

Loaded onto WF Online on 5<sup>th</sup> May 2016

Version 3.0

**LONDON BOROUGH OF WALTHAM FOREST**

and

Service Purchaser

Agreement for the Provision of Services

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This Agreement is effective from the date of loading onto WF Online and covers all services purchased from this date.

between

(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WALTHAM FOREST of Town Hall, Forest Road, Walthamstow, LONDON E17 4JF (“the Council”)

-and -

(2) Service Purchaser (“the Customer”)

**BACKGROUND**

- A. The Council has agreed to provide services to schools within its local area.
- B. The Council is willing and able to provide the Services and this Agreement is made by the Council with the Customer to secure the provision of the Services by the Council subject to the terms and conditions of this Agreement.

**AGREED TERMS**

**1. Definitions**

1.1 The following terms have the following meanings in Agreement: -

<b>Authorised Officer:</b>	has the meaning given in clause 6.1
<b>Business Days</b>	any day other than Saturday, Sunday or public holidays
<b>Background Intellectual Property:</b>	means all technical know-how and information known to the Council and/or the Customer at the date of this Agreement of a confidential nature not in the public domain, together with all intellectual property rights owned by or licensed to the Council and/or the Customer at the date of this Agreement and, following the date of this Agreement, all technical know-how and information of a confidential nature (prior to it coming into the public domain) and intellectual property rights owned by or licensed to the Council and/or the Customer which is not Foreground Intellectual Property
<b>Charges:</b>	the amount specified in the Service Specifications for each of the Services or any amount subsequently agreed in writing between the parties
<b>Commencement Date:</b>	Date the order was confirmed on WF Online or as otherwise defined in the Service Specification
<b>Customer Data:</b>	any information which is provided by the Customer to the Council as part of the Customer’s use of the Services, including any information derived from such information

<b>Foreground Intellectual Property:</b>	means all information know how, results, designs, inventions and other matter capable of being the subject of intellectual property rights which is conceived, first reduced to practice or writing or developed in whole or in substantial part in the course of providing the Services
<b>Key Personnel:</b>	the people listed in the Service Specifications for each of the Services
<b>Relationship Manager:</b>	has the meaning given in clause 7.1
<b>Service Specification:</b>	A combination of a description of the service, together with the specific terms upon which the individual Services will be provided, where appropriate.
<b>Service Purchaser</b>	The school or other educational setting that agrees to purchase services under the terms of this Agreement, through WF Online
<b>Service Users:</b>	Governors, Management Team, employees or other agreed person of the Customer
<b>Services:</b>	the services detailed in the Service Specifications
<b>School Term</b>	The school autumn, spring and summer terms as defined by the term dates published by the Council
<b>Term:</b>	the Services will be provided for the term specified in the Schedule for each Service, subject to the Customer giving prior notice to terminate as set out in the Schedule for each Service, or the Council giving at least 6 months prior notice to terminate
<b>WF Online</b>	The order management system offered by the Council and used by the Customer to purchase services from the Council.

1.2 This Agreement is governed by English law subject to the jurisdiction of English Courts.

1.3 References to: -

- (a) any Act, Order, Regulation, Statutory Instrument, etc, include any amendment or re-enactment.
- (b) one gender include any other gender
- (c) persons include corporations
- (d) singular includes the plural
- (e) clauses are to clauses in the Agreement

- 1.4 This Agreement represents the entire agreement between the Council and the Customer and supersedes all other undertakings, statements and agreements relating to the provision of the Services.

## **2. Purpose of Agreement**

- 2.1 The Council agrees to provide the Customer with the Services as described in the Service Specifications in accordance with this Agreement and the Service Specifications set out in the Service Specifications.

## **3. Period of Agreement**

- 3.1 The Council shall provide each of the Services for the Term specified for each individual Service in its description on WF Online or as otherwise agreed between the Council and the Customer and recorded through the order placed in WF Online

## **4. The Council's Obligations**

- 4.1 The Council shall provide the Services with all reasonable skill and care and in accordance with the Service Specifications available within WF Online at the time that the service was purchased and the terms of this Agreement.

## **5. Customer's Obligations**

- 5.1 The Customer shall comply with its obligations, which are set out in the Service Specifications within WF Online for each of the Services.

