

OFFICIAL

London
Community Rehabilitation Company



STANDARD CONTRACT TERMS AND CONDITIONS

Corporate Procurement Unit
151 Buckingham Palace Road
London
SW1W 9SZ

COMMERCIAL IN CONFIDENCE

OFFICIAL

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1. DEFINITIONS

- 1.1 “**Authority**” means London Community Rehabilitation Company, 151 Buckingham Palace Road, London SW1W 9SZ and, where the context permits, reference to the Authority in these Terms and Conditions shall include reference to an employee of the Authority;
- 1.2 “**Brand**” means the name, design, colour, usage and other such similar qualities of, and protected by, the Authority;
- 1.3 “**Commencement Date**” means the date agreed in writing by the Parties;
- 1.4 “**Confidential Information**” means confidential by either Party in writing or that ought reasonably to be considered as confidential however is conveyed, including information that relates to business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Provider, including intellectual property rights, together with all information derived from the above, any other information clearly designated as being confidential (whether or not it is marked as confidential) or which ought reasonably to be considered to be confidential.
- 1.5 “**Contract**” means the agreement concluded between the Authority and the Provider including these terms and conditions and as defined in Clause 2.1;
- 1.6 “**Contracting Authority**” means any contracting authority as defined in the Regulations 3 of the Public Contracts Regulations 2006;
- 1.7 “**Key Personnel**” means any person named by the Provider who is notified to the Authority and is to be regarded as key personnel during the course of the Services.
- 1.8 “**Order Number**” means the unique number that appears on the Purchase Order.
- 1.9 “**Parties**” means the Authority and the Provider.
- 1.10 “**Premises**” means any land or building where the Services are to be performed.
- 1.11 “**Price**” means the price exclusive of Value Added Tax paid to the Provider under the Contract for the full and proper performance by the Provider of his part of the Contract under its provisions;
- 1.12 “**Provider**” means the individual or organisation who by the Contract undertakes to render such Services for the Authority as is provided by the Contract;
- 1.13 “**Purchase Order**” means an order for services served by the Authority on the Provider which includes a description of the services, the price or rate applicable to the services and any particular terms applying to the services which are additional to these Terms and Clauses.
- 1.14 “**Services**” means the services as agreed in writing by the Parties;
- 1.15 “**Sub-contractor**” means any person, firm or company under the Contract to the Provider to perform work or provide professional services and/or supply

goods and includes any other person or persons taken as a partner or director by such person, firm or company during the currency of the Contract;

- 1.16 **“Termination Date”** means the last date as agreed in writing by the Parties;
- 1.17 **“Terms and Conditions”** means these terms and conditions for the supply of the Services.
- 1.18 **“The Directive”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or the European Acquired Rights Directive 77/187 or any amendment or revision thereof;
- 1.19 The headings of these Clauses shall not affect the interpretation thereof.
- 1.20 The masculine includes the feminine, and the singular includes the plural.
- 1.21 Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

2. GENERAL

- 2.1 These Terms and Conditions, together with the relevant Purchase Order and any other document, plan or specification referred to in the Purchase Order or any other agreed communication thereafter constitute the Contract between the Parties for the Services (“the Contract”).
- 2.2 In the event of any conflict between a clause in this Contract and any other document it shall be the Terms and Conditions contained herein that shall prevail.
- 2.3 The Contract constitutes the entire agreement between the parties relating to the Services and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However, nothing in the Contract shall limit or exclude any liability for fraud or fraudulent misrepresentation, death and personal injury.
- 2.4 The Services shall be provided, as required by and in agreement with the Authority.
- 2.5 Nothing in this Contract shall have the effect of making the Provider an agent, servant or employee of the Authority.

3. THE SERVICES

- 3.1 The Provider shall provide the Services as agreed with the Authority.
- 3.2 The Provider shall perform the Services:
 - a. with reasonable care and diligence;
 - b. in accordance with industry best practice and using the best available techniques and standards;
 - c. using staff who have appropriate skills, qualifications and experience;

