

GENERAL TERMS AND CONDITIONS

1 Overall Aim

- 1.1 The Governing Body and the Provider are both committed to providing service users with high quality Services at a fair price and we recognise the need for continuous improvement in economy, efficiency and effectiveness and aim to work together in a spirit of co-operation with a view to ensuring best value is achieved.

2 Provision of the Services - Your Obligations

- 2.1 You agree that you will provide the Services in accordance with the terms of this Agreement and any reasonable requests of the Governing Body. You will comply with all relevant Legislation, government best practice and standards and Governing Body Rules including in particular:
- 2.1.1 The Equality Act 2010, (and insofar as they remain in force - the Race Relations Act 1976 (as amended), the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995, the Disability Discrimination Act 2005) and all relevant codes of practice issued by the Equality and Human Rights Commission or comparable body;
 - 2.1.2 the Health and Safety at Work Act 1974 in order to protect the health and safety of your personnel and those of the Governing Body and all other people and to adopt safe methods of work;
 - 2.1.3 the Modern Slavery Act 2015 and any other applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force.
- 2.2 You will provide the Services in a good, safe and competent manner and free from dishonesty and corruption and in a manner which is not, and is not likely to become, injurious to health or detrimental to the environment or the image and reputation of the Governing Body and will ensure that the Governing Body's interests are protected at all times.
- 2.3 You will, so far as you can, operate an equal opportunities policy which complies with the practical guidance and recommendations contained in the Equalities and Human Rights Commission codes of practice.
- 2.4 You will support and assist the Governing Body in compliance with our obligations under Best Value, the Human Rights Act 1998 and the Code of Practice on Government Information (1994), and any obligations imposed by any external funder of these services.
- 2.5 You are aware of the Governing Body's obligations under the Counter-terrorism and Security Act

2015 (CTSA15) (including any guidance, amendments and all subsequent regulations made pursuant to this Act) and in particular our obligation under s26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of our functions (the “Prevent duty”).

2.6 You will:

- 2.6.1 co-operate with the Governing Body in ensuring our compliance with our obligations under CTSA15 and in particular the Prevent duty;
- 2.6.2 comply with any CTSA15 policy produced by the Governing Body;
- 2.6.3 demonstrate an awareness and understanding of the risk of radicalisation within the London Borough of Southwark through effective leadership, working in partnership with the Governing Body and the Local Authority and the utilization of appropriate capabilities in relation to the delivery of the Services;
- 2.6.4 ensure any frontline staff have a good understanding of the Prevent duty and are trained to recognise vulnerability to being drawn into terrorism, are aware of available programmes to deal with this issue and will make appropriate referrals to Channel (the programme which provides support to individuals who are at risk of being drawn into terrorism which was put on a statutory footing by Chapter 2 of Part 5 of the Counter-Terrorism and Security Act 2015).
- 2.6.5 use filtering solutions on any IT equipment made available to the general public under this contract which limit access to terrorist and extremist material.

3 Payment and Invoicing

- 3.1 We will pay the Fee to you in accordance with the Payment Periods set out in the Specific Terms.
- 3.2 At each Payment Period you will give the Authorised Officer an invoice recording all time spent, work done and the Fee due. We will pay the invoice within 28 days of receipt of the invoice by the Authorised Officer.
- 3.3 The Governing Body will notify you as soon as possible if we become aware that any of the Services are not being provided in accordance with this Agreement and you will be given a reasonable period to rectify the position. If rectification does not occur within the period specified, the Authorised Officer will not make a payment in respect of those Services identified on any invoice and will give you written reasons.
- 3.4 If the Governing Body makes a payment late you may claim interest on that late payment at 4% above the current basic rate of the National Westminster Bank PLC for the unpaid period.
- 3.5 We will pay VAT on the Fee at the appropriate rate upon receipt of a formal VAT invoice.
- 3.6 If the Governing Body and the Provider agree to vary or extend this Agreement any additional Fee

or applicable hourly rates will be agreed between us and set out in writing before any additional services are provided.

