

Contract for the supply of Digital Project Consultancy

Contract Reference No	
Buyer Name & Address	Midlands and Lancashire CSU
Supplier Name & Address	Wysa Ltd 1 London Street Reading RG1 4PN United Kingdom

Details of Goods or Services to be provided:
Discovery Phase: 1st November 2022 - March 31st 2023 NHSEI Midlands - Children & young people with mental health needs within acute and paediatric settings
Please detail when invoices should be submitted to MLCSU by the Supplier:
Total Contract Value
£40,000 (inc VAT)

Delivery address	
	1/11/22- 31/03/23
Additional Delivery Details	MLCSU Contacts for the activity are:
Contract Duration (Start and End dates)	1/11/22- 31/03/23

For the purposes of this contract the goods/services to be provided will be in accordance with Annex1 Terms and Conditions

Signed on behalf of MLCSU		Signed on behalf of the Supplier	
Printed Name		Printed Name	
Job Title		Job Title	
Date of signature	02/11/22	Date of signature	02/11/22

We accept the terms set out in this document including its Annex 1
Invoice instructions:

1. The order number must be quoted on all paperwork and correspondence
2. Each invoice must refer to one order number only
3. Each invoice must be addressed to **NHS Midlands and Lancashire CSU, 0CX Payables M385, Phoenix House, Topcliffe Lane, Wakefield, WF3 1WE**
4. Failure to comply with any of the above will result in payment delays and may result in goods/invoices being refused/returned

Annex 1 Terms and Conditions

1. Definitions

1.1 In these terms and conditions:

- a) "Contract" means these terms and conditions and the purchase order to which these terms and conditions apply.
- b) "Force Majeure Event" means an event or occurrence which could not be prevented or foreseen and which is beyond the reasonable control of the party and without its fault or negligence (excluding any industrial disputes such as lockouts, strikes)
- c) "Goods" means the items (if any) which are the subject of the contract.
- d) "Intellectual Property" means any patent registered design, copyright, database right, design right, topography right, trade mark, service mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world.
- e) "Services" means the services to be supplied by the Supplier (if any), which are the subject of the Contract.
- f) "Supplier" means the person, firm or company with whom the Contract is made.

2. Terms and Conditions These terms shall prevail over the Supplier's terms and conditions. No terms or conditions endorsed upon, delivered with or contained in any quotation, acknowledgement acceptance of order, invoice or similar document will form part of any contract for the sale and purchase of the Goods and Services.

3. Offer and Acceptance

3.1 All quotations or estimates given by the Supplier must be in writing and shall constitute an offer. Acceptance may be made by MLCSU issuing a purchase order number.

4. Time of Delivery or Performance

4.1 Any time for delivery or despatch of Goods or completion of Services agreed between the parties in writing shall be of the essence and if the supplier fails to meet any delivery day this could be deemed to be a breach.

4.2 Prior to the date(s) for delivery of any Goods or performance of the Services, MLCSU (acting reasonably) may alter such date(s), quantities and type of Goods, places for delivery and/or details of the Services, upon giving the Supplier reasonable notice in writing. If any such alteration affects the price agreed for the Goods and/or Services the Supplier shall promptly notify MLCSU.

5. Statutory Obligations

5.1 The Supplier shall comply with all relevant UK and EU legislation, rules, regulations, by-laws, codes of practice and directives relating to the supply of Goods and Services hereunder.

5.2 The Supplier shall be responsible for the safety of all its staff on MLCSU premises or sites. The Supplier shall co-operate with MLCSU staff and comply with all reasonable instructions whilst at MLCSU sites.

6. Price and Payment

6.1 The Charges for the Goods or Services shall be as set out in the contract and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods or Services, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking carriage, royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Staff.

6.2 The Supplier shall submit an invoice for the Goods upon receipt of the Goods and for the Services upon proper completion of the Services.

6.3 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods.

6.4 Following Delivery of the Goods or at the agreed point of delivery of Services, the Supplier shall invoice the Buyer as stated within the contract. Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Goods or services supplied in the invoice period.

6.5 Payment terms - NHS organisations comply with the Governments Better Payment Practice Code (BPPC) which is to pay or query all invoices within 30 days from date of receipt.

Invoices received before the goods or services are delivered - the 30 days will start from when the goods or services were delivered.

Goods received and followed by the invoice - the 30 days will start from the date the invoice is received.

6.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 17.3. Any

disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.

6.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

6.8 The supplier shall not enter into a sub contract unless agreed at part of the quotation stage

6.9 If any sum of money is recoverable from or payable by the Supplier in respect of any breach of the Agreement that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due.

