

***Freelance Co-ordinator for the  
Morecambe Bay Electric Bike Network***

**1. Background**

- 1.1. Morecambe Bay Partnership, working with the Morecambe Bay Electric Bike Network, wish to appoint a freelance co-ordinator to drive the success of the Electric Bike Network.
- 1.2. The development and implementation of an Electric Bike Network for Morecambe Bay is being funded by the Coastal Communities Fund and is a key project within the Destination Morecambe Bay scheme that aims to support the growth of sustainable tourism in Morecambe Bay.
- 1.3. Building on the Bay Cycle Way, launched in June 2015, the Electric Bike Network will open up the Bay to a wider range of users and presents a business opportunity for local cafes, cycle hire, accommodation and attraction providers in the area. We believe that this will be the first long distance route with an Electric Bike provision.
- 1.4. To date, May 2017, the development of the Morecambe Bay Electric Bike Network includes:
  - A network of 7 hire points and 4 additional charge points.
  - The hire points have been/are being given grants to buy 4 ebikes each and associated equipment.
  - A brand for the Morecambe Bay Electric Bike Network has been developed and professionally designed marketing materials are nearing completion.
  - A website is in development.
  - The proposed date for the launch of the network is early July.
  - The network have met together several times and are actively working and communicating, including through a yahoo group.
  - Independent consultants supported the development work, including preparing a business plan and operating model. These development documents will be shared on appointment of the successful contractor.
- 1.5. Working closely with the Electric Bike Network members and the Morecambe Bay Partnership, the co-ordinator's role is to
  - drive the success of the network,
  - handle promotion and marketing, liaison with the media

- build the network, support growth and sustainability
  - support the network members by being the point of contact for all queries including: supporting them with technical issues and set up, facilitating discussions between them regarding development plans, facilitating feedback from them during first year pilot and co-ordinating Monitoring & Evaluation.
  - ensure liaison and communication among the network, with the Morecambe Bay Partnership and with key stakeholders
  - manage the reporting requirements of the funder.
- 1.6. The co-ordinator will be the initial liaison person between Morecambe Bay Partnership and the Electric Bike Network members.
- 1.7. Together with the network members, the co-ordinator should take a lead in developing a management and coordination model that ensures the sustainability of the network. If this includes continuing the co-ordinator's role at the end of this contract, the coordinator should lead in securing funding working closely with the Electric Bike Network members and the Morecambe Bay Partnership.

## **2. Key Tasks**

- 2.1. Drive the success of the network. Champion, support and promote the development, marketing and promotion of the Morecambe Bay Electric Bike Network.
- 2.2. Handle promotion and marketing, liaison with the media. Develop and deliver the marketing strategy to ensure maximum exposure of the network to potential customers. This will include media and press releases, supporting journalist visits, developing and distributing marketing materials, updating website/pages with new and engaging images and content and attending appropriate events/festivals/meetings to raise the profile of the network.
- 2.3. Build the network, support growth and sustainability. Explore new business opportunities. These could involve promotion to local employers, development of ebike itineraries, bike transport between network members, transfer of customer baggage, apprenticeships or ebike service training, etc.
- In line with the needs of the network, secure new electric bike hire and/or charge points around Morecambe Bay.
- 2.4. Support the network members with technical issues and set up, facilitating discussions between them regarding development plans, facilitating feedback from them during first year pilot and co-ordinating Monitoring & Evaluation
- 2.5. Ensure liaison and communication among the network, with the Morecambe Bay Partnership and with key stakeholders. Be the main contact for network members and communicate effectively between the network and Morecambe Bay Partnership.

- 2.6. Manage the reporting requirements of the funder. Support monitoring so that the Partnership is able to report to the funder and demonstrate that grant conditions and regulations are being met.
- 2.7. Provide an evaluation report with key findings and recommendations after the first year of operation (or at the end of the contract if sooner).
- 2.8. Report and make presentations to appropriate networks including to the Partnership's Coastal Community Board.
- 2.9. It is anticipated that the busiest period will be during the first few months when the network will be setting up and settling down and ensuring marketing materials are ready for tourism promotional publications that normally go to print in the autumn for the following year. Winter is expected to be a quiet period, however, may be used to secure future funding. Hire and network enquiries are expected to pick up again in the Easter and May Bank Holidays.
- 2.10. Work for these outcomes:
  - A sustainable electric bike hire network in the Morecambe Bay area with good geographic spread and outlets well matched to demand.
  - Increased cycling opportunities for a wider range of users.
  - Repeat visits and overnight stays across the Morecambe Bay area.
  - Safeguarding and increasing job opportunities.