- 3.7 On the first Monday that follows April 1st of each calendar year during the Period of Appointment, the Governing Body may agree a variation in the Fee in line with:-
- (a) any increase in the Governing Body's overall budget or
 - (b) a percentage equivalent to the overall percentage increase or decrease of the Consumer Prices Index as published by the Central Statistical Office,

4 Staff

- 4.1 The Providers' Representative appointed by you is identified in the Specific Terms. They are your authorised representative and are entitled to act on your behalf and receive any notices or information regarding these Services from the Governing Body. They should be reasonably contactable by the Authorised Officer and able to attend meetings. Any change in your Representative must be immediately notified to the Governing Body in writing and any replacement Representative must have equivalent experience and qualifications.
- 4.2 If you have identified specific staff to provide these Services, those staff shall not be changed without notifying us and confirming that their replacements have equivalent skills and experience by supplying copies of their CVs. There must be a sufficient number of appropriately trained and skilled staff and supervisors available at all times. You will use reasonable endeavours to ensure that all members of your staff are properly and sufficiently qualified, reference checked, competent, skilled, honest and experienced to carry out these Services, and at all times exercise proper care in the execution of their duties and tasks.
- 4.3 You must carry out all appropriate checks with the Disclosure and Barring Service and any other relevant statutory checks on all staff or potential staff who are to provide these Services to ensure they are fit and suitable to provide the Services. If having carried out such checks, you are unsure as to the fitness or suitability of a particular person to provide these Services, you will discuss the matter, on an anonymised basis with the Authorised Officer and agree the course of action to be taken.
- 4.4 You must take prompt appropriate disciplinary action against any employee who is engaged or is alleged to be engaged in gross misconduct.
- 4.5 All your employees providing these Services shall provide information in accordance with the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act (Exceptions) Order 1975 about convictions which would otherwise be spent.
- 4.6 The Governing Body may reasonably require you in writing to remove any member of staff employed or used by you to provide the Services. Upon receiving such notification you will ensure

that the specified person is removed and replaced as soon as possible, and in any event not later than the period of time set out in the Specific Terms after notification. The Governing Body shall not be liable to you or to the specified person in respect of any costs, expenses, liability, loss or damage caused by this removal.

4.7 You will comply with the Governing Body's Safeguarding Policies as set out in Schedule 1 and the documents appended to this Agreement and ensure that staff are aware of and know how to contribute to Prevent duty related activity in their area where appropriate.

4.8 Unless in response to an openly advertised recruitment process, during this Agreement, and within 12 months of its termination, neither party shall approach or make offers of employment to or engage any member of each other's staff engaged or employed in connection with this Agreement without having first obtained the written consent of the other.

4.9 **LONDON LIVING WAGE**

4.9.1 For the purposes of this clause:

Relevant Staff: shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Services for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.

Equivalent Hourly Wage: shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act),

the London Living Wage: shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure,

4.9.2 You will:

- ensure that all Relevant Staff employed or engaged by you are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- ensure that all Relevant Staff employed or engaged by your Subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- provide to the Governing Body such information concerning the London Living Wage and the performance of your obligations under this clause 4.9 as we may reasonably require and within the deadlines we reasonably impose;
- co-operate and provide all reasonable assistance to the Governing Body in monitoring the

effects of the London Living Wage including without limitation assisting the Governing Body in conducting surveys and assembling data in respect of the affect of payment of London Living Wage to Relevant Staff.

- 4.9.3 For the avoidance of doubt, any breach by you of this clause 4.9 may be a material breach in relation to which the Governing Body is entitled to rely upon its termination rights under this agreement.
- 4.10 This Agreement is a contract for the provision of services and nothing in this Agreement is intended to create any employment relationship between the Governing Body, the Local Authority and the Provider or any of your employees or authorised representative who are entitled to act on your behalf.

