

**London Grid for Learning Trust**  
**NETWORK SERVICES AGREEMENT**  
**COVER SHEET**

<b>Service Provider</b>	London Grid for Learning Trust, CI Tower, New Malden KT3 4TE (LGfL)
	Company no 4205579 Registered Charity no 1090412
<b>Service User (School):</b>	###
<b>Address:</b>	###
<b>Contact name:</b>	### this should be the person who is named as completing the online registration form
<b>Start Date:</b>	1 <sup>st</sup> April 2011 **
<b>Initial Term for core service:</b>	1 <sup>st</sup> April 2011 to the fifth anniversary of the school's first LGfL broadband billing date which occurs on or after 1 <sup>st</sup> April 2011.
<b>Initial Term payment plan:</b>	Five annual payments invoiced and payable within the month the broadband billing date occurs, adjusted annually and incrementally to align broadband and included services billing periods, and to take account of increase or decrease in the annual January School Census pupil numbers on roll at the Service User school (Full time equivalent pupils).
<b>LGfL 2.0 Service – bandwidth*:</b>	##Mbps (Max Upgrade ##Mbps)
<b>Annual Charge ex vat (Year 1):</b>	£### ex vat
<b>Charge for year 1 above is based on:</b>	## primary + ## secondary pupils

**Documents**

This *Cover Sheet* together with the terms and conditions that follow and the following documents (as amended by LGfL from time to time and published at [www.policies.lgfl.net](http://www.policies.lgfl.net)) form the entire Agreement under the provisions of clause 16.2:

- |                          |                            |                        |
|--------------------------|----------------------------|------------------------|
| 1. Acceptable Use Policy | 4. Connection Policy       | 7. Service Description |
| 2. Terms of Use Policy   | 5. Privacy Policy          |                        |
| 3. Security Policy       | 6. Service Level Agreement |                        |

**Explanatory Notes**

\*\* "Why is the Start Date 1<sup>st</sup> April 2011, when the anniversary of the school's current LGfL Broadband Service is (or may be) a later date?"

Until 31<sup>st</sup> March 2011, all the 'included services' which both underpin and are overlaid on the LGfL broadband service were paid for by means of London LAs applying Harnessing Technology Grant. This includes the cost of the LGfL secure core network which currently serves schools' connections and services like filtering, antivirus, email hosting, learning resources etc.

These services are now combined to form part of the LGfL 2.0 'Core Service' for schools and in the absence of grant which would normally be collected from LAs in April, from 1<sup>st</sup> April 2011, these must now be resourced from schools' subscriptions.

Consequently, LGfL will issue an invoice on or around the date of each school's existing LGfL annual broadband billing date. For 'included services' this invoice will relate to the period 1<sup>st</sup> April 2011 to 31<sup>st</sup> March 2012, and for your broadband connection, to a 12 month period extending from your current annual broadband billing date. During the term of the agreement small annual adjustments will be made to align these two.

\*Where the initial bandwidth ordered is greater than 10Mbps, and the Service User site is not already served at a data rate greater than 10Mbps, the charge made will be based, on the charge for the 10Mbps price for the selected router, pro rata until the date the bandwidth upgrade is implemented, when a second, adjustment invoice will be issued for the difference in bandwidth charge, for the remaining part of the current billing period.

Schools currently served at 2Mbps or 5Mbps on the old LGfL (sourced from Synetrix) service must appreciate that the current average cost of these connections actually exceeds the new broadband charge for 10Mbps, hence the application of the new 10Mbps charge.

Note for Finance Officers regarding the regional procurement of LGfL 2.0 Services: This order may exceed the value of your school's tender limits. This order is covered, for EU procurement compliance, by a mini-competition held in October 2010 by LGfL Trust on behalf of London LAs and schools under the Janet Transmissions Framework.

Additional services provided as part of the LGfL 2.0 service have been procured through an EU Open Journal Procurement completed by LGfL Trust on behalf of London schools and local authorities in September 2009. The London Grid for Learning Trust is owned collectively by the London councils and authorised to procure services on behalf of LAs and schools.

