

**Confidentiality Agreement between Work Programme
Provider and Local Authority.**

DATED

CONFIDENTIALITY AGREEMENT

between

WORK PROGRAMME PROVIDER

and

LOCAL AUTHORITY

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the “**Work Programme Provider**”); and
- (2) [LOCAL AUTHORITY NAME] of [ADDRESS] (the “**Local Authority**”).

BACKGROUND

- (A) Pursuant to an agreement made between the Secretary of State for Work and Pensions (the “**Authority**”) and the Work Programme Provider dated [DATE], the Work Programme Provider is contracted to deliver Work Programme services to customers in [NAME OF CONTRACT PACKAGE AREA] (the “**Contract Package Area**”).
- (B) The Authority and the Work Programme Provider have agreed that the Work Programme Provider may disclose certain Management Information to the Local Authority for the purposes specified in this agreement.
- (C) The Work Programme Provider wishes to disclose to the Local Authority, and wishes to ensure that the Local Authority maintains the confidentiality of, the Management Information.
- (D) In consideration of the benefits to the parties of disclosing and receiving the Management Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Management Information.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation in this clause apply in this agreement:

Business Day: a day (other than a Saturday, Sunday or public holiday) when the banks in London are open for business.

Management Information: all confidential management information (however recorded or preserved) disclosed or made available, directly or indirectly, by the Work Programme Provider or its employees, officers, representatives or advisers to the Local Authority and its Representatives including but not limited to:

- (a) customer referral and attachment management information in respect of the Work Programme services being delivered by the Work Programme Provider in the Contract Package Area;

- (b) information on job starts (including data on volumes of job starts) in respect of the Work Programme services being delivered by the Work Programme Provider in the Contract Package Area;
- (c) proportional data on outcomes (for example, without limit, x% of outcomes are for payment group y, z% of outcomes are for people who have a disability) (but not volume data in respect of job outcomes and sustainment outcomes) in respect of the Work Programme services being delivered by the Work Programme Provider in the Contract Package Area;
- (d) the existence and terms of this agreement;
- (e) [any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Work Programme Provider, and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Work Programme Provider]; and
- (f) any information or analysis derived from the Management Information;

but not including any information that:

- (g) is or becomes generally available to the public (other than as a result of its disclosure by the Local Authority or its representatives in breach of this agreement), (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Management Information);
- (h) was available to the Local Authority on a non-confidential basis prior to disclosure by the Work Programme Provider;
- (i) was lawfully in the possession of the Local Authority before the information was disclosed to it by the Work Programme Provider as evidenced by written records;
- (j) the parties agree in writing is not confidential or may be disclosed; or
- (k) is developed by or for the Local Authority independently of the information disclosed by the Work Programme Provider.

Purpose: the Local Authority may use or exploit the Management Information for the purposes of:

- (a) monitoring the performance of delivery of the Work Programme services in the Contract Package Area;
- (b) developing employment support programmes which complement the Work Programme services; and

for any other additional purposes as notified by the Work Programme Provider to the Local Authority from time to time (subject always to all such additional purposes having been agreed by the Authority in advance).

Representatives: employees, agents and other representatives of the Local Authority.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedule forms part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedule.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.7 References to clauses and schedules are to the clauses and schedules of this agreement.

2. OBLIGATIONS OF THE LOCAL AUTHORITY

- 2.1 The Local Authority shall keep the Management Information confidential and, except with the prior written consent of the Work Programme Provider, shall, and shall procure that its Representatives shall:
 - (a) not use or exploit the Management Information in any way except for the Purpose;
 - (b) not disclose or make available the Management Information in whole or in part to any third party, except as expressly permitted by this agreement;

- (c) not disclose or make available the Management Information in whole or part in any minutes and papers prepared by, or on behalf of, the Local Authority in respect of, or in connection with, any public meetings;
- (d) not copy, reduce to writing or otherwise record the Management Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Work Programme Provider);
- (e) not use, reproduce, transform, or store the Management Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;
- (f) keep separate the Management Information from all documents and other records of the Local Authority;
- (g) apply the same security measures and degree of care to the Management Information as the Local Authority applies to its own Management Information, which the Local Authority warrants as providing adequate protection from unauthorised disclosure, copying or use;
- (h) keep a written record of: any document or other Management Information received from the other in tangible form; any copy made of the Management Information; and/or
- (i) ensure that any document or other records containing Management Information shall be kept at its premises at [PREMISES] and shall not remove or allow to be removed such document or records from its premises.

2.2 The Local Authority may only disclose the Management Information to those of its Representatives who need to know this Management Information for the Purpose, provided that:

- (a) it informs these Representatives of the confidential nature of the Management Information before disclosure and shall obtain from its Representatives enforceable undertakings to keep the Management Information confidential in terms at least as extensive and binding upon the Representatives as the terms of this agreement are upon the Local Authority;
- (b) at all times, it is responsible for these Representatives' compliance with the obligations set out in this agreement; and
- (c) it keeps a written record of these Representatives.

2.3 Without prejudice to clause 2.4, the Local Authority may disclose Management Information only to the extent required by law, by any governmental or other regulatory authority or by a court or other

authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the Work Programme Provider and the Authority as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 2.3, it takes into account the reasonable requests of the Work Programme Provider and the Authority in relation to the content of such disclosure.