- 5.2 The Customer shall:

- 5.2.1 provide the Council with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be required by the Council;
- (c) all necessary access to the Customer's premises as may be required by the Council;

in order to render the Services, including but not limited to Customer Data, security access information and software interfaces, to the Customer's other business applications;

- 5.2.2 provide such personnel assistance, including the Authorised Officer and Key Personnel, as may be reasonably requested by the Council from time to time;

- 5.2.3 nominate the Authorised Officer, who shall have the authority to contractually bind the Customer on all matters relating to this Agreement. The Customer shall use reasonable endeavours to ensure continuity of the Authorised Officer;
- 5.2.4 comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- 5.2.5 carry out all other Customer responsibilities set out in this Agreement or in any of the Service Specifications in a timely, efficient and effective manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Council may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.

## **6. Authorised Officer**

- 6.1 The Authorised Officer is the person nominated by the Customer to act on its behalf and may issue instruction to the Council on any matter related to this Agreement. The Customer will also provide designated Key Personnel for each of the Services to co-ordinate the day to day interface between the Customer and the Council.

## **7. Relationship Manager**

- 7.1 The Council shall appoint a Relationship Manager approved by the Customer. The Relationship Manager shall be the primary (but not the sole) point of contact for the Customer for all of the Services purchased by the Customer. Any notice, instruction or other information given to the Relationship Manager shall be deemed to have been given to the Council.

## **8. Key Personnel and Staffing**

- 8.1 The Council shall provide sufficient staff, to provide each of the Services and shall ensure that there is a named key contact for each of the Services. Where set out in the Service Specifications the Council shall designate Key Personnel for a Service or Services
- 8.2 Unless otherwise set out in the Service Specifications, the Key Personnel will be available by telephone during normal office hours (9.00 am to 5.15pm Monday to Thursday and 9.00am to 5.00pm Friday, excluding public holidays) to provide advice to the Authorised Officer or other appropriate officer. In the event of staff sickness or annual leave, the Council will provide and ensure continuity of service as specified for each of the Services in the Service Specifications.
- 8.3 The Council will ensure that all staff employed for the purpose of providing the Services are appropriately qualified and have the necessary knowledge, skills and competencies to provide the Services. The Council will also ensure that such staff are provided with appropriate on-going learning and development to ensure up to date advice and that the Customer can satisfy employment, equal opportunity and other legislation.
- 8.4 Where the Services involve contact with children or vulnerable adults or the handling of sensitive data or financial records, the Council will ensure that the relevant staff have up to date Disclosure and Barring Service disclosure checks, including enhanced disclosure checks where appropriate.

8.5 Subject to clause 18, if the Customer has grounds for concern about the actions, behaviour or record of any person involved in the provision of the Services by the Council, those concerns should be notified to the Relationship Manager who will take any necessary action, to the satisfaction of both parties to the Agreement.

8.6 For the duration of the Agreement and for a period of 3 months thereafter neither the Customer nor the Council shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management and/or the delivery of the Services without that other Party's prior written consent such consent not to be unreasonably withheld.

## **9. Premises**

9.1 The Services will be provided from Waltham Forest Town Hall complex, Forest Road, Walthamstow, London E17 4JF, or such other appropriate accommodation as may be designated. The Council agrees to permit access to its premises to the Authorised Officer or other appropriately designated person for the purpose of monitoring the service provided upon reasonable prior notice.

## **10. IT Systems and Technology**

10.1 The Council will arrange, subject to approval by the Customer, for such access as is reasonably required to its IT system by the Authorised Officer for the purposes of providing the Services.

10.2 The Customer understands and agrees that, provided the Council gives the Customer as much notice as possible (and, whenever practicable, agrees the time with the Customer) then the Council may suspend the provision of the Services for operational reasons or because of an emergency.

10.3 The Council will ensure that all Customer Data is secure and that access to such Customer Data shall at any time be limited to the Authorised Officer and the designated Key Personnel.

## **11. Service Performance Standards and Monitoring**

11.1 The Council will deliver the Services in accordance with the Service Specifications for each of the Services.

11.2 The Council will conduct performance monitoring to establish the level of user satisfaction of the Services. This may include an annual customer survey; the Services to be covered each year will be agreed with the Customer in advance.