# NETWORK SERVICES AGREEMENT

## 1. Definitions and Interpretation

- 1.1 "Additional Services" means those services made available by LGfL from time to time for service users to purchase.
- 1.2 "Agreement" means this document entitled the *Network Services Agreement*, which shall include the additional provisions set out in any other documents listed on the Cover Sheet.
- 1.3 "Confidential Information" means any of the LGfL's, the Supplier's or the Service User's confidential or proprietary information, including this Agreement but excluding any information: (a) that is publicly known or becomes publicly known other than by a breach of this Agreement; (b) that, when it was disclosed to the other party, was already known by that party; or (c) that, after being disclosed to the other party, is disclosed to that party again by a third party at liberty to disclose it.
- 1.4 "Core Service" means LGfL's package of core services delivered to each of its service users.
- 1.5 "Cover Sheet" means the cover sheet attached to and which forms part of this Agreement.
- 1.6 "Hardware" means the computer equipment, file-servers, web-servers, network cards, disk drives, modems, telecommunications equipment (including wide area and local area equipment), cache devices, uninterruptible power supplies, fail-over generators, ISDN gateways, video multi-control units, fixtures, fittings and other hardware.
- 1.7 "Intellectual Property Rights" means any rights in or to any patent, copyright, database right, design right, utility model, 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.
- 1.8 "Month" means any calendar month.
- 1.9 "Personnel" means the directors, employees, consultants, agents, advisors or sub-contractors of the Supplier, the LGfL or the Service User as applicable.
- 1.10 "Prohibited Act" means any act of the Service User which: (a) involves bribery or dishonesty; (b) any illegal act or any act which is an offence under the 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 the LGfL, and which is committed in relation to the obtaining or performance of this Agreement.
- 1.11 "Services" means the services to be provided by or on behalf of the LGfL to the Service User as anticipated by this Agreement, being the Core Service and any Additional Services ordered by the Service User.
- 1.12 "Software" includes computer programs, operating systems, firmware and all associated files and data (including job control and other procedure language files, macros and configuration files).
- 1.13 "Supplier" means any person who is contracted to supply the Services (or any part of them) on behalf of the LGfL under this Agreement.
- 1.14 "Supplier Equipment" means the Hardware and Software to be provided by the Supplier to the Service User in the course of providing the Services.
- 1.15 "System" means any Hardware (including the Supplier Equipment) to be supplied by or on behalf of the LGfL as anticipated by this Agreement, and references to the System includes any part of the System.
- 1.16 "Working Day" means any day which is not a Saturday, Sunday or a public holiday in England.
- 1.17 Other capitalised words have the meanings set out in the Cover Sheet.
- 1.18 In this Agreement, unless the context otherwise requires: (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.

## 2. Purpose of Agreement

- 2.1 The LGfL shall use all reasonable endeavours to procure for the Service User the supply of the Services in accordance with the SLA.
- 2.2 The Service User confirms that the Services are to be used by it only in accordance with the terms of this Agreement and that its use of and access to the Services will comply with the terms of the documents listed on the cover sheet.

## 3. Provision of Services

- 3.1 As soon as practicable from the Start Date, the Supplier shall send the Service User a project plan setting out its environmental, access and accommodation requirements and a timetable for the installation of the System.

- 3.2 The Service User shall permit the Supplier's Personnel to access any Site, at all reasonable times for the purpose of fulfilling its obligations under clause 3.1 and provide all reasonable consents, wayleaves, assistance and facilities and all necessary electrical and other installations and fittings and shall continue to provide such resources at its own cost.

- 3.3 LGfL may from time to time make available Additional Services to service users. If the Service User wishes to receive any Additional Services, it shall place orders for the relevant Additional Services via the mechanism then in place for doing so, and the charges payable and the terms relating to those Additional Services shall be incorporated into this Agreement. Additional Services shall have their own Initial Terms, Start Dates and Charges as specified by LGfL and agreed by the Service User.

- 3.4 The LGfL, the Service User and the Supplier shall provide such reasonable co-operation to each other as is necessary to implement, operate and receive the Services.

## 4. Service Purpose

- 4.1 Subject to clause 4.2, the parties agree that the Service User shall be permitted to the use of the Services in accordance with the relevant Service Description(s) and Service Level Agreement(s) for the promotion of education and community benefit.
- 4.2 The parties agree that the LGfL shall not be liable for and is indemnified by the Service User in respect of any costs or claims whatsoever relating to or arising from use of the services as set out in clause 4.1 or use by the Service User or any other person of the System and the Services.