- 2.4 The Local Authority acknowledges that where the Authority receives requests for information in respect of any of the Management Information pursuant to the Freedom of Information Act 2000 (as amended) (the “**FOIA**”), the Authority may (in its absolute discretion) determine that such information is exempt from disclosure in accordance with the provisions of the FOIA (including but not limited to Section 22 of the FOIA) as applicable. In the event that the Local Authority receives requests for information pursuant to the FOIA in respect of, or relating to, any of the Management Information, the Local Authority shall use all reasonable endeavours to utilise the exemptions contained in the FOIA (including but not limited to Section 22 of the FOIA). The Local Authority shall notify the Authority in writing of any such request for information it receives and shall:
- (a) consult with the Authority on all substantive issues (including the application of any of the exemptions under the FOIA); and
 - (b) take due and proper account of the interests of the Authority when responding to any such request for information.

3. RETURN OF INFORMATION AND ANNOUNCEMENTS

- 3.1 At the request of the Work Programme Provider, the Local Authority shall promptly:
- (a) destroy or return to the Work Programme Provider all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Management Information;
 - (b) erase all the Management Information from its computer systems to the extent possible; and
 - (c) certify in writing to the Work Programme Provider that it has complied with the requirements of this clause, provided that a Local Authority may retain documents and materials containing, reflecting, incorporating, or based on the Management Information to the extent required by law or any applicable governmental or regulatory authority, and to the extent reasonable to permit the Local Authority to keep evidence that it has performed its obligations under this agreement. The provisions of this clause shall continue to apply to any such documents and materials retained by the Local Authority, subject to clause 6.

- 3.2 If the Local Authority develops or uses a product or a process which, in the reasonable opinion of the Work Programme Provider, might have involved the use of any of the Management Information other than for the Purpose, the Local Authority shall, at the written request of the Work Programme Provider, supply to the Work Programme Provider information reasonably necessary to establish that the Management Information has not been used or disclosed in order to develop or use that product or process.
- 3.3 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction.

4. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT

- 4.1 Without prejudice to any of the Authority's rights, the Work Programme Provider reserves all rights in the Management Information. No rights in respect of the Management Information are granted to the Local Authority and no obligations in relation to the Local Authority are imposed on the Work Programme Provider other than those expressly stated in this agreement. In particular, nothing in this agreement shall be construed or implied as obliging the Work Programme Provider to disclose any specific type of information under this agreement, whether Management Information or not. The Local Authority acknowledges that the Authority may at any time:
- (a) suspend or withdraw its consent permitting the Work Programme Provider to disclose Management Information to the Local Authority ; or
 - (b) vary any the conditions and/or requirements which attach to such consent.

In the event of the Authority varying its requirements (for whatever reason), and if requested to do so by the Work Programme Provider (or the Authority), the Local Authority shall without charge to the Work Programme Provider (or the Authority) execute all documents and do all such further acts as the Work Programme Provider (or the Authority) may require to reflect any such new requirements.

- 4.2 Except as expressly stated in this agreement, the Work Programme Provider does not make any express or implied warranty or representation concerning the Management Information, or the accuracy or completeness of the Management Information.
- 4.3 The disclosure of Management Information by the Work Programme Provider shall not form any offer by, or representation or warranty on the part of, the Work Programme Provider to enter into any further agreement.

- 4.4 The Local Authority acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Work Programme Provider shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this agreement.
- 4.5 The Local Authority shall be liable to the Work Programme Provider for the actions or omissions of its Representatives in relation to the Management Information as if they were the actions or omissions of the Local Authority.

5. INDEMNITY

The Local Authority shall indemnify and keep fully indemnified the Work Programme Provider at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Work Programme Provider arising from any breach of this agreement by the Local Authority and from the actions or omissions of any Representative of the Local Authority.

6. TERM AND TERMINATION

- 6.1 If the Work Programme Provider ceases to deliver the Work Programme services in the Contract Package Area (for whatever reason) it shall notify the Local Authority in writing immediately. The obligations of each party shall, notwithstanding any earlier termination of negotiations or discussions between the parties in relation to the Purpose, continue for a period of two (2) years from the termination of this agreement.
- 6.2 Termination of this agreement shall not affect any accrued rights or remedies to which the Work Programme Provider is entitled.

7. ENTIRE AGREEMENT AND VARIATION

- 7.1 This agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
- 7.2 No variation of this agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

8. NO WAIVER

- 8.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 8.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.
- 8.3 A party that waives a right or remedy provided under this agreement or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

9. ASSIGNMENT

Except as otherwise provided in this agreement, no party may assign, sub-contract or deal in any way with, any of its rights or obligations under this agreement or any document referred to in it.

10. NOTICES

- 10.1 Any notice required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address as set out below:
- (a) the Work Programme Provider: [CONTACT NAME] [ADDRESS]
 - (b) the Local Authority: [CONTACT NAME] [ADDRESS]
- or as otherwise specified by the relevant party by notice in writing to each other party.
- 10.2 Any notice shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
 - (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 10.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

11. NO PARTNERSHIP

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party

to make or enter into any commitments for or on behalf of any other party.

12. THIRD PARTY RIGHTS

- 12.1 Except as provided in this clause 12, this agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- 12.2 This agreement is made for the benefit of the Authority, and the Authority may enforce this agreement as if it were the Work Programme Provider and a party to this agreement.
- 12.3 The parties may not terminate, rescind or materially vary this agreement without the consent of the Authority.

13. GOVERNING LAW AND JURISDICTION

- 13.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 13.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF DIRECTOR]
Director
for and on behalf of [NAME OF WORK PROGRAMME PROVIDER]

Signed by []
for and on behalf of [NAME OF LOCAL AUTHORITY] []