

# Edapt (UK) Ltd

## Terms and Conditions for Education Providers

Version: 2.0  
Date: 11/07/2017

### 1. The Agreement

These terms and conditions (**Terms**) set out the basis on which Edapt (UK) Limited, a company registered in England and Wales (company number 07830046) and whose registered office is at 111 Piccadilly, Piccadilly, Manchester, M1 2HY (**Edapt**) shall provide its employment support services more particularly described as such on its website (**Support Services**) to the employed staff members (**Staff**) of the school or education provider signing up to these Terms (**You, Your**).

These Terms are to be read in conjunction with any written quotation issued by Edapt to You (**Quotation**), which will together form a legally binding agreement (**Agreement**).

For the avoidance of doubt, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to **writing** or **written** includes email but not fax. A **Business Day** shall mean any day which is not a Saturday, Sunday or public bank holiday in England.

### 2. Quotation

The Quotation shall remain valid and capable of acceptance by You for a period of 28 days (**Acceptance Period**) from the date on which Edapt sent it. The Quotation shall contain details of the fees payable by You to Edapt and the number of Staff (in a factor of 10) for which You have subscribed (**Subscriptions**).

*For illustrative purposes, where You have 37 staff, You must subscribe for 40 Subscriptions.*

Where You signify Your acceptance of the Quotation on a date later than the end of the Acceptance Period, this shall be construed as an offer by You capable of acceptance by Edapt and for the avoidance of doubt the Agreement shall not have been formed unless Edapt signifies its acceptance of Your offer. Edapt shall either signify its acceptance in writing or otherwise by conduct commensurate with performance of its obligations set out hereunder.

### 3. Commencement and Duration

The Agreement shall commence in accordance with the above paragraph (**Commencement Date**) and remain in force for a minimum period of 12 months thereafter (or if longer such other period as specified in the Quotation) (**Minimum Term**) unless terminated earlier in accordance with clause 10 below.

The Agreement shall automatically renew for consecutive periods of 12 months (**Subsequent Term**) unless either party serves no less than 3 months' written notice to the other party prior to the end of the Minimum Term or any Subsequent Term, as the case may be.

*For illustrative purposes, where the Commencement Date is 1 January, notice must have been served by 30 September in order for the Agreement to terminate at the end of the Minimum Term and avoid automatically rolling over into a Subsequent Term.*

Following formation of the Agreement in accordance with the paragraph above, You must promptly and as soon as reasonably practicable provide to Edapt the personal information requested by Edapt of each of the relevant Staff such that Edapt can amongst other things independently verify the identity of each of the Staff as Your employee and thereafter liaise. Such personal information must comply with the specified form and any other requirements notified to You by Edapt.

You agree and acknowledge that You shall comply with the following obligations and understand that Edapt reserves the right not to deliver any of the Services (as defined in the below paragraph) until such time as they have been complied with.

#### 4. Provision of the Services

Edapt shall provide the Support Services to the Staff (rather than You) using all reasonable care and skill and subject to its terms and conditions of service (**Standard Service Terms**). Edapt shall also provide the Staff with access to the additional services described as such on its website and which are to be provided by third party providers (**Additional Services**). The Additional Services shall be provided in accordance with the relevant third party provider's own terms and conditions but at no additional cost to the Staff.

For the avoidance of doubt, the Support Services and the Additional Services (together, **the Services**) do not include:

- a) accompaniment, representation or any other employment related services provided by or accessible via Edapt from time to time for the Staff which are not specifically detailed within the Service Schedule;
- b) any Services, the facts and/or circumstances of which arose prior to the Commencement Date;

(together, **Excluded Services**). You agree and acknowledge that it is Your responsibility to inform the Staff that the Services do not include the Excluded Services, nor are they a substitute for union representation. You therefore agree and acknowledge that You shall not represent to the Staff that the Services being provided under and in accordance with this Agreement are in substitute for union representation.

We shall provide the Services either via telephone, email or in person at Our election and dependent on the requirements of the individual situation.

Where and to the extent that the Staff require any Excluded Services then they shall be entitled to sign up to an upgrade for a discounted price of to be disclosed in advance and subject to additional terms and conditions.

You agree that Edapt's provision of the Services (and any Excluded Services as the case may be) to the Staff shall be confidential as between the relevant member of Staff and Edapt, that no duty of care is owed to You and that Edapt shall not be obliged to disclose any information relating to any such matters to You.

