

**EDSENTIAL COMMUNITY INTEREST COMPANY
CONDITIONS OF CONTRACT FOR THE SUPPLY OF CATERING
SERVICES TO SCHOOLS**

1. **DEFINITIONS and INTERPRETATION.**

In this Agreement the definitions detailed in the Contract Particulars (as defined below) shall have the same meaning as those given in the Contract Particulars unless indicated otherwise below.

"Agreement" means, together, the Contract Particulars, these terms and conditions and the Specification.

"Authorised Representative" means Edsential's authorised representative as detailed in the Contract Particulars, or such person or persons as notified by Edsential to the Customer from time to time in writing and being a person who can make decisions under this Agreement without the need for the matter to be escalated further.

"Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Change Order" means a record of a variation of the Agreement made and agreed by Edsential and the Customer in accordance with Clause 6 of these terms and conditions.

"Contract Particulars" means the Edsential official order form setting out details of the Customer's requirements, and to be signed by each of the Customer and Edsential.

"Customer" means the Customer as detailed in the Contract Particulars.

"Customer's Equipment" means any fixed plant or machinery or kitchen equipment, including lightweight kitchen equipment and tools, systems, cabling or facilities for the supply of electricity, gas or water, provided and owned by the Customer and used directly or indirectly in the supply of the Services and/or Goods. For the purposes of clarity, such equipment may include but is not limited to: oven or range, steamer, hot cupboards, mobile heated trolleys, servery counter and gantry, food mixers, potato oven, Insectocuter, sterilizer, convection oven, deep fat fryer, combination oven, cooking and food heating equipment, cold rooms, fridges, freezers, dishwasher, work benches and surfaces, air ventilation and heating systems, lifts, servery equipment, cooking and eating utensils.

"Customer's Manager" means the Customer's authorised representative as detailed in the Contract Particulars, or such person or persons as notified by the Customer to Edsential from time to time in writing and being a person who can make decisions under this Agreement without the need for the matter to be escalated further.

"Deliverables" means all documents, products, marketing materials, software programmes, kitchen management system software applications and other materials developed by Edsential or its agents, subcontractors, consultants and employees in relation to the Services and/or Goods.

"Edsential" means Edsential Community Interest Company (company number 09550258) and with its registered office at Whitby Hall Lodge, Stanney Lane, Ellesmere Port, CH65 6QY.

"Edsential's Equipment" means the kitchen management system software and associated hardware, meal selection software and temperature monitoring equipment provided and owned by Edsential or its subcontractors and used directly or indirectly in the supply of the Services and/or Goods AND any fixed plant or machinery or kitchen equipment that is provided and owned by Edsential or its subcontractors and loaned to the Customer which are not the subject of a separate agreement between the parties under which title passes to the Customer.

"Goods" means the goods and food to be supplied by Edsential to the Customer and as detailed in the Specification.

"Maintained Equipment" shall have the meaning detailed in the Specification and as may be amended in the Contract Particulars.

"Specification" means the specification of the catering service to be provided by Edsential to the Customer as detailed in the Specification attached to these terms and conditions and in the Contract Particulars.

"Services" means the catering services to be provided by Edsential to the Customer and as detailed in the Specification.

2. THE CONTRACT AND CONTRACT PERIOD

- 2.1 These terms and conditions, the Specification and the Contract Particulars govern the contract and form the only Agreement between Edsential and the Customer. No other conditions will apply. Edsential's delivery of Goods and/or the supply of Services shall imply that the Customer has accepted Edsential's offer, Contract Particulars, Specification and these terms and conditions .
- 2.2 The Agreement between Edsential and the Customer shall take effect on the Commencement Date and shall continue unless otherwise terminated in accordance with the Agreement.