## 5. Use of Services

- 5.1 The Service User undertakes to use the Services in accordance with the documents listed on the cover sheet.
- 5.2 Without limitation to the generality of clause 5.1, the Service User undertakes not to use the System:
  - 5.2.1 for the publication, communication or transmission of any material which is: (a) defamatory, offensive or abusive; (b) of an obscene, nuisance or threatening character; (c) is calculated to demean or be discriminatory of any person or vitiate their human or moral rights; or (d) or is of a character such that its access by children would be to put them at risk in any way or would be considered improper;
  - 5.2.2 in a manner which constitutes a violation or infringement of the legal rights of any person; or
  - 5.2.3 in a manner that is or is associated with a criminal offence.
- 5.3 The Service User shall not (whether or not for profit) re-sell or permit the resale directly or indirectly of the Services (or any part of them including Equipment) to any third party, or to allow any third party to connect to the System or otherwise receive or make use of the Services directly or indirectly.
- 5.4 The LGfL or the Supplier may suspend or limit the Services (or any part of them) if the LGfL or the Supplier reasonably suspects that the Service User is in breach of clause 5.2 or clause 5.3, or the LGfL or the Supplier reasonably believe that 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 Service User of the action to be taken to allow the restoration of the Services.

## 6. Term of the Services

- 6.1 Each Service making up the Services shall be provided by LGfL to the Service User for the Initial Term for that Service.
- 6.2 At the end of the Initial Term, the parties agree that, unless terminated in accordance with this Agreement, each of the Services shall continue to be provided whilst this Agreement remains in force.

## 7. Equipment

- 7.1 The Service User acknowledges that all Supplier Equipment shall remain the property of the Supplier. The Service User will permit the Supplier reasonable access to the Site at all reasonable times upon reasonable notice for the purpose of providing any modification or maintenance of the Supplier Equipment.
- 7.2 The Service User undertakes with the LGfL that at all times it will ensure the safe keeping and proper use of the Supplier Equipment at the Site. In particular the Service User undertakes:
  - 7.2.1 to comply with all the Supplier's reasonable instructions in relation to the safe keeping and proper use of the Supplier Equipment;
  - 7.2.2 except in the case of an emergency, to keep the Supplier Equipment at its premises and stationary at all times;
  - 7.2.3 not to (or permit any other person to) add to, modify, or in any way interfere with the Supplier Equipment, or any part;
  - 7.2.4 not to do, omit to do or permit anything which is likely to damage, disable or impair the operation of the Supplier Equipment;

- 7.2.5 not to remove, tamper with or obliterate any words or labels on the Supplier Equipment, or any part; and
- 7.2.6 procure and maintain for the duration of this Agreement suitable insurance in respect of all relevant risks relating to the Supplier Equipment.
- 7.3 The Service User shall be liable for any loss or damage howsoever caused to the Supplier Equipment at the Site (fair wear and tear excepted) except in so far as it has taken all reasonable precautions to prevent such loss or damage and the Service User shall:
- 7.3.1 maintain appropriate insurance for the Supplier Equipment against all relevant risks; and
- 7.3.2 on its own behalf undertakes to hold harmless and reimburse the LGfL against all such loss, claims or damage.
- 7.4 Where the Service User prevents the Supplier from fulfilling its obligations in clauses 3.2 and/or 7.1, the Service User may be liable to pay for the reasonable costs of storage for the Supplier Equipment or any equipment purchased from the Supplier as well as a call-out fee and other reasonable costs related to the Service User's failure.
- 7.5 The Service User must not change the configuration of the Equipment and if in breach of this clause shall be liable for LGfL's reasonable costs arising from remediation.

## 8. Service User's Equipment

- 8.1 The Service User acknowledges that it alone and that neither the LGfL nor the Supplier shall be responsible for the competence, sufficiency, repair and maintenance of the Service User's Hardware.
- 8.2 The Supplier may disconnect the Service User's Hardware from the System if the Customer's Hardware: (a) does not comply with any relevant law or any other material standards currently in force; (b) may cause the death of or personal injury to any person or material damage to property (including any Intellectual Property Rights); or (c) may materially impair the operation of the System or the quality of the Services made available to the Service User or to any other person.
- 8.3 The Service User shall indemnify the LGfL against all claims, costs, demands and expenses (including reasonable legal costs) arising directly or indirectly out of any claim against the LGfL or the Supplier relating to the disconnection of the Service User's Hardware from the System under the provisions of clause 8.2, unless and to the extent that any such claim arises out of the negligence or wilful default of the LGfL or the Supplier.