11.3 The Council will maintain appropriate records to enable the Customer to verify the work carried out in accordance with this Agreement.

## **12. Annual Review**

12.1 During each financial year the Council and the Customer will jointly review the continued application of the Services against the needs of the Service Users. This will include the

review of the Services against the monitoring and performance standards identified in clause 11.

### **13 Risk Management and Contingency Planning**

- 13.1 The Council will work with its partners and contractors to ensure that comprehensive disaster recovery arrangements are in place to restore data in the event of a complete system failure. These arrangements will be made known to the Authorised Officers who will also be informed of any changes to these arrangements.
- 13.2 The Council will use all reasonable endeavours to ensure, with the co-operation of its partners, that the disaster recovery arrangements described in clause 13.1 are in place.

### **14 Modifications / Variation**

- 14.1 The Council may vary this Agreement upon such terms as may be agreed with the Customer and, where appropriate, the variation will include provision for the adjustment of the agreement charges.
- 14.2 All variations shall be recorded in writing and attached to this Agreement.

### **15 Assignment and Sub-Contracting**

- 15.1 Neither Party will assign this Agreement or any part of it without the prior written consent of the other.
- 15.2 The Council will not sub-contract this Agreement or any part of it without the prior written consent of the Customer<sup>1</sup> which shall not be unreasonably withheld or delayed.

### **16 Liabilities and Insurance**

- 16.1 The following provisions set out each party's entire liability (including any liability for the acts and omissions of their respective employees, agents or sub-contractors) to the other parties in respect of:
  - 16.1.1 any breach of its contractual obligations under this Agreement; and
  - 16.1.2 any representation, statement or tortious act or omission, including negligence, arising under or in connection with this Agreement.
- 16.2 Nothing in this Agreement will exclude or limit the liability of either Party for:
  - 16.2.1 death or personal injury caused by its negligence; or

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<sup>1</sup> In some circumstances, e.g to deal with peaks in workload and demand, the Council may provide some of the Services through a sub-contractor, consultant or agency member of staff. Wherever possible the Customer will be given advance notice of this.

16.2.2 fraud or fraudulent misrepresentation.

16.3 Except to the extent permitted by law each party's liability to any other party (other than any liability of the Customer to pay the Charges for the Services under this Agreement) shall be limited to the total of the Charges payable by the Customer to the Council under this Agreement.

16.4 Subject to the provisions of clause 16.3 no party is liable to any other party or to any third party, whether in contract, tort, under statute or otherwise (including each case negligence) or otherwise for any of the following types of loss or damage arising under or in relation to this Agreement:

16.4.1 any loss of profits, business contracts, anticipated savings, goodwill or revenue; and/or

16.4.2 any indirect or consequential loss or damage whatsoever.

even if that party was advised in advance of the possibility of such loss or damage arising.

16.5 The Customer acknowledges and agrees that the provisions of this clause 16 are reasonable and reflected in the amount of the Charges, which would be higher without those provisions, and the Customer accepts such risk and/or will insure accordingly.

16.6 Each Party shall at all times take all reasonable steps to minimise and mitigate any losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Agreement.

16.7 The Council shall have in place and maintain public liability insurance against its liabilities under this Agreement for death, injury or third party damage for the sum of £10 million in respect of each and every incident in relation to which a claim against it is made.

16.8 The Council shall have in place and maintain employer's liability insurance against its liabilities under this Agreement for death, injury or third party damage for the sum of £10 million in respect of each and every incident in relation to which a claim against it is made.

16.9 The Council will maintain throughout the Term adequate insurance to cover the liabilities referred to in clause 16.1 which shall be for the minimum of £2 million in respect of all risks that may be incurred by the Council.

16.10 The Council will provide the Customer with a copy of the certificate of insurance referred to in clauses 16.7 to 16.9 on request.

16.11 Each Party will indemnify the other from and against all actions, proceedings, costs, claims and demands whatsoever (including damage to the other's property) arising from the negligence of the other Party, its servants or agents in connection this Agreement.