3. THE PRICE, PAYMENT AND PRICE REVIEW

- 3.1 The Price of the Goods and/or Services is as detailed in the Contract Particulars. The Customer will pay any VAT due. The Price shall consist of the Meal Payments and the Annual Payment as per the Contract Particulars. The Meal Payments shall be calculated and invoiced and paid monthly in accordance with clauses 3.3 to 3.8 below. The Annual Price shall be calculated in accordance with schools average meal uptake and invoiced during September of each year.
- 3.2 No variation in Price will apply unless agreed in writing by the Authorised Representative prior to delivery of Goods or Services; and
- 3.2.1 IF A ONE YEAR CONTRACT: No variation in Price will apply unless also agreed in writing by the Customer's Manager.
- 3.2.2 IF A THREE YEAR CONTRACT: Edsential shall conduct a Price Review on or around 1st April of each year. Following any Price Review, Edsential may, by giving no less than three (3) month's written notice to the Customer, vary the Price in line with (a) the material increase or decrease in the cost of raw materials and/or (b) the percentage increase or decrease in the Consumer Prices Index in the preceding academic year period and/or (c) the number of pupils attending the Customer's school or schools in the next academic year. The variation in Price shall be effective from 1st September of the year in which notice has been given. No other variation in Price will apply unless agreed in writing by the Customer's Manager.
- 3.3 Edsential shall notify the Customer on Tuesday of each week with the number of meals served in the previous week. The Customer must notify Edsential of any discrepancies within three business days of receipt. The Customer is deemed to have verified the number of meals if a challenge is not made within three business days.
- 3.4 The Meal Payment payable for Goods received and Services completed shall be calculated by Edsential in accordance with the price per meal and the number of meals consumed. The calculation of the amount payable shall be made at the end of each month using data supplied and / or verified by the Customer.
- 3.5 Payment for Goods received and Services completed must be made within 14 days of the date of Edsential's invoice therefor. Time for payment shall be of the essence. Edsential will usually raise an invoice for payment on the first day of each month but reserves the right to raise an invoice on any date or for part of a month or for any other period in respect of Goods received or Services completed and not yet invoiced.
- 3.6 The Customer must pay by BACS to the account details detailed on the Contract Particulars.
- 3.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Edsential on the due date:
- 3.5.1 the Customer shall pay interest on the overdue amount at the rate of 8% per annum above National Westminster Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
- 3.5.2 Edsential may suspend all Services, and/or the supply of Goods, until payment has been made in full.
- 3.6 All sums payable to Edsential under this Agreement shall become due immediately on its termination, despite any other provision. This clause 3.6 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.

4. QUALITY OF GOODS AND SERVICES AND EDSENTIAL'S OBLIGATIONS

- 4.1 Edsential will use all reasonable endeavours to:
 - 4.1.1. ensure that the Goods are fit for the purpose made known to Edsential by the Customer;
 - 4.1.2. ensure that the Goods are of satisfactory quality;
 - 4.1.3. ensure that the Goods are entirely safe and conform to all relevant British and European standards and/or legislation;
 - 4.1.4. ensure that the Goods and/or Services are (as applicable) delivered to the Customer and performed by Edsential in accordance with the Specification and the Contract Particulars, but any timeframes specified are estimates only, and time for delivery and/or performance shall not be of the essence of this Agreement;
 - 4.1.5. provide a weekly summary of paid and free meal numbers and other income which will be sent via email to the Customer;
 - 4.1.6. ensure that the Services are performed with due skill, care and diligence expected of a professional body experienced in carrying out services of the kind envisaged;
 - 4.1.7. ensure that the Goods and Services are supplied by supervised, experienced, qualified, trained and competent staff, and with the necessary staffing resources being made available by Edsential;
 - 4.1.8. procure that any Edsential employees shall not, in connection with this Agreement commit a Prohibited Act under the Bribery Act 2010; and
 - 4.1.9. comply with all Edsential policies detailed and displayed on its website.
 - 4.1.10. take positive action and collective ownership in progressing the School's environmental initiatives, carbon reduction, including energy management, recycling and green travel.
 - 4.1.11. have in place operational procedures that cover all "due diligence" aspects of providing a catering service and performance monitoring systems to ensure both consistency of provision and legislative compliance.