- d. using the appropriate number of staff; and
 - e. to the reasonable and justifiable satisfaction of the Authority.
- 3.3 The Provider shall provide all plant, equipment and materials necessary for the performance of the Services except as otherwise agreed with the Authority. All plant, equipment and materials shall be at the Provider's risk.
- 3.3 The Provider shall not place or cause to be placed any orders with third parties or otherwise incur any liabilities to third parties in the name of the Authority without the prior written consent of the Authority.
- 3.4 The Provider shall take appropriate steps to ensure that neither the Provider nor any of its staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of the Contract. The Provider will disclose to the Authority full particulars of any such conflict of interest which may arise.
- 4. TIME OF PERFORMANCE**
- 4.1 The Provider shall carry out the Services for the period in accordance with the timescales agreed with the Authority. The Provider shall comply with any reasonable timescales notified by the Authority.
- 4.2 The Authority may by written notice require the Provider to execute the Services in such order as the Authority may reasonably decide.
- 4.3 The Provider shall notify the Authority immediately if it becomes aware of any event that it believes is likely to delay or impede the performance of the Services.
- 4.4 In the event that the Provider fails to meet a date or dates agreed with the Authority it shall, on the request of the Authority, and without prejudice to the Authority's other rights and remedies, arrange to provide at no additional cost to the Authority all such additional resources as are necessary to fulfil its obligations.
- 5. PROVIDER'S ORGANISATION**
- 5.1 All personnel deployed on the work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to the Authority. If the Authority so requires, full particulars of all personnel to be so employed shall be forwarded in advance to the Authority for confirmation of acceptability.
- 5.2 The key personnel offered by the Provider and accepted by the Authority to work on the Contract shall be detailed and submitted promptly to the Authority upon request.

- 5.3 The Provider shall take all reasonable steps to avoid changes of personnel assigned to and accepted for the work under the Contract except whenever changes are unavoidable or of a temporary nature caused by sickness etc. The Provider shall give at least one month's notice to the Authority of proposals to change key personnel and Clause 5.1 shall apply to the replacement personnel.
- 5.4 The Provider shall take the steps reasonably required by the Authority to prevent unauthorised persons being admitted to the Authority's premises. If the Authority gives the Provider notice that any person is not to be admitted to or is to be removed from its premises or is not to become involved in (or removed from) the Services, the Provider shall take all reasonable steps to comply with such notice.
- 5.5 The decision of the Authority as to whether any person is to be admitted to or is to be removed from involvement in the Services or as to the designation or approval of key personnel and as to whether the Provider has furnished the information or taken the steps required of him by this Clause shall be final and conclusive.
- 5.6 The Provider shall ensure that the person removed is replaced by someone of at least equivalent skills and qualifications.
- 5.7 The Provider shall bear the cost of any notice, instruction or decision of the Authority under this Clause.
- 5.8 The Provider shall not unlawfully discriminate within the meaning and scope of the provisions of any act of Parliament relating to discrimination in employment. The Provider shall take all reasonable steps to secure the observance of these provisions by all servants, Sub-contractors or agents of the Provider.

6. SECURITY AND USE OF AUTHORITY'S PREMISES

- 6.1 Where the Services are carried out at Premises owned or occupied by the Authority the Provider shall:
- a) comply and shall ensure that its staff, Sub-contractors and agents comply with any rules or regulations applied by the Authority in relation to security at its premises;
 - b) comply with any notice given by the Authority stating that a person named in the notice is to be removed from the Premises and/or not deployed any further in the provision of the Services. The Provider shall ensure that the person is replaced by someone of at least equivalent skills and qualifications. The decision of the Authority on whether someone may be admitted to its Premises is final. The Provider shall bear the cost of complying with such a notice;

- c) keep the Premises reasonably clean and tidy while the Services are being performed and shall leave them clean and tidy on completion; and
- d) pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) done by its employees, agents or Sub-contractors other than fair wear and tear.

6.2 The Provider shall co-operate with any other person, firm or company which is providing services to the Authority at the same time as the Provider.

7. OCCUPATION OF AUTHORITY'S PREMISES

7.1 Any land or premises (including temporary buildings) made available to the Provider by the Authority in connection with the Contract shall be made available to the Provider free of charge and shall be used by the Provider solely for the purposes of performing the Contract. The Provider shall have the use of such land or premises as licensee and shall vacate the same upon completion or determination of the Contract.

8. PROVISION OF EQUIPMENT, ACCESS TO INFORMATION SYSTEMS AND DATA MANAGEMENT

8.1 Any equipment provided by the Authority for the purpose of the Contract shall remain the property of the Authority and shall only be used for the purpose of carrying out this Contract; to be returned promptly to the Authority on expiry or termination of the Contract. The Provider will reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the actions of the employee or agent of the Provider. Equipment supplied by the Authority shall be deemed to be in good condition when received by or on behalf of the Provider, unless the Authority is notified otherwise in writing within seven days.

8.2 The Provider shall be responsible for adherence to the following London Community Rehabilitation Company policies and procedures:

- Information Security Policy
- Vetting Policy
- NOMS' Data Protection
- Incident Management Policy

These policies are available from the Authority upon request and the Provider shall ensure that all his staff, agents or representatives are aware of, comply with and are managed thoroughly in such regard. It is the Provider's responsibility to remain aware of any amendments to such policy during the Contract. The Provider shall indemnify the Authority against any and all costs, as defined in Clause 20 that arise as a result of any breach of such procedure.