## **17 Charges**

- 17.1 The Charges are specified and agreed within WF Online at the point of ordering. Annual service charges will be invoiced by the Council each year in termly instalments on or after the first day of each of the School Terms.
- 17.2 Where Charges are variable based on activity levels, invoices will be raised monthly following the end of the month in which the Service(s) have been carried out.
- 17.3 Charges are subject to the addition of Value Added Tax at the prevailing rate where appropriate.
- 17.4 Invoices will be payable in accordance with the terms set out on the invoice.

## **18 Dispute Resolution**

- 18.1 Any dispute or difference (in this Condition 'the dispute') which arises between the Council and the Customer as to the construction of this Agreement, as to their respective rights, duties and obligations or as to any other matter arising out of or connected with the Agreement shall be determined in accordance with the provisions of this Condition.
- 18.2 The Customer is not permitted to raise a dispute on the basis that the Council owes it money, which may or not exceed the amount that the Customer owes the Council in relation to the provision of services governed by this Agreement. In these circumstances, the Customer is still required to pay their invoice(s) in accordance with clause 17.6.
- 18.3 In the first instance the Authorised Officer and the Relationship Manager shall meet within 10 Business Days of the dispute or difference arising and endeavour to resolve the matter in dispute.
- 18.4 If the Authorised Officer and the Relationship Manager are unable to resolve the dispute or difference as a result of the meeting under clause 18.3, either the Authorised Officer or the Relationship Manager or both of them shall submit the dispute to senior officers of both parties, to be agreed at the time, to assist in resolving the dispute. The senior officers will, acting reasonably, seek to resolve the dispute on behalf of the Council and the Customer.

## **19 Breach of Agreement, Suspension and Termination**

- 19.1 Where the Services are not provided in accordance with this Agreement the Customer may, by written notice, request that the Council should remedy the failure.
- 19.2 In the event that the Customer is of the reasonable opinion that there has been a failure to perform a Service and such failure constitutes a material breach of the Council's obligations under this Agreement, then the Customer may, without prejudice to any other rights or remedies it may have under this Agreement, require the Council to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within ten (10) Business Days or such other period of time as the Customer may direct.
- 19.3 In the event that the Council fails to comply with clause 19.2 or fails to remedy the breach within the time directed by the Customer, the Customer may, consult with the Council and then do any of the following:

- 19.3.1 without terminating this Agreement, suspend the affected Service by giving written notice to that effect to the Council;
- 19.3.2 without terminating the whole of this Agreement, terminate this Agreement in respect of the affected part of the Services only in accordance with clause 19.5 (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Customer may supply or procure a third party to supply such part of the Services; or
- 19.3.3 terminate this Agreement in accordance with clause 19.5.
- 19.4 Either Party may voluntarily terminate this Agreement or any Service by giving the other Party the relevant amount of written notice, as set out in the Service Specifications at any time after the Commencement Date.
- 19.5 The Customer may terminate this Agreement in whole or part with immediate effect by written notice to the Council if:
  - 19.5.1 the Council is in persistent or repetitive breach of the Service Specifications;
  - 19.5.2 the Council is in persistent breach of its obligations under this Agreement;
  - 19.5.3 the Council has breached any of its obligations under this Agreement and that breach materially and adversely affects the provision of the Services in accordance with this Agreement, and the Council has not remedied that breach within forty (40) Business Days following receipt of notice from the Customer identifying the breach.

## **20 Data Protection and Freedom of Information**

- 20.1 The Council will comply with all obligations equivalent to those imposed on a Data Controller in accordance with the seventh principle under the Data Protection Act 1998.
- 20.2 All information provided by the Council to the Customer will be provided in accordance with the requirements of the Freedom of Information Act 2000.

## **21 Confidentiality**

- 21.1 Each party shall treat all information belonging to the other party as confidential and safeguard it accordingly subject to the Freedom of Information Act 2000 and any other statutory, legal or parliamentary obligation placed upon the parties.

## **22 Intellectual Property**

- 22.1 For the avoidance of doubt, all Background Intellectual Property and know how relating to or used in connection with the Services shall remain the property of the party introducing the same.

- 22.2 The Council will disclose to the Customer all Foreground Intellectual Property immediately on its coming into existence. All rights to Foreground Intellectual Property shall be proprietary to and owned by the Council.
- 22.3 The Council grants to the Customer the non-exclusive, royalty free, perpetual and irrevocable right and licence to use all Foreground Intellectual Property so far as it is needed for the Customer or any assignee, agent or employee of the Customer to use the Services.