5 CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
 - 5.1.1 co-operate with Edsential in all matters relating to the provision of Services and/or Goods and comply with the 'Customer Obligations' detailed in the Specification;
 - 5.1.2 adhere to the Food Allergy process to ensure safety of pupils;
 - 5.1.3 appoint the Customer's Manager in relation to the Services and Goods, who shall have the authority contractually to bind the Customer on matters relating to the Services and Goods;
 - 5.1.4 grant Edsential, its agents, subcontractors, consultants and employees (Edsential Personnel), in a timely manner and at no charge, access to the Customer's premises, kitchen, office and other accommodation, data and other facilities reasonably required by Edsential or any Edsential Personnel to ensure that the Goods and/or Services are delivered to the Customer and performed by Edsential;
 - 5.1.5 provide, in a timely manner and no later than 9-30am, pupil attendance numbers and such other information as Edsential may require to minimise food waste and the use of resources, and ensure that it is accurate in all material respects;
 - 5.1.6 provide a minimum of one weeks' notice of Customer organised trips, training days or other activities that will affect the number of pupils at any of the Customers' premises;
 - 5.1.7 inform Edsential of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
 - 5.1.8 provide access to the Customer's first aid facilities, qualified first aid staff and equipment to Edsential staff whilst working at the Customer's premises;
 - 5.1.9 No later than 1st November to Inform Edsential of the number of pupils on the school or schools roll for the forthcoming academic year;
 - 5.1.10 ensure that all the Customer's Equipment is kept and maintained in good working order in accordance with Edsential's requirements and suitable for the purposes for which it is used and for use by Edsential Personnel in delivering or performing the Goods and/or Services and conforms to all relevant United Kingdom standards or requirements; **NOTE** that some items of Customer's Equipment ("the Maintained Equipment") will be repaired and maintained by Edsential in accordance with the Specification and Contract Particulars subject to payment of the appropriate annual repair and maintenance charge by the Customer;
 - 5.1.11 obtain and maintain all necessary licences and consents as directed by Edsential and comply with all relevant legislation in relation to the installation and maintenance of the Customer's Equipment; **NOTE** that some consents licences or certifications will be obtained by Edsential in accordance with the Specification subject to payment by the Customer of the appropriate annual charge;
 - 5.1.12 replace any item of Customer's Equipment that is obsolete or deemed uneconomic to repair with new or reconditioned replacements to an equivalent specification and to Edsential's reasonable satisfaction AND not to dispose of, replace or use any item of Customer's Equipment other than in accordance with Edsential's written instructions or authorisation;
 - 5.1.13 maintain the fabric of the building (interior & exterior) and the general working environment, in the kitchen and associated areas, (including floors, walls, ceilings, utilities, fixtures, light fittings and windows) to ensure compliance with health and safety legislation and 'good practice' standards;
 - 5.1.14 be responsible for the cost of removing any pest infestation in the kitchen in a timely manner;

- 5.1.15 provide suitable welfare facilities for Edsential staff including changing and toilet facilities;
- 5.1.16 be responsible for the cost of removing any pest infestation in the kitchen in a timely manner;
- 5.1.17 be responsible for high-level cleaning, deep cleaning and all extraction, ventilation and canopy cleaning;
- 5.1.18 complete remedial action or work required following report of an issue, concern or defect or based on findings of a Health and Safety risk assessment or Environmental Health Officer report;
- 5.1.19 co-operate with Edsential and take all reasonable steps to ensure that both Edsential and the Customer comply with their health and safety legal obligations for all Edsential staff and contractors whilst on the school site.
- 5.2 If Edsential's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Edsential shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 5.3 The Customer shall be liable to pay to Edsential, on demand, all reasonable costs, charges or losses sustained or incurred by Edsential that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement and upon Edsential confirming such costs, charges and losses to the Customer in writing.
- 5.4 The Customer shall not, without the prior written consent of Edsential, at any time from the date of this Agreement to the expiry of 24 months after the completion of the Services or termination of this Agreement (whichever occurs later), solicit or entice away from Edsential or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Edsential in the provision of the Services.
- 5.5 Any consent given by Edsential in accordance with clause 5.4 shall be subject to the Customer paying to Edsential a sum equivalent to 25% of the then current annual remuneration of Edsential's employee, consultant or subcontractor or, if higher, 25% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