In addition, where relevant, the Provider shall accept and adopt any appropriate Information Sharing Agreement that the Authority shall request.

- 8.3 Both Parties warrant that they will duly observe all their obligations under the Data Protection Act 1998, Directive 95/46 EC, and its updated versions, and any other associated legislation or regulations (“the Data Protection Requirements”). Both Parties shall comply with any applicable codes of practice or other relevant guidance issued under or in connection with the Data Protection Requirements.
- 8.4 Where applicable, the Provider shall ensure that it and any of its sub-contractors involved in the provision of the Services shall be registered under the appropriate part of the Data Protection Act 1998.
- 8.5 Where the Provider or any sub-contractor process personal data on behalf of the Authority as part of the Services, the Provider shall:
- a) act only on instructions from the Authority as data controller in processing personal data; and
 - b) comply with any instructions issued by the Authority from time to time in relation to the processing of personal data; and
 - c) take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 8.6 The Authority may from time to time serve on the Provider an information notice requiring the Provider, within such time and in such form as is specified in the notice, to furnish the Authority with such information as the Authority shall reasonably require relating to:
- a) compliance by the Provider or its sub-contractor’s with the Provider’s obligations under this Contract in connection with the processing of personal data; and/or
 - b) the Provider or its sub-contractor’s handling of the rights of data subjects, including but not limited to subject access rights.
- 8.7 For the purposes of this Condition, “data controller”, “data processor”, “data subject”, “personal data”, “processing” and “subject access rights” shall have the meanings given to them in the Data Protection Act 1998.
- 8.8 Where the Provider, or any sub-contractor as part of the Services processes personal data as a data controller, the Provider warrants that it will obtain any personal data fairly and lawfully. Further, the Provider warrants that it is able to disclose such data to the Authority and that it has designed the Services in such as way as to ensure that the use by the Authority of the personal data obtained in connection with the Services does not breach any provisions of the Data Protection Act 1998 or any associated legislation or regulations.

- 8.9 The Provider may use its own laptop computers on the Authority sites but under no circumstances shall they connect them to the Authority systems or infrastructure. Where the Provider uses its own laptops it shall be responsible for all relevant security and health and safety of such equipment.
- 8.10 The Provider shall return, destroy or otherwise manage, including but not limited to, all data, information and documents, whether in electronic or paper format, as instructed by the Authority and in a timely manner and by the defined deadline.
- 8.11 Where the actions of the Provider give rise to a breach of data protection legislation the Authority may withdraw any and all access to the Authority's systems and offices indefinitely.
- 8.12 Subject to the compliance by the Authority with its obligations under this Contract, the Provider shall fully indemnify the Authority against the costs of dealing with any claims made in respect of any information subject to the Data Protection Act 1998, which claims would not have arisen but for some act, omission or negligence on the part of the Provider, his Sub-contractors, agents or staff.

9. HEALTH AND SAFETY

- 9.1 The Provider shall notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract, whether such hazards exist or potentially exist directly or indirectly through the Provider in his performance of the Services.
- 9.2 Where the Services are being carried out at land or premises owned or occupied by the Authority, the Authority shall notify the Provider of any health and safety hazards which may exist or arise at its premises and which may affect the Provider. The Provider shall draw these hazards to the attention of any of its employees, Sub-contractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.
- 9.3 The Provider shall:
- a) at all times comply with the requirements of the Health and Safety at Work Act 1974 and of any other Acts, Regulations or Orders pertaining to the health and safety of employees; and
 - b) nominate a person to be responsible for health and safety matters as required by the said Act.
- 9.4 The Authority shall be empowered to suspend the provision of the Service in the event of non-compliance by the Provider with health and safety matters. The Provider shall not resume provision of the Service until the Authority is satisfied that the non-compliance has been rectified. In respect of any such period of suspension, the default provisions as set out in this Contract shall apply.

10. PAYMENT

- 10.1 In consideration of the carrying out of the Services by the Provider the Authority shall pay the Provider as agreed in writing between the Parties, including, but not limited to, a Purchase Order or e-mail.
- 10.2 The Authority shall pay the Provider within 30 days of receipt and agreement of invoices, submitted monthly in arrears.
- 10.3 Where the Authority fails to pay the Provider on time and where the Provider wishes to invoke such remedy herein, the Provider shall be entitled to charge a maximum 2% per annum over the Base Rate of the Bank of England ruling at the date when the payment became overdue.