## **23 Health and Safety**

- 23.1 The Council shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders, regulations and Codes of Practice as far as they apply to the provision of the Services and shall have in place a health and safety policy which complies with all statutory requirements.
- 23.2 The Customer will promptly notify the Council of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Council in the performance of the Contract.

## **24 Equal Opportunities**

- 24.1 The Council will comply with employers' statutory obligations under the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Act 2002, the Race Relations Act (Amendment) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006 and the Equality Act 2006. The Council will not discriminate directly or indirectly against any person because of their age, sex, colour, race, nationality, ethnic origin, disability, religious beliefs or sexual orientation in relation to decisions to recruit, train, promote, discipline or dismiss employees or in relation to the delivery of the Services under this Agreement;
- 24.2 The Council will provide such information as the Customer may reasonably request for the purpose of assessing the Council's compliance with obligations in clause 24.1.

## **25 New Legislation**

- 25.1 Without prejudice to any other Clause in this Contract, where new legislation is enacted during the Contract Period which has the effect of changing the manner in which the Services or any part of the Services is to be provided, the Council shall ensure that:
- (a) the Authorised Officer is informed of the nature and effect of such legislation and the changes necessitated by it in the Services
  - (b) the Services are provided in accordance with such legislation

## **26 Training Charging Policy**

- 26.1 All training opportunities provided by Waltham Forest Council to education and childcare professionals will be advertised via The Hub website<sup>2</sup> and booked via WF Online.
- 26.2 Training places are offered on a first come, first served basis.
- 26.3 Places will be confirmed to the attendee via WF Online.

### **FEE PAYING COURSES**

- 26.4 Please note that once you have made your booking online practitioners/ settings/ schools will be invoiced at the end of each month via WF Online.
- 26.5 If your place is confirmed but you are unable to attend please provide a minimum of five working days' notice. You will be charged the full rate for any fee paying course which is not cancelled within the five working days notice or for non-attendance.
- 26.6 If a training course is more than one session your setting/school will be charged for every session not attended e.g. if the training course is six half day sessions and the attendee only attends two sessions the setting/school will be charged for the remaining four sessions.

### **HOW TO CANCEL A COURSE**

- 26.7 Places are to be cancelled via WF Online.

### **NON-FEE PAYING COURSES**

- 26.8 Waltham Forest Council Services will deliver forums and training that are free at the point of delivery (i.e. no charge) to local education and childcare professionals. These forums and training sessions will generally form part of a statutory offer or part of the universal offer agreed at Schools Forum and the Early Years Forum.
- 26.9 These forums / training sessions will be delivered at an occupancy level that ensures best value. If a place is confirmed but the attendee is unable to attend a minimum of five working days' notice is expected. Places are to be cancelled via WF Online. If you do not attend and you have not given us the required notice of your non-attendance then we reserve the right to make an administration charge of £25.00 for a half day course/session or £50 for a full day course/session.

### **CHILDCARE**

- 26.10 Childcare facilities are not on offer at any LBWF training venues.

### **MAXIMUM NUMBER OF ATTENDEES PER SETTING**

- 26.11 To ensure that training is accessible to all LBWF settings/schools all training will stipulate the maximum number of attendees allowed per setting.

### **NON-LBWF SETTINGS<sup>3</sup>**

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<sup>2</sup> <https://thehub.walthamforest.gov.uk/meetings-and-events>

2. Includes all education and childcare practitioners eg childminders, childcare providers and schools.

- 26.12 Non-LBWF settings who wish to attend LBWF training will be charged at full rate for Fee-paying courses and charged £50 for a half day or £100 for a full day 'Non-Fee paying' course.
- 26.13 If places are required by LBWF practitioners LBWF retains the right to re-allocate the place. In these circumstances any charges will be reimbursed.

## **27 Obligations at the End of the Contract**

- 27.1 At the end of the Term or the termination of any Service the Council shall work collaboratively and effectively with the Customer, to transfer any appropriate data and/or information in order to ensure an effective handover of the Service or Services to any incoming service provider.