7. Termination

7.1 Any order hereunder may be terminated by written notice forthwith:

- a) by either party if the other commits any material or persistent breach of these terms and, where capable of remedy fails to remedy the same within 28 days (unless an alternative timescale is agreed between both parties in writing);
- b) by either party if the other becomes bankrupt or insolvent or any receiver or administrator or similar person is appointed in respect of that party or enters into any arrangement with its creditors;
- c) by either party if they reasonably believe that any of the events mentioned in Clause 7.1 (b) above is about to occur and notifies the other party accordingly; as specified in Clause 14
- d) by MLCSU if the Supplier ceases or threatens to cease to carry on business; or
- e) by MLCSU, if the Supplier fails to deliver or despatch the Goods or complete the Services in accordance with the contract.

7.2 MLCSU shall have the right at any time and for any reason to terminate any order in whole or in part by giving the Supplier not less than 28 days written notice whereupon all work shall be discontinued and MLCSU shall pay to the Supplier

fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of profits or any indirect or consequential loss.

8. Consequences of Termination

8.1 Termination is without prejudice to the rights, duties and liabilities of either party accrued prior to termination.

8.2 In the event of termination, MLCSU shall have the right to enter upon the Supplier's premises and remove any items that are the property of MLCSU.

8.3 Any terms which expressly or impliedly have effect upon or after expiration or termination shall continue to be enforceable notwithstanding expiration or termination.

8.4 Within 7 days of any termination hereunder, both parties shall return all documents, information, computer disks and material (and all copies thereof) provided to or prepared by it pursuant to this Contract and shall certify in writing that they have complied with this clause.

9. Indemnities and Liabilities

9.1 Neither party shall have any liability to the other party in contract, tort or otherwise in respect of any indirect or consequential loss or damage that may be suffered by that party.

9.2 Subject to Clause 9.1 above the Supplier shall at its own expense keep MLCSU and any of its staff or agents fully indemnified against any claim, demand, loss or liability arising by reason of any negligent act/or omission of the Supplier his employees or agents which is:

- a) caused either to (i) any property of MLCSU or its staff or agents or (ii) any injury or death sustained by the staff or agents of MLCSU;
 - b) made against or incurred by MLCSU or any agent of MLCSU in respect of any loss, damage, injury or death sustained by any third party
 - c) made against or incurred by MLCSU or its agents in respect of any loss of or damage to (i) any property of or (ii) any injury or death sustained by the Supplier or its personnel,
- unless such loss, damage of injury is solely caused by the negligent act or omission of MLCSU or any of its staff or agents.

10. Confidentiality and Publicity

10.1 Each party shall treat as confidential all information obtained from the other pursuant to this Contract and shall not divulge such information to any person (except to such party's own employees, agents or advisers and then only to those who need to know the same) without the other party's prior written consent provided that this clause shall not extend to (i) information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to this Contract; or (ii) which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause); or (iii) which is required to be disclosed by any governmental or regulatory body or by law.

10.2 The obligations as to confidentiality shall remain in full force and effect notwithstanding the termination of the Contract in perpetuity.

10.3 The Supplier shall not use MLCSU's name for advertisements or publicity without its consent.

11. Intellectual Property Rights

11.1 The Supplier shall indemnify MLCSU in full against any claim for infringement (or alleged infringement) of any Intellectual Property rights brought by a third party as a result of the use of any Goods, the results of any Services or any materials supplied by the Supplier.

11.2 Subject to any prior rights and to the rights of third parties, all Intellectual Property rights and copyright in all reports, documents and things produced under the Contract shall be vested in MLCSU. The Supplier hereby assigns (by way of present and future assignment and with full title guarantee) all such Intellectual Property rights. All moral rights relating to the work under the Contract are hereby waived by the Supplier.

11.3 Any right of use in or over property which is acquired by the Supplier or by its staff pursuant to or for the purposes of the Contract shall be acquired by the Supplier upon terms which shall enable such rights to use to vest in MLCSU to the full extent enjoyed by the Supplier without need for any or further authorisation, consent or payment.

12. Force Majeure

12.1 Any delay or failure of the Supplier to perform its obligations hereunder shall be excused if due to a Force Majeure Event, provided that written notice of such delay is given to MLCSU.

12.2 During such period (a) MLCSU at its option may purchase Goods and/or Services from other sources and/or reduce or cancel any unfulfilled orders without liability to the Supplier and (b) the Supplier shall do all such things as may be reasonable to mitigate the effects of the Force Majeure Event.

12.3 If the delay lasts more than 30 days MLCSU may immediately terminate the Contract without liability.

13. Insurance

13.1 The Supplier shall procure and maintain insurance(s) (to include Public and Employers Liability Insurances) in amounts and with coverages acceptable to MLCSU and in line with good industry practice, with reputable insurance companies. At MLCSU's request, the Supplier shall furnish to MLCSU certificates and other satisfactory evidence of such insurances. The Supplier's purchase and maintenance of such appropriate insurance however shall not modify or relieve the Supplier of its obligations and liabilities under this Contract.

14. General

14.1 All Services supplied shall be performed by appropriately qualified and trained personnel with due care and diligence.