## 9. Payment

- 9.1 The Service User shall pay the Charges annually in advance to the LGfL within 30 days of the date of any invoice ("**Due Date**") without any deduction, set-off, discount, abatement or otherwise, unless otherwise agreed in writing and in advance by LGfL
- 9.2 If any payment is overdue, the Service User shall pay to the LGfL interest on the amount overdue at the rate prescribed from time to time 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.
- 9.3 All Charges are exclusive of VAT which shall be added at the prevailing rate.
- 9.4 The Charges:
- 9.4.1 may be varied by LGfL with 3 months notice;
- 9.4.2 may only increase in the first three years of the Agreement in accordance with the Retail Prices Index (all items excluding mortgages); and
- 9.4.3 may increase following the first three years of the Agreement in accordance with the prevailing market conditions and to secure the ongoing viability of the Services for all of LGfL's service users, provided that in accordance with LGfL's aims, LGfL shall seek to limit any such increase so far as reasonably possible and in any event any increases in the charges shall not exceed 10% in real terms, i.e. over and above RPI, in total, during the Initial Term.
- 9.5 Without prejudice to the provisions of clause 9.2, if any payment is overdue the LGfL may subject to 5 working days notice suspend the supply of the Services until such time as the Service User has paid to the LGfL any such overdue amount.

## 10. Term and Termination

- 10.1 This Agreement shall have effect from the Start Date and continue until at least the end of the longest Initial Term for each of the Services ordered. After that, this Agreement shall remain in force unless either party gives 6 Months written notice to the other ending this Agreement.
- 10.2 Either party (the "**Terminating Party**") may terminate this Agreement immediately by written notice if the other commits any material breach of this Agreement, which, if the breach is capable of remedy, is not remedied within 20 Working Days of the Terminating Party providing the other with written notice specifying the breach and requiring its remedy.
- 10.3 LGfL may terminate this Agreement if a resolution is passed or an order is made for the winding up of the Service User (save for the purpose of a bona fide reconstruction or amalgamation) or if the Service User becomes subject to an

administration order, or a receiver or administrative receiver is appointed over any of the Service User's property or assets, or the Service User 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 Service User is dissolved.

- 10.4 If any of the circumstances in clause 10.3 apply to LGfL then the second part of clause 16.3 shall apply and the Agreement shall not be terminated.
- 10.5 The LGfL may terminate this Agreement immediately on notice if the Service User commits any Prohibited Act.
- 10.6 Where the Service User gives notice of termination of a service within the Initial Term, the Service User shall pay for each of the remaining full years of the Initial Term a sum equal to 50% of the annual charge, based on the annual charge which applies during the last year of service.
- 10.7 No credit shall be given for any pre-paid term of service.
- 10.8 Each service provided under this agreement shall renew annually and be chargeable, unless the Service User gives written notice of service termination at least 50 working days, prior to the following billing date anniversary.

## 11. Limitation of Liability

- 11.1 Nothing herein shall limit either party's liability for: (a) death or personal injury resulting from its own negligence or that of its Personnel; or (b) any liability which cannot by law be excluded or restricted.
- 11.2 Subject to the provisions of this clause 11 and clause 14.1.3, neither party shall make a claim to the extent that, as a result of such claim, the aggregate liability of the other in respect of all causes of action arising out of or in connection with this Agreement or its subject matter (whether for breach of contract, negligence or other tort, statute or otherwise) during any 12 Month period (considered retrospectively from the date any cause of action arose) would exceed an amount equal to the total of the sums paid by the Service User to the LGfL under this Agreement during that 12 Month period.
- 11.3 The LGfL's liability in respect of the supply of the Services, or any part, (whether for breach of contract, in negligence or any other tort, under statute or otherwise at all) shall be limited at the LGfL's option, to: (a) re-supplying the Services; (b) paying the cost of having the Services re-supplied; or (c) repaying any Charges in respect of the part of the Services in dispute.
- 11.4 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, revenue, profit, anticipated savings, goodwill, reputation or data.

