e-mail to communicate with you and to send you a link via which you will be able to download or access digital content. Communications sent by e-mail are not secure and we do not accept any liability arising in connection with this. Users will be required to login securely to their account through their preferred web browser in order to gain access to a digital content. No digital content will be supplied directly by email.

In addition, you are solely responsible for ensuring that any email addresses and any other contact details provided by you to us are correct and kept up to date.

7. Data protection

In connection with the use of this service by you we may process "personal data" (referred to below as personal information) acting as a "data controller" or as a "data processor" on your behalf as such terms are defined in the Data Protection Act 1998 ("DPA").

The personal information we process as a data controller includes information about, and received from, you. This information may also be obtained from other third parties, such as credit reference agencies. The information we hold includes:

- personal information such as name, address and contact information (including email address); and
- payment information (including debit and/or credit card details).

We will use this information to provide the services to you and to deal with any enquiries that you may make.

We may also process this information for the purpose of compliance with applicable laws and regulations, or to defend ourselves in claims under such laws, or where necessary to exercise our legitimate business interests. Relevant portions of this information may also be used for other secondary legal, administrative and management purposes such as audits and research.

This personal information will be held in accordance with the applicable data protection legislation.

In providing the services to you, we may also act as a data processor in respect of personal information provided by you, or by third parties on your behalf or which we obtain for you. We will process this personal information in accordance with your instructions and will take appropriate technical and organisational measures against unauthorised or unlawful processing of this personal information and its accidental loss, destruction or damage.

We may share the personal information we hold as a data controller or data processor with members of EduKent or Kent County Council, or any Affiliated Office, other advisors, service providers or other third parties (some of which may be outside the European Economic Area in countries which do not have laws protecting the use of personal information) in connection with conflict clearance and other

administration or compliance requirements or the performance of legal, administrative or related services (including those referred to below). We may also disclose personal information to our insurers and their advisors, or to third parties and their advisors in connection with any merger, acquisition or disposal of all or part of our business. We will only disclose personal information to other people or organisations:

- if we have obtained your consent or instructions to do so; or
- where we are required or permitted to do so by law; or
- if those people or organisations are providing a service to us or you.

Sometimes we may ask other companies, including companies located outside of the United Kingdom, to undertake back office administration on our behalf, such as processing invoices, banking administration, payment and receipt of client monies, typing and other secretarial services.

Where we transfer personal information to service providers or advisers in other countries (some of which may be outside the European Economic Area in countries which do not have laws protecting the use of personal information), we will do so on the basis that the recipient provides appropriate technical and organisational measures against unauthorised or unlawful processing of this personal information and its accidental loss, destruction or damage.

However, such information may be accessible by law enforcement agencies and other authorities in those countries to prevent and detect crime and to comply with legal obligations.

Any personal information supplied by us to you about our employees and/or third parties may only be used for the express purposes for which that information is provided to you.

7. Use of Digital Content by customers

By purchasing Digital Content from us, you are agreeing to use this solely for the organisation or setting on whose behalf you are purchasing the Digital Content. For example, if you are purchasing Digital Content on behalf of a school, you are prohibited from sharing this with other schools, including those within a Multi-Academy Trust or wider organisation; unless that organisation has purchased the Digital Content from EduKent with agreement that it can be used by all schools within the organisation.

We have the right, but not the obligation, to monitor any activity and content associated with the Website. We may investigate any reported violation of these Conditions or complaints and take any action that we deem appropriate (which may include, but is not limited to, issuing warnings, suspending, terminating or attaching conditions to your access and/or removing any materials from the Website).

You acknowledge and agree that all copyright, trademarks and all other intellectual property rights in all material or content supplied as part of the Website shall remain at all times vested in us or our licensors. You are permitted to use this material only as expressly authorised by us.

You acknowledge and agree that the material and content contained within the Website is made available for your personal use (and the organisation on whose behalf you purchase Digital Content) and you may download any Digital Content purchased hereunder and view on your computer or other similar device. Any other use of the material and content of the Website is strictly prohibited. You agree not to

(and agree not to assist or facilitate any third party to) copy, reproduce, transmit, publish, display, distribute, commercially exploit or create derivative works of such material and content.

If we detect that you have without our authority either personally or by way of assistance/facilitation of any third party, copied, reproduced, transmitted, published, displayed, distributed, commercially exploited or created derivative works of our or our licensors material and content then we have the right to (a) suspend your user accounts, including any outstanding credits and (b) inform any relevant authorities empowered to act upon such unauthorised activity and/or copyright owners who's copyright may have been breached for them to take such necessary action as may be required. This will mean that we will be entitled to pass on your contact details to them.

