**MOBILE DEVICE SUPPLY AGREEMENT**

This Agreement is made between London Grid for Learning Trust, a company registered in England and Wales with company number 4205579, whose registered office is at 10 Exchange Square, Primrose Street, London EC2A 2BR (**"LGfL"**) and the Customer identified in the Order Form.

This Agreement comes into effect when the Order is acknowledged and accepted by LGfL.

# Definitions and Interpretation

## Capitalised terms in this Agreement have the following meanings**:**

## **"**[**Acceptable Use Policy**](https://static.lgfl.net/LgflNet/downloads/policies/LGfL%20Acceptable%20Use%20Policy.pdf)**"** means LGfL’s policy for acceptable use of its materials, including Software, which is available at its website**;**

## **"Agreement"** means this document entitled "Mobile Device Supply Agreement" and the Order Form;

## **"Applicable Law"** means any law, subordinate legislation, enforceable right, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment, or directives or requirements with which a party is bound to comply;

## **"Commercially Sensitive Information"** means the Price and any means for calculating the Price, which shall remain confidential for a period of three years following the termination or expiry of this Agreement;

## **"Confidential Information"** means any confidential or proprietary information of either party, including this Agreement and the Price, but excluding any information that: (a) is publicly known or becomes publicly known other than by a breach of this Agreement; (b) when it was disclosed to the other party, was already known by that party; or (c) after being disclosed to the other party, is disclosed to that party again by a third party at liberty to disclose it;

## **"Controller", "Processor", "processing", "Data Subject", "Personal Data",** and **"Personal Data Breach"** each has the meaning given in the GDPR;

## **"Data Protection Legislation"** means (a) the GDPR; (b) the Law Enforcement Directive *(Directive (EU) 2016/680)*; (c) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (d) all Applicable Law relating to the processing of personal data and privacy;

## **"End User"** means any directors, officers, employees or student enrolled with the Customer;

## **"GDPR"** means the General Data Protection Regulation *(Regulation (EU) 2016/679)*;

## **"Insolvency Event"** means a resolution is passed or an order is made for the winding up of a party (save for a bona fide reconstruction or amalgamation) or the party becomes subject to an administration order, or a receiver or administrative receiver is appointed over any of the party’s property or assets, or the party is insolvent or would be taken to be insolvent under section 123 of the Insolvency Act 1986 (save that the reference in that section to "£750" shall be replaced by "£10,000"), or the party is dissolved;

## **"Intellectual Property Rights"** means any rights in or to any patent, copyright, database right, design right, trade mark, brand name, service mark, trade name, business name, chip topography right, know-how or confidential information and any other rights in respect of any other industrial or intellectual property, whether capable of being registered or not and including all rights to apply for any of the foregoing rights;

## **"IPR Claim”** means a claim made against the Customer for the infringement of a third party's Intellectual Property Rights arising from its use of Software provided by LGfL pursuant to this Agreement;

## **"Mobile Devices"** means the computer equipment to be supplied by or on behalf of LGfL as identified on the Order Form;

## **"Order"** means the Customer’s offer to purchase the Mobile Devices described in the Order Form pursuant to these terms;

## **"Order Form"** means the form setting out the details of the Order which incorporate these terms by reference;

## **"Personnel"** means the directors, employees, consultants, agents, advisors or sub-contractors of the relevant party;

## **"Price"** means the price to be paid by the Customer for the Mobile Devices as set out in the Order Form;

## **"Prohibited Act"** means: (a) any act by a party which involves bribery or dishonesty; (b) any illegal act or any act which is an offence under the Bribery Act 2010, Public Bodies (Corrupt Practices) Act 1889, the Prevention of Corruption Acts 1906-1916, section 117 of the Local Government Act 1972; or (c) any act which does or attempts to defraud LGfL, and which in each case is committed in relation to the obtaining or performance of this Agreement;

## **"Software"** means the software application(s) identified in the Order form, including computer programs, operating systems, firmware and all associated files and data, including open source code, job control and other procedure language files, macros and configuration files;

## **"Term"** has the meaning given in clause 11.1;

## **"Trial Period"** means the period of time identified in the Order Form or otherwise notified to the Customer by LGfL; and

## **"Working Day"** means any day which is not a Saturday, Sunday or a public holiday in England and Wales.

## In this Agreement, unless the context requires otherwise: (a) the clause headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; (b) the word "including" shall be understood to mean "including without limitation" and the word "includes" shall be understood to mean "includes without limitation"; and (c) words of a technical nature shall be construed in accordance with general trade usage in the computer industry.