#### 5. Your General Obligations

You agree and acknowledge that at all times, You shall (and as the case may be promptly and as soon as reasonably practicable):

- a) Notify Edapt where and to the extent that the number of Staff exceeds the number of Subscriptions. Where this occurs You agree that We may automatically charge You additionally for a further 10 Subscriptions calculated on a pro rata basis rounded up to the nearest month.

*For illustrative purposes, where You have subscribed for N Subscriptions at a cost of £X + VAT per year with a Commencement Date of 1 January and on 10 July You require a further N Subscriptions, We shall charge You £X/2 + VAT, being the cost equivalent to 6 months at a rate of £X + VAT per N Subscriptions per year.*

- b) Notify Edapt where any individual member of the Staff leaves their employment with You (**Outgoing Staff**) in which case:
  - i) the Outgoing Staff shall cease to receive the Services from the date on which You notify Edapt or (where earlier) the date on which their employment terminated; or
  - ii) where the Outgoing Staff had subscribed to receive the Excluded Services Edapt shall contact them to establish whether the Outgoing Staff wishes for the Excluded Services to either continue at an increased price to accord with Edapt's standard scale of charges or to cease with immediate effect.
- c) Provide Edapt with any and all documents, information, items, materials, support and co-operation that it requires (in whatever form) in order for it to be able to properly perform its obligations under this Agreement or otherwise in connection with the performance of the Services (or the Excluded Services as the case may be).
- d) Extend Your internal staff policies to permit Staff to be accompanied by Edapt or any provider of Additional Services in accordance with the Employment Relations Act 1999.
- e) Comply with all relevant legislation as required including without limitation effecting and maintain all insurance which You are required to be hold by law or which a prudent business in the education field would hold.
- f) Comply with all other obligations set out in these Terms and any and all reasonable instructions and requirements otherwise notified by Edapt to You from time to time.

Time for performance of Your obligations under and in accordance with these Terms is of the essence. If Edapt's performance of its obligations under these Terms is prevented or delayed by any of Your acts or omissions or those of Your its agents, subcontractors, consultants or Staff then, without prejudice to any other right or remedy it may have, Edapt shall be allowed an extension of time to perform its obligations equal to the delay caused and in any event shall not be liable to You or any of the Staff for any such delay.

## 6. Price and Payment

Edapt shall raise an invoice in respect of payment of the charges payable by You via the methods specified within the invoice and in advance of the commencement of the delivery of the Services or as otherwise set out in the Quotation or invoice. The charges payable by You to Edapt are exclusive of VAT which shall be added thereon additionally.

Without prejudice to any other right or remedy which Edapt may have, if You fail to pay any invoice on the due date for payment:

- a) You shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc'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. You shall pay the interest together with the overdue amount; and
- b) Edapt may suspend all performance of its obligations under these Terms until payment has been made in full and without any liability to You; and
- c) You shall be additionally liable to pay for any Services received by Staff at an hourly rate notified by Edapt to You:

- i) during any period of suspension; or
- ii) following the termination of this Agreement where and to the extent that You have failed to inform the Staff that this Agreement has been terminated or are otherwise unable to provide Edapt with written evidence that You have informed such Staff.

All sums payable to Edapt under this Agreement as at the date of termination and which would have been payable during the remainder of any Minimum Term or Subsequent Term (as the case may be) shall become due immediately on its termination, despite any other provision and without prejudice to any right to claim for interest under the law, or any such right under this agreement.

All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **7. Confidentiality**

You undertake that You shall not at any time disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to You by Edapt, its employees, agents, consultants or subcontractors and any other confidential information concerning this Agreement, Edapt's business or its services.

Edapt treats all information provided to it by the Staff as strictly confidential and You hereby understand and acknowledge that no such information will be disclosed to You without the relevant individual's prior written consent.

You shall not use the Supplier's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## **8. Data Protection**

You and Edapt hereby both acknowledge that for the purposes of the Data Protection Act 1998 (DPA) You are the Data Controller and that Edapt is the Data Processor in respect of any Personal Data (each as defined within the DPA).

Edapt shall process the Personal Data only in accordance with Your instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Staff. You expressly warrant that for any Personal Data of the Staff which You provide to Edapt under and in accordance with this Agreement You have obtained the express consent of each relevant member of Staff to make such disclosures.