5 Information

- 5.1 **Information from the Governing Body** - We will supply you without charge and within a reasonable time all necessary and relevant information and shall give you reasonable assistance required to carry out the Services.
- 5.2 **Final Report** - You will provide us with a final project report at the end of the Period of Appointment (in a format to be agreed by both parties) with supporting documentation (monitoring forms for participants etc) to enable us to monitor the provision of the Services and the achievement of any agreed outputs and outcomes.
- 5.3 **Confidential Information** – Neither party will, whether during or after this appointment, disclose or allow to be disclosed to any person (except on a confidential basis to professional advisers) any confidential information acquired in the course of carrying out duties under this Agreement, except as may be required or permitted by law.
- 5.4 **Monitoring** - You will operate effective systems to monitor and report back on the performance of the Services to the Governing Body (a) in a format and timetable to be agreed at the Start Date. OR (b) in accordance with the specific requirements identified in the Specific Terms.
- 5.5 **Inspection** – During the Period of Appointment and for six years afterwards, you will give to the Governing Body, the Governing Body’s auditors, the Local Authority, the District Auditor and the Local Government Ombudsman such information, explanations and access to and copies of any documents as may reasonably be required to satisfy themselves as to your compliance with the terms of this Agreement.
- 5.6 **Co-operation** – You will, in performing your obligations under this Agreement, liaise with and co-operate with all members of the Governing Body, the Local Authority and any other contractors appointed to undertake duties on behalf of the Governing Body. You shall comply with all

reasonable instructions issued by the Authorised Officer.

5.7 **Complaints handling** - You will deal with any complaints promptly, courteously and efficiently and will notify the Governing Body in writing of all complaints received and the steps you have taken in response to them.

5.8 **Publicity** - You may not undertake any publicity or place any advertisement referring to the Governing Body without our prior written agreement.

5.9 **Copyright** - All copyright or other intellectual property rights in all work created or produced by you under this Agreement shall be your property. You hereby grant the Governing Body, the Local Authority and/or any third party which performs services on behalf of the Governing Body, a non-exclusive, perpetual, transferable, royalty free licence to use such work for business that is reasonably related to the Services. You also warrant that any document or design produced by you under this Agreement is your original work which does not infringe the copyright, design right, moral right or any other rights of any third party, and that no claims of such infringement have been made or are the subject of litigation actual or threatened.

5.10 **Data Protection**

5.10.1 For the purposes of this clause:

Data Protection Legislation: the Data Protection Act 1998 until such time as it is repealed and replaced and thereafter (i) the General Data Protection Regulations (GDPR), (ii) the Data Protection Act 2018 (iii) all applicable law about the processing of personal data and privacy;

Controller, Processor, Data Subject, Personal Data: take the meaning given in the Data Protection Act 1998 until such time as it is repealed and replaced and thereafter the GDPR.

5.10.2 Both parties undertake that we will comply with our respective obligations, whether Controller, Processor or otherwise under the Data Protection Legislation as and when the same are applicable to this Agreement.

5.10.3 Each party undertakes to the other that we will not knowingly place the other in breach of that other party's obligations under the Data Protection Legislation.

5.10.4 Where the Governing Body is Controller for any Personal Data processed by you under this Agreement as Processor you will:

- Only process that Personal Data in accordance with Annex A – Data Processing Schedule;
- Act only on written instruction from the Governing Body;
- Inform the Governing Body immediately if you are asked to do something infringing the Data Protection Legislation;
- Ensure that all staff who have access to Personal Data are appropriately trained and are subject to confidentiality undertakings;
- Take appropriate technical, operational and security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- Only engage sub-processors with the prior consent of the Governing Body and under a written contract;
- Not transfer Personal Data outside the EU without prior written consent of the Governing Body;
- Assist the Governing Body in providing subject access and allowing Data Subjects to exercise their rights under the Data Protection Legislation, including immediate notification of any access requests, complaints or communications received by you;
- Assist the Governing Body in meeting our Data Protection Legislation obligations in relation to the security of processing, the notification of Personal Data breaches and data protection impact assessment;
- Delete or return all Personal Data to the Governing Body as requested at the end of this Agreement;
- Submit to audits and inspections and provide the Governing Body with whatever information we need to ensure that we are both meeting our Data Protection Legislation obligations.

5.10.5 You will indemnify the Governing Body and keep the Governing Body indemnified against any damages, losses, liabilities, claims, actions, costs, deductions and expenses arising as a result of any breach you, your employees, sub-contractors, sub-processors or agents, of your obligations under this Condition 5.10. This indemnity is not subject to the liability cap under Condition 6.3.