# Supply of Mobile Devices

## LGfL shall supply and the Customer shall purchase the Mobile Devices on the terms of this Agreement.

## The Customer may amend its Order by written notice within 10 Working Days of the date the Order is accepted by LGfL.

## If LGfL anticipates that it will be unable to meet the Customer’s requirements:

### LGfL shall notify the Customer in writing as soon as possible; and

### the Customer may either amend or cancel its Order accordingly.

## LGfL shall deliver the Mobile Devices to the address of the Customer as notified in the Order Form, which delivery may be made in instalments as Mobile Devices become available.

## Delivery by instalments or delays in delivery shall not entitle the Customer to refuse to take delivery of its Order and LGfL shall have no liability for any failure or delay in delivering an Order to the extent that the failure or delay is caused by events not within its reasonable control.

## If the Customer fails to take delivery of an Order, then, except where that failure or delay is caused by LGfL’s failure to comply with its obligations under this Agreement:

### delivery of the Order shall be deemed to have been completed at 9.00 am on the date the Order is presented for delivery; and

### LGfL shall store the Order until delivery takes place and may charge the Customer for all related costs and expenses, including insurance.

# Defective Products

## Subject to clause 3.3, the Customer may reject Mobile Devices that do not comply with the specification set out in the Order Form or which are not of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), provided that notice of rejection is delivered to LGfL in writing within 5 Working Days of delivery.

## The Customer will be deemed to have accepted the Mobile Devices if it fails to reject them in accordance with clause 3.1.

## The Customer may not reject Mobile Devices if:

### it uses the Mobile Devices;

### the defect arises because the Customer failed to follow LGfL’s instructions for the storage, commissioning, use and maintenance of the Mobile Devices or (if there are none) reasonable behaviour regarding the same;

### the Customer alters or repairs the Mobile Devices without the written consent of LGfL;

### the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions; or

### the Mobile Devices differ from their description as a result of changes necessary to comply with Applicable Law.

## If the Customer rejects the Mobile Devices pursuant to clause 3.1, LGfL may repair or replace the rejected Mobile Devices or repay the Price pro rata.

## If LGfL complies with its obligations in clause 3.4 it shall have no further liability to the Customer.

# Title and Risk

## Risk in Mobile Devices shall pass to the Customer on delivery.

## Title to the Mobile Devices shall pass to the Customer when LGfL receives payment of the Price in full, whether in cash or cleared funds.

## Until title to the Mobile Devices has passed to the Customer, the Customer shall:

### store the Mobile Devices separately from all other mobile devices held by the Customer so that they remain readily identifiable as LGfL’s property;

### not remove, deface or obscure any identifying mark or packaging on or relating to the Mobile Devices; and

### maintain the Mobile Devices in satisfactory condition and keep them insured on LGfL’s behalf for their full price against all risks.

## The Customer may, as principal but not as LGfL’s agent, resell or use the Mobile Devices in the ordinary course of its business (but not otherwise) before LGfL receives payment, in which case title to the Mobile Devices shall pass to the Customer immediately before the time at which the resale occurs.

## If the Customer becomes subject to an Insolvency Event before title passes to it, LGfL may require the Customer to deliver up the Mobile Devices at any time and enter any premises where the Mobile Devices are stored to recover them if the Customer fails to do so promptly.

# Supply of Software

## If LGfL agrees to supply any Software with the Mobile Devices, the Customer warrants, represents and undertakes that it will use, or permit the use of the Software in accordance with the terms of this Agreement and the Acceptable Use Policy.

## The Customer may install the number of instances of the Software identified in the Order Form on devices for the benefit of itself and its End Users, each a permitted sub-licensee.