## 12. Confidentiality and Data Protection

- 12.1 Except as permitted by this Agreement, neither party may use any of the other party's Confidential Information.
- 12.2 Subject to clause 12.3, neither party may disclose to any other person any of the other party's Confidential Information.
- 12.3 Either party may disclose the Confidential Information of the other:
- 12.3.1 when required to do so by law or any regulatory authority, provided that where practicable and lawful, the disclosing party: (a) promptly notifies the other of such a requirement; and (b) co-operates with the owner of the Confidential Information regarding the manner, scope or timing of such disclosure or any action that the owner may take to challenge the validity of such requirement; and
- 12.3.2 to its Personnel or any person whose duties reasonably require such disclosure, on condition that the party making such 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.
- 12.4 The Parties acknowledge that the Service User is the data controller and that LGfL and the Supplier shall be data processors for the purposes of the Data Protection Act 1998. LGfL and the Supplier shall comply with the relevant provisions of that Act as if they were a data controller, and "data processor" and "data controller" shall have the meanings given in that Act.

## 13. Warranties

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

## 14. Intellectual Property Rights

- 14.1 The Service User acknowledges that:
- 14.1.1 the Intellectual Property Rights in the System remain vested in the Supplier, the LGfL or their licensors (as applicable);

14.1.2 the Service User has a licence to use the Services in accordance with the terms agreed by LGfL and the Supplier as more particularly specified in the documents referenced on the Cover Sheet; and

14.1.3 the Service User fully indemnifies LGfL for use of the System in breach of any applicable Intellectual Property Rights.

## 15. Dispute Resolution

15.1 The parties shall use all reasonable endeavours to resolve any dispute in good faith. If the Service User has a dispute regarding the provision of the Services then it shall always assign such disputes and/or claims to LGfL for LGfL to manage as against the relevant Supplier, and the Service User shall provide co-operation and assistance to LGfL to resolve the dispute and/or claim.

15.2 If within 40 Working Days of the dispute arising it remains unresolved the parties shall refer the dispute to an expert who shall be mutually agreed between the parties ("**Expert**") and in default of agreement the Expert shall be appointed, at the written request of either Party, by the President or Vice-President of the Chartered Institute of Arbitrators. The Expert shall act as an "expert" and not as an arbitrator and his determination shall be final and binding except in the case of manifest error. The Expert shall be free to decide the method of determination of any such dispute.

## 16. General

16.1 **Force majeure:** Save for the Service User's obligation to pay the Charges, neither party shall be liable to the other for any delay in, or failure of, performance of its obligations under this Agreement arising from any cause beyond its reasonable control.

16.2 **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 Clause 16.2 shall affect the liability of either party in respect of any misrepresentation, warranty or condition that it makes fraudulently.

16.3 **Assignment and Novation:** The Service User may not assign or in any other way make over to any third party the benefit of this Agreement, either in whole or in part, without the LGfL's express prior written consent. Should LGfL cease to exist then this Agreement between the LGfL and the Service User will be automatically novated and transferred from LGfL to the respective Supplier of Services, which means that the role of providing the Services to the Service User is transferred to being a direct responsibility of LGfL's Supplier with effect from the said date. The relevant Supplier will then assume all obligations, duties, tasks and rights of the Supplier and LGfL under this Agreement.

(This clause is included to provide protection for the continuity of services for schools and for the investment made by LGfL Suppliers in service provision, should any change, including a change in law or government policy relating to the rights, roles and responsibilities of Local Authorities and their subsidiary trading arms, prevent LGfL from continuing to operate as currently.)

16.4 **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.

16.5 **Notices:** Notices under this Agreement shall be in writing and delivered to the other party by hand, by first class post or by facsimile. 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 facsimile, at the time of transmission.

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

16.7 **Survival:** The provisions of Clauses 4.2, 8.3, 11, 12, 16.2, 16.4, 16.6, 16.9 and 16.11 shall survive the termination of this Agreement for any reason.

16.8 **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.

16.9 **Third Party Rights:** The Supplier shall have the right to enforce any of the terms of this Agreement in accordance with the provisions of: (a) this Agreement; and (b) the Contracts (Rights of Third Parties) Act 1999 ("**Act**"). The LGfL may terminate this Agreement or vary it in such a way as to extinguish the Supplier's rights under the Act. Except as provided in this clause 16.9, a person who is not a party to this Agreement shall have no rights under the Act to enforce any term of it. This clause 16.9 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the 1999 Act.

16.10 **Amendment:** This Agreement may not be amended, modified, varied or supplemented except in writing signed by or on behalf of both parties except in relation to the Acceptable Use Policy and SLA, which may be updated from time to time by LGfL in accordance with paragraph 3 of the Cover Sheet.

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