5.11 Information Requests

5.11.1 You accept that the Governing Body and the Local Authority is obliged to comply with information legislation including the Freedom of Information Act 2000 and Code of Practice, Environmental Information Regulations 2004, Aarhus Convention and Local Audit and Accountability Act 2014. You will assist the Governing Body to comply with our obligations under this information legislation. This includes helping the Governing Body comply with our obligation to respond to requests for information within statutory deadlines; and providing information to the Governing Body where the Governing Body requests.

5.11.2 The Governing Body and the Local Authority is entitled to disclose information unless we believe that the information is exempt or excluded under the legislation or the legislation does not apply. For example where information is provided in confidence; the information is a trade secret; or where release is likely to prejudice commercial interests. The Governing Body and/or the Local Authority will decide, acting reasonably, whether information requested is to be disclosed or not. The Governing Body and/or the Local Authority will where reasonably practicable consult you and will consider any representations made you. The Governing Body nor the Local Authority shall not be liable for any loss or other detriment caused by the disclosure of any information.

6 Insurance, Indemnity and Liability

6.1 You must maintain a comprehensive policy or policies of insurance to cover your liability under this Agreement and will give us appropriate evidence of the insurance policy or policies upon written request of at least the minimum amount set out in the Specific Terms.

6.2 You shall, subject to clause 6.3 below, be responsible for and shall release and indemnify us on demand from and against all liability which may arise out of, or in consequence of the performance or non-performance by you of your obligations under this Agreement or your negligence or a breach by you or your obligations under this Agreement for:

- 6.2.1 death or personal injury
 - 6.2.2 loss of or damage to any property (whether tangible or intangible), including property belonging to the Governing Body;
 - 6.2.3 actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis)
- 6.3 You will not be liable to indemnify the Governing Body for any claims made under clause 6.2.2 and 6.2.3 in respect of that part which exceeds any cap figure included in the Specific Terms.
- 6.4 For the avoidance of doubt, the indemnities provided in Clauses 6.2. above shall cover any costs, charges or expenses (including legal expenses on an indemnity basis) that are incurred by the Governing Body or the Local Authority in relation to any claims, demands or actions that may arise out of, or in consequence of the performance or non-performance by you of your obligations under this Agreement or your negligence or a breach by you of your obligations under this Agreement.
- 6.5 You shall not be responsible or obliged to indemnify us for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Governing Body or by the breach by the Governing Body of its obligations under this Agreement.

7 Dispute Resolution

- 7.1 We will both endeavour to resolve any disputes by discussion and agreement. If any dispute can not be resolved by the Providers' Representative and the Authorised Officer within five (5) working days, the matter shall be referred to the Board of Governors and more senior officers or managers representing the Provider. If the dispute is not resolved within ten (10) working days, either party may refer the dispute to mediation in accordance with the current Model Mediation Procedure of the Centre for Effective Dispute Resolution (CEDR).
- 7.2 If a dispute is referred to CEDR the parties shall co-operate fully with any mediator appointed and will bear their own costs and one half of the fees and expenses of the mediation (unless a different agreement is reached in the mediation).
- 7.3 Neither party may start legal proceedings until the mediation is complete, abandoned or fails to resolve the dispute.
- 7.4 In the event that this Agreement is or is deemed to be a construction contract within the meaning of the Housing Grants Construction and Regeneration Act 1996, then if either party shall refer any dispute to adjudication, the adjudication shall be carried out pursuant to the TeCSA Adjudication Rules.