## The Customer shall not (whether or not for profit but without prejudice to clause 5.2):

### sub-licence or permit the sub-licence directly or indirectly of the Software or any part to any third party or otherwise receive or make use of the Software directly or indirectly without the prior written consent of LGfL;

### resell, distribute, sublicense, or otherwise transfer the Software to any other person;

### disassemble, decompile or reverse engineer the Software, or permit any person to do so, except, and solely to the extent, permitted by applicable local law; or

### except as expressly authorised by this Agreement, (a) copy or reproduce the Software, in whole or in part; (b) modify the Software; or (c) provide the Software or make its functionality available to third parties as an application services provider or service bureau, or by hosting, time sharing or providing any other type of services.

## The Customer accepts and agrees that LGfL or its licensors may periodically send notifications to the Customer in the form of pop-ups, banners, charts, graphics, texts, images or other messages displayed by the Software, provided that the Customer may disable such notifications in the computer settings.

## **Trial Software**

## If the Software is provided to the Customer for evaluation, the Customer’s licence pursuant to clause 5.1 is limited to the Trial Period.

## The Customer accepts that Software provided for evaluation may be supplied without support and may cease to function at the end of the Trial Period.

## The Customer may terminate this Agreement at any time during the Trial Period by written notice to LGfL, in which case its licence to use the Software shall automatically cease.

## If the Customer does not terminate this Agreement and remove the Software from its devices at the end of the Trial Period the Agreement will automatically continue for the Term, and LGfL may invoice the Customer for the Price.

## **Software Audits**

## The Customer acknowledges and accepts that LGfL may audit the Customer’s subscription periodically to verify the number of instances of the Software used.

## If an audit identifies that the Customer is using more instances of the Software than it has subscribed for, LGfL may send the Customer an invoice in respect of that additional use.

## The terms of this Agreement shall automatically apply to any additional instances of the Software used by the Customer.

## **Software Suspension**

## LGfL may suspend or limit use of the Software (or any part) if it reasonably suspects the Customer is in breach of this clause 5 or it reasonably believes that such suspension or limitation will prevent or usefully inhibit such an activity or risk, provided that any such suspension or limitation is: (a) reasonable and proportionate; (b) where practical, is imposed subject to advance notice being provided; (c) is of a duration limited to that necessary to prevent any illegal or immoral activity; and (d) informs the Customer of the action it is required to take to allow the restoration of the Software.

# Payment

## The Customer shall pay the Price to LGfL within 30 days of receipt of a valid invoice (**"Due Date"**).

## LGfL may require the Customer to pay interest on any overdue amount at a rate not exceeding that prescribed periodically under the Late Payment of Commercial Debts (Interest) Act 1998 from the Due Date until payment, such interest shall accrue on a daily basis both before and after judgment.

## The Price is exclusive of VAT which shall be added at the prevailing rate.

## All payments payable to LGfL by the Customer shall become immediately due and payable if the Customer becomes subject to an Insolvency Event.

## LGfL shall indemnify the Customer without limit on a continuing basis against any liability, including interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer in respect of LGfL’s failure to account for or pay any VAT relating to payments made to it under this Agreement. Any amounts due under this clause 6.5 shall be paid in cleared funds not less than 5 Working Days before the date on which the tax or other liability is payable by the Customer.

# Intellectual Property

## If it agrees to supply any Software with the Mobile Devices, LGfL hereby grants the Customer a non-exclusive, non-transferable licence to use the Software for the Term, including the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage transmission or display) the Software.

## Without prejudice to clause 7.1, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights subsisting within the Software.

## LGfL shall indemnify and keep the Customer indemnified on written demand against any liabilities (including legal fees) awarded against or arising from an IPR Claim, provided that the Customer:

### promptly notifies LGfL in writing of the IPR Claim;

### allows LGfL to conduct all negotiations and proceedings and will provide LGfL with the assistance required by LGfL with regard to the IPR Claim; and

### does not make any admission relating to the IPR Claim without LGfL’s prior written consent.

## If an IPR Claim is made, or LGfL anticipates an IPR Claim might be made, it may:

### procure the right for the Customer to continue to use the Software;

### replace or modify the Software with non-infringing substitutes; or

### terminate the licence in clause 7.1 and reimburse the Price pro rata.

## The provisions of clauses 7.3 and 7.4 shall not apply in respect of any IPR Claim caused by:

### the use by or on behalf of the Customer of the Software in combination with any item not supplied by LGfL; or

### the use by or on behalf of the Customer of the Software in a manner not reasonably anticipated by this Agreement.

# Confidentiality

## Except as permitted by this Agreement, neither party may use any of the other party's Confidential Information.

## Subject to clause 8.3, neither party may disclose to any other person any of the other party's Confidential Information.