You acknowledge that Edapt is reliant on You for direction as to the extent to which Edapt is entitled to use and process the Personal Data. Consequently, Edapt will not be liable for any claim brought by a member of Staff or other such Data Subject arising from any action or omission by Edapt, to the extent that such action or omission resulted directly from Your instructions or breach of warranty under this clause.

Edapt may authorise a third party to process the Personal Data and shall pass this on for the purposes of their performance of the Additional Services.

## **9. Liability and Indemnity**

You shall indemnify, keep indemnified and hold harmless Edapt, on demand and against all reasonable costs, claims, charges, damages, expenses, liabilities or losses sustained or incurred by Edapt (including any direct, indirect, special or consequential losses, loss of profit and loss of reputation, loss or damage to property) whether in contract, tort (including negligence), for breach of statutory duty, or otherwise that arise directly or indirectly from Your (or the Staff's) fraud,

negligence, failure to perform or delay in the performance of any of its obligations under this Agreement.

Save that nothing in this Agreement shall limit or exclude Edapt's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or anything else for which it is illegal to limit or exclude liability:

- a) Edapt shall not be liable to You, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement (or arising out of any Services provided to Staff where this could be considered to Your detriment) for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of use or corruption of software, data or information and any indirect, special or consequential loss;
- b) the total liability of Edapt to You, 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 the charges paid by You to Edapt in the 12 months leading up to the event leading to a liability.

## 10. Termination

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:

- a) 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 5 Business Days after being notified in writing to do so;
- b) The other party repeatedly breaches any of the terms of this Agreement 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 this Agreement;
- c) 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;
- d) 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;
- e) 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);
- f) 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);
- g) 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;
- h) 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;
- i) 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 10 Business Days;

- j) 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 clauses 10(c) – (i) above (inclusive); or
- k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

In any of the circumstances in which Edapt may terminate this Agreement above, it may suspend performance of its obligations without liability to You or any of the Staff.

#### 11. Consequences of Termination

On termination of this Agreement:

- a) pursuant to clause 10, all agreements in place between Edapt and any of the Staff at the time of termination shall automatically terminate unless the relevant individual member of Staff wishes to continue to pay for the Services (and the Extended Services as the case may be) itself and in which case the cost of such Services and the Extended Services shall be increased to accord with Edapt's standard scale of charges. In the event that termination takes effect as envisaged by this clause, You agree and acknowledge that You shall be wholly responsible for notifying the relevant Staff of its effect and responsible for any failure to do so;
- b) You shall immediately pay to Edapt all of Edapt's outstanding unpaid invoices and interest and following receipt of an invoice for the same, any payments which would have been made for the remainder of the Minimum Term (or a Subsequent Term, as the case may be);
- c) any clause which expressly or by implication should remain in force shall so remain in force.

Termination 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 the agreement which existed at or before the date of termination or expiry.

#### 12. Notices

Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email to the address specified in the Quotation or otherwise notified by one party to the other.

Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, 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 or at the time recorded by the delivery service and if sent by email, at 9.00am on the next Business Day after transmission.

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.

#### 13. Dispute Resolution

If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:

- a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute; and
- b) if the parties are for any reason unable to resolve the Dispute within 30 days of the process in clause 13(a) above commencing then the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR Notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 10 Business Days after the date of the ADR Notice
- c) If the Dispute is not resolved within 20 Business Days after service of the ADR Notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 20 Business Days, or the mediation terminates before the expiration of the said period of 20 Business Days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 14 in this Agreement.

#### 14. Miscellaneous

If Edapt's performance of any of its obligations under this Agreement is delayed by an event outside its control then it will contact You as soon as possible to let You know and will take steps to minimise the effect of the delay. Edapt shall not be liable to You in any way for any event beyond its control.

Edapt and its licensors (or as the case may be, its third party providers and any of their licensors) shall retain ownership of all intellectual property rights in any deliverables.

This Agreement is personal to You and You shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement. Edapt may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

Edapt may update the terms of this Agreement from time to time and in doing so shall notify You of any such changes which You hereby agree and acknowledge shall (unless otherwise agreed in writing between the parties (or their authorised representatives)) automatically come into force at the beginning of the next Subsequent Term thereafter.

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

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. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party

agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

Nothing in this Agreement 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.

No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

This Agreement 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.

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.