8 Termination

- 8.1 This Agreement will end on the completion of the Period of Appointment unless terminated early in accordance with Condition 8 or extended by agreement of both parties.
- 8.2 Either party may, following discussions with the other, terminate this Agreement, or part thereof, by one month's written notice if you have seriously failed to deliver the Services or are in material breach of this Agreement or if we have persistently failed to comply with our payment obligations in Condition 3;
- 8.3 The Governing Body may by written notice having immediate effect terminate this Agreement, or part thereof, if you:
- 8.3.1 suffer any distress or execution to be levied, commit an act of bankruptcy, make any composition or arrangement with creditors, have a receiver appointed or go into liquidation; or
 - 8.3.2 or any employee or any other person acting on your behalf has offered, given or agreed to give any gift or consideration of any kind as an inducement or reward for doing or not doing something or for showing favour or disfavour in relation to this or any other agreement with the Governing Body; or shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have offered or given any fee or reward to any officer of the Governing Body which if accepted is or would be an offence contrary to s.117 Local Government Act 1972 or any amendment or re-enactment thereof; or
 - 8.3.3 make any fraudulent claims.
- 8.4 The Governing Body may terminate this Agreement, or part thereof, by giving you three months' written notice.
- 8.5 On the early termination of this Agreement, the Governing Body will pay you a fair and reasonable proportion of the Fee for the Services which you have provided (less any amounts previously paid). If you have already received payment for Services which have not been provided, you will immediately repay those sums to the Governing Body. Where this Agreement is terminated under Condition 8.2 or 8.3 the Governing Body may claim from you any additional costs incurred by providing the Services ourselves or arranging for some one else to provide them.
- 8.6 The Governing Body shall have no liability for any consequential loss incurred by you as a result of early termination of this Agreement under Clause 8.2 and 8.3. Where this contract is terminated by notice under Clause 8.4, you may submit a written claim, with such evidence as is reasonably necessary, to the Governing Body for your reasonable direct costs of early termination. You are however under a duty to take all reasonable steps to mitigate any loss incurred.
- 8.7 On termination of this Agreement you will give to the Governing Body all correspondence, documents, specifications, papers and property belonging to us that are in your possession.

8.8 Termination of this Agreement shall be without prejudice to either party's rights or remedies in respect of any default or breach of contract, which may have arisen prior to the date of termination.

9 Miscellaneous Provisions

9.1 **Assignment and Subcontracting** – You will not assign or sub-contract any of your obligations under this Agreement without the prior written agreement of the Governing Body which will not be unreasonably withheld.

9.2 **Notices** - Any notice or other communication given under this Agreement shall be in writing and may be delivered or sent by first class prepaid post or by fax to the address or number notified by either party for this purpose. Unless the contrary is proved, any such notice or communication shall be deemed to have been given to and received by the addressee:

9.2.1 if delivered, at the time it is left at the address of or handed to a representative of the party to be served;

9.2.2 if sent by post, 2 working days following the date of posting;

9.2.3 if sent by fax, 1 working day following the date of transmission.

9.3 **Waiver and cumulative rights** - No failure or delay by either party to exercise any right, power, privilege or remedy under this Agreement shall operate as a waiver. All such rights, powers, privileges and remedies are several and cumulative and are not exclusive of each other or of any other rights or remedies otherwise available at law or in equity.

9.4 **Whole contract** - This Agreement contains the full and complete understanding between the parties and supersedes all prior arrangements and understandings, whether written or oral, relating to the subject matter of this Agreement. It may not be varied except in writing, signed by both parties.

9.5 **Severance** - If any provision of this Agreement is declared by any judicial or other competent authority to be voidable illegal or otherwise unenforceable it shall not affect any other provision of this Agreement which shall remain in full force and effect.

9.6 **Continuation of obligations** - The provisions of clauses 5.3, 5.5, 5.6, 5.8, 5.9, 6, 8 and 9 of this Agreement shall continue in force notwithstanding the termination or expiry of this Agreement.

9.7 **Agency** – You are not and shall in no circumstances hold yourself out as being a servant or agent of the Governing Body.

9.8 **Contracts (Rights of Third Parties) Act 1999** – The Local Authority may enforce this agreement subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

9.9 **Governing Law** - This Agreement shall be governed by and construed in accordance with the

laws of England and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.

Annex A – Data Processing Schedule

1. The Contractor shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>clearly set out the duration of the processing including []</i>
Nature and purposes of processing	<p><i>should be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>the nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>the purpose might include: employment processing, statutory</i></p>
Types of Personal Data	<i>examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Retention or return and deletion of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>describe how long the data will be retained for, how it be deleted or destroyed]</i>

School Services Contract (under EU threshold)

General Terms

Contracts Team – Legal Services

March 2018