14.2 None of the work covered by the Contract shall be assigned or sub-contracted by the Supplier.

14.3 The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to the Contract and are hereby expressly excluded.

14.4 Except as otherwise provided herein, the rights of either party under the Contract shall not be prejudiced or restricted by any indulgence or forbearance extended by one party to the other and no waiver by one party of its rights in relations to any breach of the Contract shall affect its rights in respect of any subsequent breach.

14.5 Any demand, notice or other communication given or made under or in connection with this Contract shall be in writing. Notices shall be addressed to the MLCSU signatory shown on page 1 of this agreement and emailed to mlcsu.procurement@nhs.net

14.6 All notices shall be deemed properly served if delivered in person or sent by email. A notice sent by email will be deemed to have been served at the time of successful transmission, provided a confirmatory copy is also sent by first class post.

14.7 The Supplier and MLCSU are independent contracting parties and nothing in this Contract shall make either party the agent or representative of the other.

14.8 If any provision herein is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions and the remainder of the provisions in question shall not be affected thereby.

14.9 This Contract constitutes the entire agreement between the Supplier and MLCSU with respect to the matters contained herein and supersedes all prior oral or written representations and agreements.

14.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

14.11 The supplier acknowledges that MLCSU's requirements for the goods or services may change during the contract term and the supplier shall not unreasonably withhold or delay its consent to any reasonable variation as requested from time to time.

14.12 The supplier shall take appropriate steps to disclose full particulars of any conflict of interest which may arise to MLCSU.

15. Data Protection and Freedom of information

15.1 The supplier shall procure that all staff comply with any requirements under the General Data Protection Regulations (GDPR) and both parties shall duly observe all their obligations under the GDPR which arise in connection with the agreement.

Where applicable the Parties acknowledge that the Authority is the Data Controller and the Supplier is the Data Processor in respect of any Personal Data Processed under this Contract.

15.2 The supplier acknowledges the duties of MLCSU under the freedom of information act and shall give reasonable assistance to enable compliance with those duties.

16. Reporting

Where agreed between the two parties the supplier shall submit progress reports to MLCSU at the times and in the format specified by MLCSU.

Additional Standard Terms and Conditions for the supply of Goods only:

15. Delivery of Goods

15.1 At time of delivery the Supplier shall provide an advice note detailing the MLCSU purchase order number, description and quantity of the Goods consigned.

15.2 All Goods must be adequately packaged and protected against damage and deterioration in transit.

15.3 Returnable packaging and other containers shall be supplied by the Supplier free of charge.

16. Statutory obligations – Imported Goods

16.1 The Supplier shall furnish any necessary information for MLCSU to comply with the EC Intrastat regime if applicable only.

17. Property and Risk

17.1 Title to the Goods shall not pass to MLCSU until the price for those Goods has been paid, but in any event, MLCSU shall be entitled to resell or use the Goods in the ordinary course of business.

17.2 The risk in the Goods shall pass upon the delivery of the Goods provided that a duly authorised representative of MLCSU signs for the receipt of the Goods.

17.3 Where advance or progress payments are made, title but no risk shall pass to MLCSU as soon as items are allocated to the Contract. All items so allocated shall be adequately marked and recorded as being the property of MLCSU.

18. Rejection of Goods

18.1 MLCSU may reject any Goods which on inspection are found not to confirm with the requirements of the Contract and the Supplier shall at its own expense remove the rejected Goods and shall do so within 7 working days receipt of notification of rejection.

18.2 If the Supplier fails to remove the Goods in accordance with Clause 18.1, MLCSU may return the rejected Goods to the Supplier at the Supplier's risk, the cost of carriage being recoverable from the Supplier.

18.3 When MLCSU rejects any Goods after delivery, MLCSU at its sole discretion shall either (i) obtain a full refund of the Goods or (ii) require that the Supplier (at its own expense) delivers Goods which conform with the requirements of the Contract as soon as reasonably practicable.

19. Quality and Description

19.1 Unless otherwise agreed in writing by MLCSU all Goods supplied shall:

- a) conform as to quality and description stated in the purchase order/quotation and correspond to any sample pattern or specification specified in the Contract;
- b) comply with any applicable British or European equivalent standard specification;
- c) be of sound materials and workmanship;
- d) be fit for the purpose for which they are supplied and any purpose that the Supplier is made aware of; and
- e) be new or be provided using new materials.

20. Warranty

20.1 Without prejudice to any other rights or remedies, the Supplier shall expeditiously repair or replace all Goods which are or become defective during the period of 12 months (or during any other longer agreed period) from using the Goods where such defects occur under proper usage and are due to faulty design, materials or workmanship or erroneous or inadequate instructions as to use or any other breach of the Supplier's obligations, whether express or implied.

20.2 Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months (or any extended agreed period) from the date of reinstallation or supply.

21. Health and Safety

21.1 The supplier will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.