## Either party may disclose the Confidential Information of the other:

### to its Personnel or any person whose duties reasonably require such disclosure, on condition that the party making the disclosure ensures that each such person to whom such disclosure is made: (a) is informed of the obligations of confidentiality under this Agreement; and (b) complies with those obligations as if they were bound by them; and

### when required to do so by Applicable Law or any regulatory authority, provided that where practicable and lawful, the disclosing party: (a) promptly notifies the other of the requirement; and (b) co-operates with the owner of the Confidential Information regarding the manner, scope or timing of the disclosure or any action that the owner may take to challenge the validity of the requirement.

# Data Protection

## Any Personal Data processed in the performance of this Agreement shall be limited to business contact data, for which each party shall be an independent Controller.

## If it is subsequently determined that a relationship of Controller and Processor exists, the parties shall promptly implement such additional provisions as are necessary to comply with GDPR [Article 28](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679#d1e3150-1-1) based substantially on the terms set out in the Crown Commercial Services [Procurement Policy Note 02/18](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708836/18.docx.pdf) as revised periodically.

## Each party:

### hereby undertakes to comply with its obligations as a Controller in respect of its processing of Personal Data;

### shall only provide Personal Data to the other to the extent necessary to perform their respective obligations under this Agreement and in accordance with the Data Protection Legislation, including by ensuring all required fair processing information has been given to any relevant Data Subject;

### shall co-operate with the other in a timely manner in response to a request from a Data Subject relating to that person’s rights under the Data Protection Legislation, including by providing information or assistance as appropriate;

### shall promptly notify the other on becoming aware of a Personal Data Breach relating to Personal Data provided by the other party, including co-operating in timely manner in the provision of information or assistance as appropriate; and

### shall not do anything to cause the other party to be in breach of the Data Protection Legislation.

# Freedom of Information

## If requested, LGfL shall provide such assistance as the Customer may reasonably require in responding to requests for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 (together the **"Information Regulations"**) in relation to this Agreement or its subject matter (**"Information Request"**). LGfL shall provide such assistance promptly so as to facilitate compliance with relevant statutory time limits.

## LGfL acknowledges and accepts that the Customer may disclose information pursuant to an Information Request in its sole discretion and without prior consultation, provided that it: (a) acts in accordance with any code of practice arising under the Information Regulations; (b) takes reasonable steps to give LGfL advance notice or, failing that, gives LGfL notice of the disclosure; and (c) acts in good faith to determine whether any Commercially Sensitive Information is exempt from disclosure in accordance with the Information Regulations.

# Term and Termination

## This Agreement shall take effect on execution by the parties (or the last of them to sign as applicable) and shall continue until the later of:

### the date delivery of the Order has been completed; or

### if LGfL supplies any Software, the end of the licence term as stated on the Order Form,

## (**"Term"**).

## If LGfL supplies any Software, this Agreement shall automatically renew for further 12 month periods unless terminated by either party on not less than 20 Working Days’ written notice prior to the end of the current Term.

## Either party (**"Terminating Party"**) may terminate this Agreement immediately by written notice if:

### the other party (**"Defaulting Party"**) commits a material breach of this Agreement, which, if the breach is capable of remedy, is not remedied within 20 Working Days of written notice specifying the breach and requiring its remedy;

### the Defaulting Party suffers an Insolvency Event; or

### the Defaulting Party commits a Prohibited Act.

## If the licence for any Software is terminated for any reason, including pursuant to clause 7.4.3, the Customer shall destroy or, at the request of LGfL, return the Software.

## The provisions of clauses 4, 6 - 8, 13 and 15, together with any clauses whose survival is necessary for the interpretation or enforcement of this Agreement shall survive its termination or expiry.