11. VALUE ADDED TAX

- 11.1 The Authority shall pay to the Provider, in addition to the Price, a sum equal to the prevailing rate of Value Added Tax chargeable on the value of the supply of goods and services provided in accordance with the Contract.
- 11.2 Any invoice or other request for payment of monies due to the Provider under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Finance Act 1972.
- 11.3 The Provider shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of Value Added Tax chargeable on the value of goods and services supplied in accordance with the Contract and payable by the Authority to the Provider in addition to the Contract Price. Any overpayment by the Authority to the Provider shall be a sum of money recoverable from the Provider for the purposes of Clause 12 'Recovery of Sums Due'.

12. RECOVERY OF SUMS DUE

- 12.1 If any sum is recoverable from or payable by the Provider under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Provider under the Contract or under any other agreement with the Authority.

13. NOT IN USE

14. UNSATISFACTORY PERFORMANCE

- 14.1 Should the Services or any portion thereof not be completed to the reasonable satisfaction of the Authority within the time or times specified in the Contract, or if in the opinion of the Authority progress made in the execution of the Service is justifiably unsatisfactory and unlikely to lead to such completion, the Authority may without prejudice to any other remedies by notice in writing to the Provider either:

- a) request the Provider to carry out the Services to a reasonable satisfactory end within a justifiable timescale deemed suitable by the Authority;
- b) request a review meeting with the Provider to agree an action plan. Where underperformance continues, the Authority reserves the right to reasonably and justifiably redefine the terms of this Contract including, but not limited to, structure of payments; or
- c) determine the Contract with immediate effect, either as respects the Services which have not been carried out in accordance with the Contract at the time of such determination or as respects all the Services to which the Contract relates other than those carried out in accordance with the Contract before that time, hereinafter called a relevant determination, and in such case the Provider shall not be entitled under the Contract to payment of any amount by way of compensation.

14.2 Where the Authority has determined the Contract under Clause 14.1 hereof and without prejudice as aforesaid the Authority may obtain all or any of the Services as respects which the Contract is so determined by arranging for those services to be carried out by alternative means and there shall be recoverable from the Provider the amount by which the aggregate of the cost of obtaining the Services in this way exceeds the amount which would have been payable to the Provider in respect of all the Services so replaced if they had been carried out in accordance with the Contract.

14.3 In the event of the Provider failing to carry out any Services in accordance with these Clauses, the Authority shall (without prejudice to any other remedy available) be entitled to deduct from any account rendered by the Provider in respect of unsatisfactory Services such sum as may represent in the reasonable opinion of the Authority the diminution in value of the Services covered by the invoice.

14.4 On the occurrence of a relevant determination the Provider shall, notwithstanding such determination, cooperate in the transfer of the Services, to which the relevant determination relates to any alternative organisation under Clause 14.2 hereof in accordance with arrangements to be notified to him by the Authority.

15. ALTERNATIVE DISPUTE RESOLUTION

15.1 Notwithstanding Clause 14, in the event of a dispute between the Parties in relation to this Contract the matter shall be referred in writing as soon as practicable to the Head of Corporate Procurement within the Authority and appropriate Director within the Provider.

15.2 If the dispute remains unresolved within six working days of such referral, or if the Parties determine it incapable of being resolved at that level, then the

dispute shall be immediately referred to the Corporate Services Director within the Authority and Director within the Provider.

- 15.3 If the Parties are unable to resolve the dispute within a further 12 working days, either Party may refer the dispute to the Centre for Dispute Resolution (“CEDR”) whom shall appoint a mediator.
- 15.4 The Parties shall seek to agree directions for how the mediation is conducted and, failing agreement, they shall seek directions from the mediator.
- 15.5 If the Parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.

16. ARBITRATION

- 16.1 If the parties have not come to a written resolution of their dispute within 30 working days of the first reference by a party of the dispute under Clause 15, then the matter shall be referred to the arbitration of two persons, one to be appointed by the Authority and one by the Provider, in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof. Such decision shall be full and final and neither Party shall have any recourse beyond such decision being reduced to writing.

17. TERMINATION

- 17.1 The Provider shall notify the Authority in writing immediately upon the occurrence of any of the following events:
- a) (where the Provider is an individual) if a petition is presented for the Provider's bankruptcy or a criminal bankruptcy order is made against the Provider, or the Provider makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs;
 - b) (where the Provider is a firm; or a number of persons acting together in any capacity) if any event in (a) or (c) of this Clause occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Provider to be wound up as an unregistered company; or
 - c) where the Provider is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 17.2 The Authority shall be entitled to terminate this Contract by notice to the Provider with immediate effect if:

- a) any of the events described in Clause 17.1 occurs;