You should assume that everything you see and read on the Website is copyrighted unless otherwise noted and may not be used except as provided by the Conditions.

You expressly agree that your use of, or inability to use any services provided on the Website is at your sole risk. All Digital downloads provided via the Website are provided "as is" and "as available" for your use, without warranties of any kind, either express or implied, including all implied warranties of merchantability, fitness for a particular purpose, title and non infringement.

We do not represent or guarantee that any service provided via the Website will be free from loss, corruption, attack, viruses, interferences, hacking or other security intrusions and we disclaim any liability relating thereto.

We will not be liable in contract, tort or otherwise if you incur loss or damage by connecting to the Website through a third party's hypertext link.

8. Retention of digital content by EduKent

Copies of any digital content generated by us for you will be stored on a secure server, operated by us, or such other digital media partner as we may elect to use from time to time (our digital media partners).

We and our digital media partner may retain copies of any reports generated for you for up to 15 years from the date on which the report is generated for legal and regulatory purposes.

9. Use of website

Subject to the remainder of this clause, your use of the website is governed by the website Privacy Policy and Terms and Conditions.

You will be provided with account access upon confirmation that we have accepted your order for Digital Content. You are responsible for maintaining the confidentiality of your email address, user ID, password or account. You agree to: (i) immediately notify us of any unauthorised use of your email address, password, user ID or account or any other breach of security and (ii) ensure that you exit from your account at the end of each session by logging out. We will not be liable to you or any third party for any loss or damage arising from your failure to comply with this provision.

Whilst we will endeavour to provide you with uninterrupted access to the website and to any Digital Content that you have purchased, we cannot and do not guarantee this. In particular, you may be denied access from time to time whilst we update the website and/or carry out maintenance work on the website. In addition, we reserve the right to terminate your access to the EduKent website at any time if you breach

any of the terms of use, our copyright or any of our other intellectual property rights.

If you cannot access the website or log-in to your account on the website for any reason, you can email us at edukent@kent.gov.uk to ask for a copy of any digital content that you have purchased to be emailed to you. Once a link to digital content has been emailed to you in response to such a request, it is your responsibility to ensure that you retain a copy of the digital content and we will not be obliged to send you any further copies of the digital content.

We reserve the right to modify or withdraw, temporarily or permanently, the whole/any part of Website with or without notice to you and you confirm that we shall not be liable to you or any third party for any modification to or withdrawal of the Website. The Website is subject to constant change. You will not be eligible for any compensation because you cannot use any part of the Website or because of a failure, suspension or withdrawal of all or part of the Website.

You agree to be fully responsible for (and fully indemnify us against) all claims, liability, damages, losses, costs and expenses (including legal fees) suffered by us and arising out of any breach of these Conditions by you or any other liabilities arising out of your use of the Website, or the use by any other person accessing the Website using your computer or internet access account.

Notwithstanding any other provision in the Conditions, nothing shall limit your rights as a consumer under English law where or insofar as such rights cannot be derogated from by contract.

If any part of the Conditions shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed to be severable from these Conditions and shall not affect the validity and enforceability of any of the remaining provisions of the Conditions.

10. Intellectual Property Rights

We retain ownership of any and all copyright or other intellectual property rights in the report and any other media and Digital Content created by us, including but not limited to the website and any e-mails sent by us to you.

Subject to payment in full of the purchase price, you and your organisation will have an access to use the digital content for your organisation's own business purposes only, but you do not obtain ownership of the copyright or any other intellectual property rights subsisting in the Digital Content and you will not have any rights to distribute or use the digital content for purposes not relating to your organisation's business.

You hereby grant us a licence to use the information submitted to us. We may retain records of the information that you submit to us for up to 15 years from the date on which you submit the information for legal and regulatory purposes.

11. Complaints procedure

Whilst we hope that you find the Digital Content helpful, if you feel that we have not met the standards you expect, please let us know immediately. You may raise concerns by emailing us at edukent@kent.gov.uk

12. Severability

If any part of these terms and conditions is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed and will be ineffective but without affecting any other provisions of this agreement which will remain in full force and effect.

13. Variation & alterations

We reserve the right to amend these terms and conditions of sale in the future, and we advise you to consult the terms and conditions on the website each time you order a Digital Content from us.