6 CHANGE REQUEST

- 6.1 If either party wishes to change the scope or execution of the Services and/or provision of Goods, it shall submit details of the requested change to the other party in writing (**Change Request**).
- 6.2 If Edsential originates a Change Request, it shall provide, with the Change Request, written details of the impact which the proposed change will have on:
 - 6.2.1 the Services and/or Goods;
 - 6.2.2 Edsential's existing charges;
 - 6.2.3 the timetable for the delivery of the Services and/or Goods; and
 - 6.2.4 any of the terms of this Agreement.
- 6.3 Edsential may, from time to time and without notice or the Customer's consent, change the Services and/or Goods in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services and/or Goods.
- 6.4 If the Customer originates a Change Request, Edsential shall, as soon as reasonably practicable after receiving the Change Request, provide a written estimate to the Customer setting out:
 - 6.4.1 the likely time required to implement the proposed change;
 - 6.4.2 details of the impact which the proposed change will have on:
 - 6.4.3 the Services and/or Goods;
 - 6.4.4 Edsential's existing charges;
 - 6.4.5 the timetable for the delivery of the Services and/or Goods; and
 - 6.4.6 any of the terms of this Agreement.
- 6.5 Unless both parties consent to a Change Request, there shall be no change to the delivery of the Services and/or Goods and any other terms of this Agreement.
- 6.6 If both parties consent to a Change Request, it shall be signed by the each of the Authorised Representative and the Contract Manager, upon which the Change Request becomes a **Change Order**.
- 6.7 If either party is unwilling to accept a Change Request suggested by the other (or a term of any proposed Change Order), then the other party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 13.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 As between the Customer and Edsential, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by Edsential. Subject to clause 7.2, Edsential licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services and/or Goods. If this Agreement expires or is terminated in accordance with its terms this licence will automatically terminate.
- 7.2 The Customer acknowledges that, where Edsential does not own any of the Intellectual Property Rights and other rights in the Deliverables, the Customer's use of rights is conditional on Edsential obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle Edsential to license such rights to the Customer.

8 LIMITATION OF LIABILITY

- 8.1 Nothing in this Agreement shall limit or exclude Edsential's liability for:
- 8.1.1 death or personal injury caused by its negligence;
 - 8.1.2 fraud or fraudulent misrepresentation; or
 - 8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, Edsential shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
- 8.2.1 loss of profits;
 - 8.2.2 loss of sales or business;
 - 8.2.3 loss of agreements or contracts;
 - 8.2.4 loss of anticipated savings;
 - 8.2.5 loss of or damage to goodwill;
 - 8.2.6 loss of use or corruption of software, data or information;
 - 8.2.7 cost of arranging alternative supply and provision of the Goods and Services; and
 - 8.2.7 any indirect or consequential loss.
- 8.3 Subject to clause 8.1 Edsential's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to an amount equal to the amount payable in respect of the Goods and /or Services supplied under the terms of this Agreement in the twelve-month period immediately preceding the date of claim.

9 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

- 9.1 The Customer and Edsential both acknowledge that each party is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Customer and Edsential must assist and co-operate with the other party to enable each party to comply with these information disclosure requirements.

10 TERMINATION

- 10.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 10.1.1 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 10.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 10.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
 - 10.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
 - 10.1.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - 10.1.6 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 10.1.7 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is

- appointed over all or any of the assets of the other party;
- 10.1.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 10.1.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.1 to clause 10.1.7 (inclusive); or
- 10.1.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 10.2 For the purposes of clause 10.1.1 **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement.
In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 10.3 Without affecting any other right or remedy available to it, Edsential may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified to make such payment.
- 10.4 Either party may terminate this Agreement for any reason whatsoever by:
- 10.4.1 If a One Year Contract; giving notice on or before 1st May to the other party that the Agreement will terminate on the 31st of July of that year.
- 10.4.2 If a Three Year Contract; giving notice on or before 1st May of the third academic year of the contract to the other party that the Agreement will terminate on 31st July of that year.
- 10.5 Edsential may terminate this Agreement, and/or any Goods or Services to be provided hereunder, at any time upon three months' notice to the Customer and in the event that Edsential ceases to provide such Goods and/or Services as a part of its business.