- b) the Provider has committed a material breach of this Contract and (if such breach is capable of remedy) has failed to remedy such breach within thirty days of being required by the Authority in writing to do so;
 - c) (where the Provider is an individual), if he shall die or be adjudged Incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983;
 - d) the Authority is instructed by the Courts to terminate the Contract; or
 - e) there is a breach of Clause 3.4 where there may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of the Contract; or
 - f) there is a breach of Clause 32 that results in actual or potential reputational damage to the Authority including, but not limited to, a substantiated complaint raised by a member of staff or service user, legal proceedings or adverse media interest.
- 17.3 Both parties acknowledge that the Contract may be set aside by a Court in accordance with the Public Contracts Amendment Regulations 2009 (SI 2009/2992).
- 17.4 Notwithstanding Clause 17.2, and unless as otherwise agreed in writing with the Authority, the Authority shall be entitled to terminate this Contract without cause at any time by giving to the other not less than thirty days' written notice to that effect.
- 17.5 Upon notification of expiry or termination of this Contract, the Provider shall assist the Authority in planning and managing the exit from the Service Provision, including the transition to a new provider where applicable. As a minimum the Provider shall:
- a) support the Authority by making available the respective information and data to enable the Authority to re-tender the Services;
 - b) maintain a "business as usual" environment for the Authority during the transition period;
 - c) provide all other necessary activities and resources to support the preparation for, and execution of, a smooth and orderly transfer of all or part of the Services to either a new provider or the Authority
- 17.6 The Provider shall provide such support at no additional cost to the Authority and the new provider.

18. FORCE MAJEURE

- 18.1 Notwithstanding anything else contained in this Contract, the Provider shall not be liable for any failure to perform its obligations under this Contract if such delay is caused by circumstances beyond its reasonable control and the Provider has undertaken reasonable and justifiable measures to perform his duties through alternative action.
- 18.2 Subject to the Provider promptly notifying the Authority in writing of the reasons for the inability to perform the Service (and the likely duration), the performance of the Provider's obligations shall be suspended during the period that the said circumstances persist. Under such circumstances the Parties shall agree a new payment regime as necessary to reasonably protect their mutual interests.

19. AUDIT

- 19.1 The Provider shall keep and maintain until two years after the Contract has been completed records to the satisfaction of the Authority. These records shall include records of the hours worked and costs incurred by the Provider or any employees of the Provider in connection with the Services, Services supplied under the Contract, all expenditure reimbursable to the Authority, all payments made by the Authority and all data relevant to the Service provision. The Provider shall on request afford the Authority or any person reasonably specified by the Authority such access to those records as may be required by the Authority in connection with the Contract.

20. INDEMNITY AND INSURANCE

- 20.1 The Provider shall effect and maintain insurance necessary to cover jointly the Authority and the Provider for the risks faced under these Clauses with regard to fire damage, injury to persons and loss of or damage to property, which insurance may be limited in respect of any one claim (but shall not be limited in any other respect), provided that any such limit made under this Clause shall in any event be at least £10,000,000.
- 20.2 The Provider shall indemnify and keep indemnified the Authority against all actions, claims, demands, costs and expenses incurred by or made against the Authority in respect of any direct or indirect loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or wrongful act of the Provider, his servants or agents.
- 20.3 The Provider shall maintain all required insurance policies including public liability insurance of a minimum of £10,000,000 and employer liability insurance of a minimum of £10,000,000 in respect of one incident. The number of incidents shall be unlimited.
- 20.4 The Provider (if an individual) represents that he is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Authority against any tax, national insurance

contributions or similar impost for which the Authority may be liable in respect of the Provider by reason of this Contract.

- 20.5 The Provider shall, whenever required by the Authority, produce to the Authority certificates signed on behalf of the Provider's insurers stating that insurance complying with the requirements set out in Clause 20.1 is in force and the period for which it has been taken out.
- 20.6 If, for whatever reason, the Provider fails to comply with this Clause or, without the approval of the Authority, obtains a different policy of insurance from that which he notified to the Authority at the time when the Provider submitted his tender proposal, the Authority may make alternative arrangements necessary to protect his interests and recover reasonable loss and damages from the Provider.
- 20.7 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.
- 20.8 The Authority shall not be liable to the Provider for any indirect or consequent loss, damage, injury or costs whatsoever which arise out of or are connected with the Authority's adherence or non-adherence to the terms and conditions of this Contract.
- 20.9 The Provider shall maintain appropriate Professional Indemnity Insurance and provide evidence of such policies.

