

BACKGROUND

- (A) The Company is in the business of providing support and guidance services to: schools on behalf of their governing bodies.
 (B) The Subscriber wishes to obtain and the Company wishes to provide the services on the terms set out in these Conditions.

THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.

1.1 Definitions.

Applicable Laws: all applicable laws, statutes, regulations and codes from time to time in force.

Business Day: a day, other than a Saturday, Sunday or public holiday in England and Wales.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day or as otherwise agreed between the Company and the Subscriber.

Charges: the sums payable for the Services, as set out in [Schedule 2](#).

Company: GOVERNORS CYMRU SERVICES LIMITED incorporated and registered in England and Wales with company number 11435806 whose registered office is at Elfed House, Oak Tree Court, Mulberry Drive, Cardiff Gate Business Park, Cardiff, CF23 8RS ("**Company**")

Conditions: these Conditions as amended from time to time in accordance with Clause 14.

Contract: the contract between the Company and the Subscriber for the supply of Services in accordance with these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Data Protection Legislation: all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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.

Officers who have responsibility for school governance: includes the relevant Line manager, governor support managers and officers

Services: the services as set out in Schedule 1, including services which are incidental or ancillary to such services.

Subscriber: the school.

Subscriber Materials: all documents, information, items and materials in any form, whether owned by the Subscriber or a third party, which are provided by the Subscriber to the Company in connection with the Services.

Subscription: the Subscriber's written request to the Company for Services.

VAT: value added tax chargeable in the UK.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of these Conditions.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions. Therefore, any reference to these Conditions includes the Schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 These Conditions shall be binding on, and ensure to the benefit of, the parties to these Conditions and their respective personal representatives which in the case of the Subscriber shall include their governing body, and references to any party shall include that party's personal representatives and governing body.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.10 A reference to **writing** or **written** includes fax and email.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to **these Conditions** or to any other agreement or document referred to in these Conditions is a reference of these Conditions or such other agreement or document as varied or novated (in each case, other than in breach of these provisions) from time to time.
- 1.13 References to clauses and Schedules are to the clauses and Schedules contained herein and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2 Basis of contract**
- 2.1 The Subscription constitutes an offer by the Subscriber to purchase the Services in accordance with these Conditions.
- 2.2 The Subscription shall only be deemed to be accepted when the Subscriber pays the Charges; and the Company issues written acceptance of the Subscription at which point and on which date the Contract shall come into existence ("**Commencement Date**"), which will be on one of three dates as listed:
1st September
1st January
1st April
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Subscriber seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3. Commencement and duration**
- 3.1 The provision of Services shall commence upon the Commencement Date and shall continue, unless terminated earlier in accordance with clause 12 (Termination), until 12 months thereafter.
- 3.2 The Company shall provide the Services to the Subscriber in accordance with these Conditions from the Commencement Date.
- 4. Company's responsibilities**
- 4.1 The Company shall use reasonable endeavours to supply the Services in accordance with these Conditions in all material respects.
- 5. Subscriber's obligations**
- 5.1 The Subscriber shall:
- (a) ensure that the terms of the Subscription are complete and accurate;
 - (b) co-operate with the Company in all matters relating to the Services;
 - (c) provide to the Company in a timely manner all documents, information, items and materials in any form (whether owned by the Subscriber or third party) required under **Schedule 1** or otherwise reasonably required by the Company in connection with the Services and ensure that they are accurate and complete;
 - (d) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Company to provide the Services, the use of all Subscriber Materials, in all cases before the date on which the Services are to start;
 - (e) provide the Company with the relevant contact details as requested of the head teacher, chair of governors and clerk to governors before the date on which the services are to start, and to notify the Company in writing in a timely manner should those details change.
 - (f) ensure that any governor who leaves, or whose term office ends at the subscribed school does not retain/use any login details beyond their end of service.
- 5.2 If the Company's performance of its obligations under these Conditions is prevented or delayed by any act or omission of the Subscriber, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Company shall be allowed an extension of time to perform its obligations equal to the delay caused by the Subscriber.
- 6. Charges and payment**
- 6.1 In consideration of the provision of the Services by the Company, and prior to the Commencement Date, the Subscriber shall pay the Charges.
- 6.2 The Subscriber shall pay the invoice submitted to it by the Company prior to the provision of Services beginning.
- 6.3 All sums payable to the Company under these Conditions are:
- (a) are inclusive of VAT; and
 - (b) shall be paid in full and in advance without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7. Compliance with laws and policies**
- In performing its obligations under these Conditions, the Company shall comply with the Applicable Laws.
- 8. Intellectual property rights**
- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Subscriber) shall be owned by the Company.
- 8.2 The Subscriber agrees not to copy, reproduce, distribute, share, or otherwise use any materials, documents, or content provided by the Company for any purpose other than as expressly authorised by the Company. This includes, but is not limited to, publishing such materials on websites, sharing with third

parties, or using them for commercial or competitive purposes. All materials remain the sole property of the Company and are provided for the Subscriber's internal use only. For the avoidance of doubt, once this Agreement terminates, the Subscriber is prevented from using or copying the Subscriber Materials.