11 CONSEQUENCES OF TERMINATION

- 11.1 On termination or expiry of this Agreement:
- 11.1.1 the Customer shall immediately pay to Edsential all of Edsential's outstanding unpaid invoices and interest and, in respect of the Services and/or Goods supplied but for which no invoice has been submitted, Edsential may submit an invoice, which shall be payable immediately on receipt;
- 11.1.2 the Customer shall, return all of Edsential's Equipment, and Deliverables. If the Customer fails to do so, then Edsential may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- 11.1.3 the following clauses shall continue in force: clause 7 (Intellectual Property Rights), clause 8 (*Limitation of Liability*), clauses 15.11 and 15.12 (*governing law and jurisdiction*).
- 11.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

12 FORCE MAJEURE EVENT

- 12.1 A **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
- 12.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 12.1.2 epidemic or pandemic; animal or other disease affecting the food chain;
- 12.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 12.1.4 nuclear, chemical or biological contamination or sonic boom;
any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
collapse of buildings, fire, explosion or accident; and
- 12.1.5 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause);
- 12.1.6 non-performance by suppliers or subcontractors; and
- 12.1.7 interruption or failure of utility service.
- 12.2 Provided it has complied with clause 12.3, if a party is prevented, hindered or delayed in or from performing any of

its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

12.3 The Affected Party shall:

12.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and

12.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

12.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving fourteen (14) days' written notice to the Affected Party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

13. DISPUTE RESOLUTION

13.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty (20) Business Days of either party notifying the other of the dispute. Such efforts shall (if necessary) involve the escalation of the dispute to the commercial director or equivalent of each party.

Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

13.2 If the dispute cannot be resolved by the parties pursuant to clause 13.1 the dispute shall be referred to mediation pursuant to the procedure set out in Clause 13.4 unless either party considers that the dispute is not suitable for resolution by mediation.

13.3 The performance of this Agreement shall not be suspended, ceased or delayed by the reference of a dispute to mediation and the parties shall comply fully with the requirements of this Agreement at all times.

13.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

13.4.1 a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the parties or if they are unable to agree upon a Mediator then they shall apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator;

13.4.2 the Parties shall within ten (10) Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;

13.4.3 unless otherwise agreed all negotiations connected with the dispute and any settlement or agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

13.4.4 if the parties reach agreement on the resolution of the dispute the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives;

13.4.5 failing agreement either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the agreement without the prior written consent of both parties; and

13.4.6 if the parties fail to reach agreement in the structured negotiations within forty (40) Business Days of the Mediator being appointed or such longer period as may be agreed by the parties then any dispute or difference between them may be referred to the English courts. Either party may exercise any remedy it may have.

14. NOTICES

14.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

14.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service to the address specified in the Contract Particulars; or

14.1.2 sent by email to the address specified in the Contract Particulars.

14.2 Any notice or communication shall be deemed to have been received:

14.2.1 if delivered by hand, on signature of a delivery receipt;

- 14.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00am on the second Business Day after posting; and
- 14.2.3 if sent by email, at 9.00am on the next Business Day after transmission.
- 14.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15. GENERAL TERMS

- 15.1 Each party shall comply with all legislation, regulations, as amended, extended or re-enacted from time to time including all subordinate legislation made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 15.2 This Agreement is personal to the Customer and the Customer shall not assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement. Edsential may at any time assign, transfer or deal in any other manner with any or all of its rights under this Agreement, provided that Edsential gives prior written notice of such dealing to the Customer.
- 15.3 Subject to the remaining terms of this Agreement, no variation of this Agreement or Change Order shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15.4 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 15.5 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.6 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 15.7
- 15.7.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 15.7.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.8 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.9 If there is an inconsistency between any of the provisions of these terms and conditions, the Specification and the provisions of the Contract Particulars, the provisions of the Contract Particulars shall prevail.
- 15.10 The headings to Conditions shall not affect their interpretation.
- 15.11 This Agreement shall be governed by and construed in accordance with English Law.
- 15.12 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.
- 15.13 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any conditions of this Agreement.