21. INTELLECTUAL PROPERTY

- 21.1 The foreground intellectual property rights (including the copyright) in any reports, documentation or materials produced as part of the Services are hereby assigned to and shall vest in the Authority. This Clause shall survive the termination of this Contract and the Provider hereby grants to the Authority a perpetual, royalty-free, non-exclusive licence to use any intellectual property of the Provider as may be necessary for the use by the Authority of the foreground intellectual property for the purposes of the Authority.
- 21.2 Save where the Service uses documentation and materials supplied by the Authority, the Provider warrants that none of the documentation and materials used or created as part of the Services shall infringe any intellectual property right of any third party (and in particular any patent, trade mark or registered design and any copyright).
- 21.3 The Provider shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and Authority basis) which the Authority may incur as a result of or in connection with any breach of clause 21.2.

22. PATENTS

22.1 All royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan or information in connection with the Contract shall be deemed to have been included in the Price. The Provider shall indemnify the Authority from and against all claims and proceedings, which may be made or brought against the Authority, and any damages, cost and expenses incurred by the Authority in respect of such supply or use.

23. AUTHORITY'S BRAND

23.1 Where the Authority requires its Brand to be used by the Provider in connection with the Contract, it grants the Provider a non-exclusive, royalty-free right to do so. The Provider shall ensure that the Brand use complies with all policy and guidelines defined by the Authority.

24. USE OF DOCUMENTS, INFORMATION ETC

24.1 Except with the consent in writing of the Authority, the Provider shall not disclose the Contract or any provision thereof to any person other than a person employed by the Provider in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.

24.2 Except with the consent in writing of the Authority the Provider shall not make use of the Contract or information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract.

24.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion of the Contract.

25. TRANSFER, SUB-LETTING AND SUB-CONTRACTING

25.1 The Provider shall not give, bargain, sell, assign, sub-let, sub-contract or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the contract or any part thereof without the previous written consent of the Authority.

25.2 No sub-contracting of this Contract shall in any way relieve the Provider of its obligations under the Contract.

25.3 Where the Provider enters a sub-contract for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Provider to pay the Sub-Contractor within 30 days of receipt of a valid invoice.

25.4 The Provider shall be responsible for the Sub-Contractor as if it had been performed by the Provider himself.

26. RIGHTS OF THIRD PARTIES ACT

26.1 This Contract shall not create any rights which are enforceable by anyone other than the Parties.

27. TRANSFER OF UNDERTAKING (PROTECTION OF EMPLOYMENT) 2006 REGULATIONS

27.1 The Provider agrees that if upon termination of this Contract the Directive applies, the Provider shall in good faith co-operate with the Authority and disclose all information and provide all necessary assistance to the Authority to enable the Authority to ensure that it or any other person may comply with the terms of the Directive.

27.2 Where circumstances arise, the Provider also undertakes to demonstrate its support for the principles and its willingness to work with the Authority as defined within the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP).

28. CONFIDENTIALITY AND OFFICIAL SECRETS ACT

28.1 The Provider undertakes to comply and to procure that its employees comply with the provisions of the Official Secrets Acts 1911 to 1989 both during performance and surviving termination.

28.2 The Provider undertakes to keep secret and not to disclose and to procure that its employees, Sub-contractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this Clause applies to information, which is already in the public domain or the possession of the Provider other than because of breach of this clause.

28.3 The provisions of this Clause shall survive the termination of this Contract however, that occurs.

28.4 The Provider shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Provider except with prior written permission of the Authority to whom any press or other enquiry or any such matter should be referred.

28.5 The Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the Authority. This Clause shall survive termination of the Contract.

28.6 The Parties acknowledge that, except for the information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

- 28.7 Notwithstanding any other term of this Contract, the Provider hereby gives his consent for the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
- 28.8 The Authority may consult with the Provider to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.
- 28.9 The Provider shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

29 FREEDOM OF INFORMATION

29.1 Definitions

- “Exempt Information”** means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Contract or otherwise relating to the Provider which potentially falls within an exemption to FOIA (as set out therein).
- “FOIA”** means the Freedom of Information Act 2000 and all regulations made thereunder from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in this Clause 29 ; and
- “FOIA notice”** means a decision notice, enforcement notice and/or an information notice.

29.2. Freedom of Information

- 29.2.1 The Provider acknowledges and agrees that the Authority is subject to legal duties under FOIA which may require the Authority to disclose on request information relating to this Contract or otherwise relating to the Provider.
- 29.2.2 The Provider acknowledges and agrees that all decisions made by the Authority pursuant to a request under FOIA is solely a matter for and at the discretion of the Authority.
- 29.2.3 Notwithstanding anything in this Contract to the contrary (including without limitation any obligations of confidentiality), the Authority shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the Authority shall use reasonable endeavours (but shall not be obliged) to consult the Provider and shall not:

- (a) confirm or deny that information is held by the Provider; or
- (b) disclose information requested

to the extent that in the Authority's opinion the information is eligible in the circumstances for an exemption and therefore the Authority may lawfully refrain from doing either of the things described in parts (a) and (b) of this Clause.