8.3 The Subscriber shall not sub-license, assign or otherwise transfer the rights granted in Clause 8.

8.4 The Subscriber grants the Company a fully paid-up, non-exclusive, non-transferable licence to copy and modify any materials provided by the Subscriber to the Company for the term of the Contract for the purpose of providing the Services to the Subscriber. For the avoidance of doubt, once this Agreement terminates, the Subscriber is prevented from using or copying the Subscriber Materials.

9. Data protection and data processing

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Subscriber is the data controller and the Company is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation. Schedule 3 sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation).

9.3 Without prejudice to the generality of clause 9.1, the Subscriber will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company for the duration and purposes of these Conditions.

9.4 Without prejudice to the generality of clause 9.1, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under these Conditions:

9.4.1 process that Personal Data only on the written instructions of the Subscriber unless the Company is required by Applicable Laws to otherwise process that Personal Data. Where the Company is relying on the laws of a member of the European Union or European Union Law as the basis for processing Personal Data, the Company shall promptly notify the Subscriber of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Subscriber;

9.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Subscriber, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

9.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

9.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Subscriber has been obtained and the following conditions are fulfilled:

9.4.4.1 the Subscriber or the Company has provided appropriate safeguards in relation to the transfer;

9.4.4.2 the data subject has enforceable rights and effective legal remedies;

9.4.4.3 the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

9.4.4.4 the Company complies with reasonable instructions notified to it in advance by the Subscriber with respect to the processing of the Personal Data.

10. Limitation of Liability

10.1 The Company has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1M per claim except public liability claims which shall not exceed £2m per claim. The limits and exclusions in this clause reflect the insurance cover the Company has been able to arrange and the Subscriber is responsible for making its own arrangements for the insurance of any excess loss.

10.2 Nothing in the Contract limits any liability which cannot legally be limited.

10.3 Subject to Clause 10.2, the Company's total liability to the Subscriber shall not exceed £2M. The Company's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

10.4 This *Clause 10.4* sets out specific heads of excluded loss and exceptions from them:

10.4.1 Subject to Clause 10.2, the types of loss listed in Clause 10.4.3 are wholly excluded by the parties, but the types of loss and specific losses listed in Clause 10.4.4 are not excluded.

10.4.2 If any loss falls into one or more of the categories in Clause 10.4.3 and also falls into a category, or is specified, in Clause 10.4.4, then it is not excluded.

10.4.3 The following types of loss are wholly excluded:

10.4.3.1 Loss of profits

10.4.3.2 Loss of sales or business.

10.4.3.3 Loss of agreements or contracts.

10.4.3.4 Loss of anticipated savings.

10.4.3.5 Loss of use or corruption of software, data or information.

10.4.3.6 Loss of or damage to goodwill.

10.4.3.7 Indirect or consequential loss.

10.4.4 The following types of loss and specific loss are not excluded:

- 10.4.4.1 Sums paid by the Subscriber to the Company pursuant to the Contract, in respect of any Services not provided in accordance with the Contract.
 - 10.4.4.2 Wasted expenditure
 - 10.4.4.3 Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Contract. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.
 - 10.4.4.4 Losses incurred by the Subscriber arising out of or in connection with any third party claim against the Subscriber which has been caused by the act or omission of the Company. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Company's personnel, regulators and Subscribers of the Subscriber.
- 10.5 Unless the Subscriber notifies the Company that it intends to make a claim in respect of an event within the notice period, the Company shall have no liability for that event. The notice period for an event shall start on the day on which the Subscriber became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 4 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 10.6 This Clause 10 shall survive termination of the Contract.
- 11 Confidentiality**
- 11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning any other party except as permitted by clause 11.2.
 - 11.2 Each party may disclose the other party's confidential information:
 - 11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Conditions. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11;
 - 11.2.2 to relevant authorities when that party has legitimate concerns as to the safety of a child; and
 - 11.2.3 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - 11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Conditions.
- 12 Termination**
- 12.1 Without affecting any other right or remedy available to it, either party may terminate these Conditions with immediate effect by giving notice to the other party if:
 - 12.1.1 the other party commits a material breach of any term of these Conditions which breach is irremediable;
 - 12.1.2 the other party repeatedly breaches any of the terms of these Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Conditions;
 - 12.1.3 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);
 - 12.2 The Charges paid by the Subscriber to the Company shall not be refunded if either party terminates these Conditions pursuant to Clause 12.1 above.
 - 12.3 Termination or expiry of these Conditions 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 the agreement which existed at or before the date of termination or expiry.
- 13 Assignment and other dealings**
- These Conditions are personal to the Subscriber and the Subscriber shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under these Conditions.
- 14 Variation**
- No variation of these Conditions shall be effective unless it is expressly agreed, in writing by the Company.
- 15 Waiver**
- 15.1 A waiver of any right or remedy under these Conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
 - 15.2 A failure or delay by a party to exercise any right or remedy provided under these Conditions 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 these Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 16 Rights and remedies**
- The rights and remedies provided under these Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17 Severance**
- 17.1 If any provision or part-provision of these Conditions 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 these Conditions.
 - 17.2 If any provision or part-provision of these Conditions 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.