# Warranties

## Each party warrants, represents and undertakes to the other that: (a) it is duly authorised to enter into this Agreement on these terms; (b) in entering this Agreement it has not committed and will not commit any Prohibited Act; (c) it will use its best endeavours to ensure that it will not introduce any virus or disabling programmes or devices into the computer systems of the other party; and (d) it will use its best endeavours to ensure that none of its Personnel will infringe or induce, instruct or encourage any Personnel to infringe any Intellectual Property Rights of the other party or any third party.

## The Customer acknowledges and agrees that the Software is provided “as is” without warranty of any kind, express or implied, including implied warranties of merchantability and fitness for a particular purpose, except as otherwise set out in these terms. LGfL does not warrant that the functions contained in the Software will meet the Customer’s requirements or expectations or that the operation of the Software will be uninterrupted or error free.

## Except as expressly set out in this Agreement, all other warranties, representations and undertakings, whether express or implied, are excluded to the fullest extent permitted by law.

# Limitation of Liability

## Nothing in this Agreement shall limit either party's liability for: (a) death or personal injury resulting from its own negligence or that of its Personnel; (b) fraud or fraudulent misrepresentation; or (c) any liability which cannot by law be excluded or restricted.

## Without prejudice to clause 13.1, the aggregate liability of either party shall not, in respect of all other causes of action arising out of or in connection with this Agreement (whether for breach of contract, negligence or other tort, statute or otherwise), exceed an amount equal to the Price paid or payable (without deduction, set off or counter-claim).

## Neither party shall be liable to the other under this Agreement for: (a) any indirect or consequential loss or damage at all; or (b) for any loss of business, financial loss, including loss of revenue, profit or anticipated savings or loss of goodwill, reputation or data.

# Dispute Resolution

## The parties shall use all reasonable endeavours to resolve any dispute in good faith.

## Any disputes that cannot be resolved by the parties’ representatives in the first instance shall be escalated to a senior executive officer of each party.

## If the dispute remains unresolved within 20 Working Days of the dispute being escalated to the senior executive officers, the parties shall refer the dispute to mediation in accordance with the Centre for Effective Dispute Resolution (**"CEDR"**) Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR and the mediation will start not less than 20 Working Days after the referral.

## Either party may commence or continue litigation if the parties are unable to resolve the dispute by mediation.

## Nothing in this clause 14 shall prevent either party from seeking injunctive relief at any time.

# General

## **Force majeure:** Neither party shall be liable to the other for any delay or failure to perform its obligations under this Agreement arising from any cause beyond its reasonable control.

## **Exclusion of other terms:** This Agreement sets out the entire agreement and understanding between the parties in connection with its subject matter. Nothing in this Agreement shall affect the liability of either party in respect of any misrepresentation, warranty or condition that it makes fraudulently.

## **Assignment:** The Customer acknowledges that this Agreement is personal to it and that it may not assign or otherwise transfer the benefit of, or its obligations under, this Agreement to any third party, either in whole or in part, without LGfL’s prior written consent.

## **Waiver:** Failure by either party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under this Agreement or otherwise.

## **Notices:** Notices under this Agreement shall be in writing and delivered to the other party by hand, by first class post or by email. Any notice or document shall be deemed served: if delivered by hand at the time of delivery; if posted, 2 Working Days after posting; and if sent by email, at the time of transmission if sent between 09:00 – 17:00 of any Working Day (and otherwise the next Working Day), provided that no error message is returned.

## **Severance:** If any provision (or any part) of this Agreement is or becomes invalid or unenforceable it will be severed from the rest of this Agreement to the extent that it is invalid or unenforceable and no other provision of this Agreement shall be rendered invalid, unenforceable or otherwise be affected.

## **Relationship:** Nothing in this Agreement shall make either party the agent or partner of the other or give either party the power to bind the other.

## **Third Party** **Rights:** A person who is not a party to this Agreement will have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms, provided that nothing in this clause 15.8 shall affect any right or remedy that exists or is available otherwise than pursuant to that Act.

## **Amendment:** This Agreement may not be amended, modified, varied or supplemented except in writing signed by or on behalf of both parties.

## **Jurisdiction:** This Agreement shall be governed by and construed in accordance with English law. The parties hereby submit to the exclusive jurisdiction of the English Courts.