16. DATA PROTECTION OBLIGATIONS

- 16.1 In this Clause 18 the following definitions apply:
Data Controller: has the meaning given under Data Protection Law;

Data Processor: has the meaning given under Data Protection Law;

Data Protection Law: all Law relating to the processing of personal data and privacy, including all applicable guidance and codes of practice issued by the Information Commissioner's Office or any replacement EU or UK data protection or related privacy Law in force in England and Wales;

Data Subject: has the meaning given under Data Protection Law;

Personal Data: personal data, including Personal Sensitive Data as defined under Data Protection Law, concerning either children and their parents, residents or employees or workers of the Customer or any Subcontractor and which is obtained or Processed in connection with the delivery or performance of the Goods and/or Services under this Agreement;

Personal Data Breach: any event that results or may result in any unauthorised or unlawful access to, Processing, loss and/or destruction of Personal Data in breach of this Agreement including any personal data breach (as defined under Data Protection Law);

Processing: has the meaning given under Data Protection Law and "Process" and "Processed" shall be construed accordingly;

Protective Measures: appropriate (having regard to nature of the Personal Data to be protected, the harm that might result from a Personal Data Breach, the state of technological development and the cost of implementation) technical and organisational measures including (where applicable):

- pseudonymising and encrypting Personal Data;
- ensuring the confidentiality, integrity, availability and resilience of systems and services;
- ensuring that the availability of and access to Personal Data can be restored promptly after an incident; and
- regularly assessing and evaluating the effectiveness of such measures;

- 16.2 Each Party shall comply with Data Protection Law in connection with this Agreement and shall Process Personal Data of which the other is Data Controller only in accordance with Data Protection Law and this Agreement
- 16.3 Depending on the factual situation, Edsential and the Customer may each act as either Data Controller or Data Processor in relation to Personal Data under this Agreement. The subject-matter, nature and purpose and the duration of Processing and the types of Personal Data and categories of Data Subject in relation to which Personal Data may be Processed under this Agreement are set out in the table below.
- 16.4 Where either Party Processes Personal Data of which the other Party is the Data Controller the Processing Party shall:
- (a) do so only on written instructions from the Data Controller (the first such instructions being those set out in this Agreement) as revised by the Data Controller from time to time (where applicable) in accordance with clause 16.6;
 - (b) notify the Data Controller immediately if it considers that any of the Data Controller's instructions infringe Data Protection Law;
 - (c) maintain appropriate Protective Measures to protect against a Personal Data Breach;
 - (d) ensure that all persons the Data Processor authorises to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (e) provide the Data Controller with full assistance in complying with Data Protection Law and enabling Data Subjects to exercise their rights under Data Protection Law including maintaining appropriate organisational and technical measures to facilitate this;
 - (f) notify the Data Controller promptly following any Personal Data Breach and provide the Data Controller with such assistance as the Data Controller requests including with any notifications to the Information Commissioner's Office and affected Data Subjects;
 - (g) not transfer Personal Data outside of the EU without the prior written consent of the Data Controller;
 - (h) on request, provide the Data Controller promptly with all information that the Data Controller needs to show that both the Data Controller and Data Processor have complied with Data Protection Law in relation to this Agreement; and
 - (i) at the written direction of the Data Controller, delete or return all Personal Data (and copies) to the Data Controller on following termination of this Agreement unless the Data Processor is required by Law to retain it.
- 16.5 A Party that is a Data Controller may inspect and audit the other Party's facilities for Processing the Personal Data of which it is Data Controller to ensure they comply with this Agreement and Data Protection Law.
- 16.6 A Party that is a Data Controller may revise their instructions to the Data Processor on the Processing of Personal Data at any time if this is necessary or desirable to comply with Data Protection Law. Such revision shall not entitle either Party to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Agreement. The Data Controller shall use reasonable endeavours to give the Data Processor as much notice of the revision as possible, consistent with their obligation to comply with Data

Protection Law and protect against any Personal Data Breach.