18 Entire agreement

These Conditions 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.

19 Conflict

If there is an inconsistency between any of the provisions of these Conditions and the provisions of the Schedules, the provisions of these Conditions shall prevail.

20 No partnership or agency

20.1 Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21 Third party rights

21.1 Unless it expressly states otherwise, these Conditions does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions.

21.2 The rights of the parties to rescind or vary these Conditions are not subject to the consent of any other person.

22 Counterparts

22.1 These Conditions may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

22.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

23 Governing law

These Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

24 Jurisdiction

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 these Conditions or its subject matter or formation.

These Conditions have been incorporated upon payment of the Charges.

Schedule 1 Services Details

Services which the Company shall provide to the Subscriber shall include, but are not limited to, and may vary from time to time as the Company deems fit:

1. Support Line

Access to the Governors Cymru Services confidential supportline, which provides independent, advice, support and guidance on school governance to deliver effective governance. Advice will be provided as far as reasonably possible within the parameters of the service.

2. E-bulletins

E-bulletins which provide information on education news such as policy updates, new relevant consultations, guidance and effective practice. Further information will be sent out on any relevant matters as they happen.

3. Advice and guidance

Exclusive access to an advice and guidance section on the Company's website which features practical resources, including:

- 3.1 Handbook for School Governors in Wales;
- 3.2 Governing Body Self-Evaluation;
- 3.3 Governor Guides;
- 3.4 Resources;
- 3.5 FAQs;
- 3.6 Case studies;
- 3.7 Policies;
- 3.8 Clerks area;
- 3.9 Conversations;
- 3.10 Tips and Strategies; and
- 3.11 Video clips.

4. Priority place(s) at briefing sessions

The Company cannot guarantee a place or places for the Subscriber at every event. Separate information will be provided with booking forms.

5. E-learning

Access to designated e-Learning modules on a variety of topics.

Schedule 2 Charges

The Subscriber will pay the Company one of the following sums (inclusive of VAT) for the services depending on which category the Subscriber falls under:

Nursery / Infant / Junior / Primary / Special (50 pupils or less)	£162.00
Nursery / Infant / Junior / Primary / Special (more than 50 pupils)	£238.80
Secondary school (including all-age schools)	£402.00

Payment terms

Payment of the Charges shall be made in accordance with Clause 6 above.

Costs: third party materials and services charged in addition

Any materials and services that the Company procures from a third party in order to provide the Services shall be invoiced to, and be payable by, the Subscriber on demand and in addition to the above sum.

Schedule 3 Processing, Personal Data and Data Subjects

Processing by the Company

- 1.1 **Subject matter of processing:** in accordance with the engagement of the Services.
- 1.2 **Nature:** each party may process the personal data of the data subjects for the purposes set out in, and in the course of fulfilling the obligations of the Services.
- 1.3 **Purpose of processing:** The Company shall only use the Personal Data for lawful purposes in connection with the agreed purposes of the Services and not process Personal Data in a way that is incompatible with the Agreed Purposes or the Data Protection Legislation. The sharing of the Personal Data is necessary to support the following Agreed Purposes of both parties:
 - 1.3.1 The Company's obligations as set on in Schedule 1; and
 - 1.3.2 To comply with any legal obligation to which either party is subject to in relation to sharing the Personal Data.
- 1.3 **Duration of the processing:** the duration of the engagement of the Services, save where otherwise stated in these Conditions.
- 1.4 **Personal data:** any information identifying a Data Subject or information relating to a data subject that we can identify (directly or indirectly) from that data alone or in combination with other identifiers we possess or can reasonably access. Personal Data includes Special Categories of Personal Data and Pseudonymised Personal Data but excludes anonymous data or data that has had the identity of an individual permanently removed. Personal data can be factual (for example, a name, email address, location or date of birth) or an opinion about that person's actions or behaviour. Personal Data specifically includes, but is not limited to: Title, forename(s), surname, previous surname, date of birth, gender, job role, telephone number and medical history
2. **Categories of data subject:** The individuals who are the subject of the Services and any pupil, employee or agent of the Subscriber or any associated third party.