- 29.2.4 The Authority shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA of any Exempt Information or other information whether relating to this Contract or otherwise relating to the Provider.
- 29.2.5 The Provider shall assist the Authority as reasonably necessary to enable the Authority to comply with its obligations under FOIA.
- 29.3 The Provider shall treat as confidential all documents and information provided by the Authority during or in connection with the performance of this Contract which contain Exempt Information. Such documents and information shall not be used by the Authority except for the purposes for which they were made available and shall not be disclosed by the Provider to any other person without the prior written consent the Authority. The Provider shall use all reasonable endeavours to ensure that its employees and its Sub-contractors are under a similar obligation of confidentiality in respect of the relevant documents and information. The above restriction shall not apply to information which:
- a) is or has become part of the public domain other than as a result of a breach of the obligations of confidentiality under this Contract; or
 - b) is disclosed to Sub-contractors contracted to deliver all or part of the Services.
- 29.4 The provisions of this Clause 29 will apply for the duration of the Contract and after its termination.

30. VARIATIONS

- 30.1 Without prejudice and subject to the Authority's rights under Clause 14.1(b), this Contract may not be varied or amended unless the variation or amendment is in writing and agreed by both the Authority and the Provider.
- 30.2 The price for any variation (if applicable) shall be the fair and reasonable price taking into account the market price available to the Authority for similar services. The Provider shall supply the Authority with all information necessary to allow the Authority to ascertain whether the price is fair and reasonable.

30.3 If any change is agreed to anything included on the Purchase Order the Authority reserves the right to issue a replacement Purchase Order. These Terms and Conditions shall apply to any replacement purchase order as if it were the original Purchase Order.

30.4 Both parties acknowledge that the Contract may be varied by a Court in accordance with the Public Contracts Amendment Regulations 2009 (SI 2009/2992)

31. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

31.1 The Provider shall not:

- a) offer to give or agree to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract;
- b) enter into this or any other contract with Her Majesty or any Government Department in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and Clauses of any agreement for the payment thereof have been disclosed in writing to the representative of the Authority.

31.2 Any:

- a) breach by the Provider of the Clause contained in Clause 32.1;
or
- b) commission of an offence by the Provider under the Bribery Act 2010 or subsequent amendment thereof in relation to this or any other contract for Her Majesty's Service or any Government Department, NDPB or other public authority

shall entitle the Authority to determine the Contract and recover from the Provider the amount of any loss resulting from such determination and/or to recover from the Provider the amount of value of any such gift, consideration, or commission.

31.3 In Clause 31.2, references to the Provider include anyone employed by him or acting on his behalf (whether with or without his knowledge).

31.4 Where the Contract has been determined under Clause 31.2 the powers given by Clause 14 shall apply as if there has been a failure in performance.

31.5 In any dispute, difference or question arising in respect of:

- a) the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Provider under Clause 31.2 in respect of any loss resulting from such determination of the Contract); or
- b) the right of the Authority to determine the Contract; or
- c) the amount of value of any such gift, consideration or commission;

the decision of the Authority shall be final and conclusive.

32. EQUAL OPPORTUNITIES AND HUMAN RIGHTS

32.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

32.2 In the performance of the Services and in its dealings with service users, Authority employees and members of the general public, the Provider shall comply and shall ensure that any Sub-contractor complies with:

- a) the Equality Act 2010 ;
- b) the Human Rights Act 1998 as if the Provider were a public body as defined in the Human Rights Act 1998;
- c) all other legislation, official guidance and codes of practice relating to equal opportunities, including but without limitation relating to disability discrimination, sex discrimination and race relations, and
- d) the Authority's equal opportunities policies and procedures as may be adopted and amended from time to time and as notified to the Provider.

32.3 In carrying out the Services, the Provider will co-operate with and assist the Authority to satisfy its duty under the Equality Act 2010 (the "**Public Sector Equality Duty**") to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

32.4 The Provider shall inform the Authority in writing as soon as the Provider becomes aware of any legal proceedings or complaint brought or likely to be brought against the Provider under the legislation set out in clause 32.2 and shall:

- (a) co-operate fully and promptly with the investigatory body, court or tribunal;

- (b) provide any information requested by the investigating body, court or tribunal in the timescale allotted; and
- (c) attend (and permit a representative from the Authority to attend) any associated meetings.

32.5 Where any investigation is conducted or proceedings are brought arising directly or indirectly out of the provision of the Services or any other action by the Provider or any Sub-contractor, the Authority shall be entitled to recover from the Provider the full cost it may have incurred in such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.