- 16.7 Neither Party shall allow a Subcontractor to process any Personal Data of which the other is Data Controller without the prior written consent of that Party. Where either Party wishes a Subcontractor to be able to do so, the Party shall provide the other Party with such evidence as the Party requires in order to be satisfied that the proposed Subcontractor is capable of complying with the data protection obligations under this Agreement and under Data Protection Law in relation to that Personal Data. The appointment of a Subcontractor shall not relieve the appointing Party from any of its obligations under this Agreement and the Party shall be liable to the other Party for the performance of the Subcontractor's obligations in relation to Personal Data under this Agreement.
- 16.8 Where a Party allows a Subcontractor to process Personal Data in accordance with clause 16.7, the appointing Party shall:
- 16.8.1 include provisions substantially the same as those in this clause 16 in the subcontract with that Subcontractor; and
- 16.8.2 provide in the subcontract that the other Party may enforce such obligations directly against the Subcontractor under the Contracts (Rights of Third Parties) Act 1999.

DATA PROCESSING TABLE

(see Clause 16.3)

	Personal Data of which the Customer is Data Controller	Personal Data of which Edsential or a Subcontractor is Data Controller
Data Processor:	Edsential	The Customer
Categories of Data Subject:	Pupils dietary and medical requirements with regard to food.	Name and personal details of staff employed by Edsential providing the goods and services.
Subject matter of Processing (including types of Personal Data that may be Processed):	Personal Data concerning pupils including parents names, addresses and contact details. Pupils medical requirements and dietary preferences including religion requirements.	Personal Data comprising names and contact details of staff.
Nature and purpose of Processing:	Interrogation of the Personal Data for the purpose of providing the goods and services ensuring the safety of pupils. Monitoring pupil satisfaction and correcting any Personal Data found to be incorrect whilst carrying out the goods and services.	Disclosure of Personal Data concerning Staff to the Customer: <ul style="list-style-type: none"> to identify which Staff are undertaking the service and monitor and manage their performance of the Contract; and to prospective tenderers in connection with a potential TUPE transfer to the successful tenderer on completion of the Contract to ensure they understand their TUPE obligations and have priced for them.
Duration of Processing:	During the Contract Period and for 20 (twenty) Working Days after its end (within which it is to be returned or destroyed) . Pupil medical data and dietary preference or religion to be deleted within 20 working days of the pupil ceasing to be provided with the goods and services.	During the Contract Period and up to 4 (four) months after its end (whilst overseeing a TUPE transfer).

17 PARENTPAY

This Clause 17 shall apply if so specified in the Contract Particulars or in a Change Order:

For the duration of the Agreement

17.1 Edsential shall:

- a. pay the annual license fee for the ParentPay software;

- b. pay the annual ParentPay charge per child; and
- d. pay the meal selection and meal registration software licence fees (if used).

17.2 The Customer shall be responsible for and the Customer shall pay for:

- a. for any transaction charge levied by ParentPay;
- b. any cash reconciliation payment required by ParentPay.

17.3 All software support for ParentPay and meal selection will be provided by the software supplier and Edsential shall not be responsible for any payment in respect of software or hardware support.

18 SERVICE VOUCHER FACILITY

This Clause 18 shall apply if so specified in the Contract Particulars or in a Change Order:

18.1 The Customer may use the credit sum detailed in the Contract Particulars to purchase or offset against the cost of purchasing, services other than school catering provided by Edsential to schools.

18.2 The sum may only be used once and must be used before the termination of this Agreement whether the Agreement terminates by the effluxion of time or for any other reason. The Customer must notify Edsential when it proposes to use the credit sum and notify Edsential of the goods and/or service that is to be purchased.

19 LOCAL LIVING WAGE

This Clause 19 shall apply if so specified in the Contract Particulars or in a Change Order:

19.1 For the duration of the Agreement Edsential will ensure that any Edsential Personnel directly and permanently engaged in the provision or delivery of Goods and/or Services at the Customer's school or schools will be paid an hourly rate at least equivalent to or greater than the then current Local Living Wage.

19.2 Where the Local Living Wage is a figure set and published from time to time in respect of Cheshire and the North West of England.

19.3 **The Customer acknowledges that a commitment to pay the Local Living Wage is irreversible and that any renewal or variation of this Agreement must include the provisions of this Clause 19.**

Dated January 2019 v7