32.6 The Provider shall provide such information as the Authority may reasonably request for the purpose of assessing the Providers' compliance with this clause 32.

32.7 The Provider shall include in the conditions of contract for each Sub-contractor obligations substantially similar to those set out above.

32.8 This Clause 32 and the obligations therein shall survive the termination of the Contract.

33. SAFEGUARDING

33.1 The Provider acknowledges that the Authority has legal responsibilities under Section 11 of the Children Act 2004 ("CA 2004") and the Safeguarding Vulnerable Groups Act 2006 ("SVGA") in providing the Services under this Contract; the Provider warrants that it will cooperate with the Authority to enable the Authority to comply with CA 2004 and SVGA.

33.2 The Provider shall give reasonable assistance to the Authority to comply with the CA 2004 and SVGA and shall not do any act either knowingly or recklessly that would cause the Authority to be in breach of either the CA 2004 or the SVGA.

33.3 Pursuant to this clause 33 the Provider shall make arrangements during the provision of the Services under this Contract to ensure that it complies with CA2004 and the SVGA, and accordingly, the Provider shall:

- a) ensure that senior management within its organisation are committed to and responsible for monitoring the actions of their staff to safeguard and promote the welfare of children and young people and vulnerable adults;
- b) have a clear statement, policy and procedure in place outlining the Provider's responsibilities towards children and young people and vulnerable adults which is made available for its Staff;
- c) identify the manager with the overall responsibility and the ultimate accountability for the Provider's contribution to safeguarding and

promoting the welfare of children and young people and vulnerable adults and what the lines of accountability are for each staff member;

- d) consider how the delivery of the Services will take account of the need to safeguard and promote the welfare of children and young people and vulnerable adults by carrying out an assessment of the needs of the children and young people and vulnerable adults affected under this Contract and the Provider shall determine priorities and actions designed to improve outcomes for them;
- e) ensure staff working with and staff in contact with children and young people and vulnerable adults have an understanding of their roles and responsibilities by organising Staff training on safeguarding and promoting the welfare of children and young people and vulnerable adults;
- f) ensure that robust recruitment and vetting procedures are in place to help prevent unsuitable people from working with children and young people and vulnerable adults and to ensure that managers in charge of recruitment are adequately trained;
- g) ensure that its staff work with the Authority in partnership to safeguard and promote the welfare of children and young people and vulnerable adults;
- h) whilst acting in accordance with the Data Protection Act 1998 ensure that there is effective monitoring and collating of information and sharing of the same with the Authority to prevent children and young people and vulnerable adults (whether placed under this Contract, privately funded or placed by another statutory authority) from suffering harm or undergoing the risk of suffering harm.

33.4 The Provider shall have a policy and procedures in place governing the Provider's responsibilities towards children, young adults and vulnerable adults affected by the provision of the Provider's services.

33.5 The Provider shall not carry out any act either knowingly or recklessly that would cause the Authority to be in breach of the CA 2004 and the SVGA.

33.6 The Provider shall ensure it has a robust procedure which may be reviewed and evaluated by the Authority from time to time.

33.7 All Provider staff shall be trained at induction to follow the reporting procedures and training should be updated at least annually.

33.8 The Authority shall be notified immediately of all instances of suspected abuse and concerns pertaining to the Contract in order to protect children,

young adults and vulnerable adults from suffering harm or being at risk of suffering harm.

- 33.9 The Provider shall ensure that none of its staff or Sub-contractor staff is barred from working with children, young adults and vulnerable adults where such interaction is required as part of the Service delivery under this Contract.
- 33.10 The Authority reserves the right to visit the Provider's organisation to audit, inspect and monitor the Provider's compliance with this clause 33.
- 33.11 Failure by the Provider to comply with the provisions of this clause 33 may lead to the immediate termination of the Contract at the absolute discretion of the Authority.

34. NON SOLICITATION

- 34.1 For the duration of the Contract and for a period of 12 months thereafter neither the Authority nor the Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and / or the contract management of the Services without the other Party's prior written consent.

35. CHANGE IN LEGAL STATUS

- 35.1 Any change in legal status of the Authority such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.
- 35.2 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to any other body established under statute in order to substantially perform any of the functions that had previously been performed by the Authority.

36. STATUTORY REQUIREMENTS

- 36.1 The Provider shall in connection with the provisions of the Service comply with the requirements of all relevant legislation.

37. GOVERNING LAW

- 37.1 This Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

38. NOTICES

- 38.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Purchase Order (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address). Communications to the

Authority must be sent to its address given for the buyer contact on the Purchase Order and not its address for invoices.

- 38.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving party proves otherwise.
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