**3. Price and Payment Schedule**

- 3.1. The total cost for delivery of this work is to be no more than £8,000 (excluding VAT).
- 3.2. This price covers consultant time to deliver the above outputs and all travel and other business expenses and overheads.
- 3.3. An additional budget is available for promotion and marketing of the MBEBN.
- 3.4. The schedule for payment will be agreed at the inception meeting.

**4. Deadlines and Timetable**

- 4.1. The timetable for tendering is as follows:

Deadline for expressions of interest and clarifications	9 am Mon 5 June 2017
Response to clarifications	5 pm 7 June 2017
Deadline for submission	9 am Mon 12 June 2017

Interviews (if required)	14 June (pm preferred) or 16 June
Inception & planning meeting	Week beginning 19 June 2017

- 4.2. The contract is to begin in June or July 2017 and is expected to be completed within 12 months.
- 4.3. The successful consultant/s should initially discuss the scope of the work with the client and network member at the inception meeting to agree detailed timetable for the work.

## 5. Project Management

- 5.1. The facilitator will report to the client and network members immediately if there are any unforeseen delays or problems which may limit the ability to complete the work to schedule.
- 5.2. As part of the contract, the facilitator is required to attend meetings with the client, in Kendal, as detailed below.
- (i) Inception meeting with the client and a network member representative for an initial briefing to agree the scope of the project, timetable and communications and identify any operational difficulties that might be encountered.
- (ii) Regular (monthly) progress meetings during 2017 – dates to be agreed at inception.
- (iii) Informal meetings (in person or by phone, to be agreed) on a regular basis (minimum every 6 weeks).
- 5.3. The client requires 1 hard copy and a digital copy (in MS Word and PDF format) of any final reports/materials that may be produced, which should be fully proof-read. A copy of any presentation materials used in reports, presentations or in project meetings, workshop sessions or seminars (slides, hand-outs, overhead projection transparencies, etc.) will be required by the client for retention.
- 5.4. The client will hold the copyright on materials developed through this contract. The report or the information from this research cannot be quoted from or used in any other project work without the written permission of the client.

## 6. Work proposals and submission

- 6.1. Interested consultants should submit proposals to arrive by 9am on 12 June **2017**. Late submissions will not be accepted. Submissions should be sent by email to Susannah Bleakley, Executive Director [sb@morecambabay.org.uk](mailto:sb@morecambabay.org.uk)

and copied to Penny McMullen, Finance Officer,  
[penny@morecambebay.org.uk](mailto:penny@morecambebay.org.uk) and will be acknowledged.

6.2. Anticipated competencies of the chosen consultant/s are:

- Strong marketing, promotion and PR skills, with experience of leisure and/or tourism sectors,
- Experience of developing and delivering successful promotional and marketing campaigns
- Excellent communication, facilitation and problem solving skills
- Good business sense and evidence of supporting business network development and collaborative working
- A keen commitment to support the Network and make it a success
- A good understanding of the leisure cycling sector, including best practice in cycle hire and electric bike networks is desirable
- Experience of working in partnership with a range of stakeholders, seeking best value, balancing interests, identify priorities, and opportunities for development
- An understanding of public sector funding to support private sector initiatives
- Experience of project fundraising for cycling/tourism projects including where additional sources of funding may be obtained
- Project management; timetabling and budgeting; consultation and facilitation; reporting and communication.

6.3. The proposal should be as brief as possible while also demonstrating the requirements below. Please submit the following information in your tender for us to evaluate your response. Note that 6.4 – 6.7 are pass/fail criteria that will determine whether we evaluate your proposals.

6.4. Please confirm that you have read and agree to the general terms and conditions listed in Appendix 1.

6.5. Please provide details of 3 relevant / similar previous or current projects/experiences in the last 3 years. The information should include:

- Description of services
- Contract period (i.e. 2 months, 3 years etc.)
- Value
- Company / individual services provided to
- Contact details and agreement that we may seek references

6.6. Please provide CVs (2 pages max) for the personnel who would be involved in this contract. These should include qualifications and relevant experience.

6.7. Copies of your insurance certificates. The client will require consultants to include proof of employer's liability insurance - this is a legal requirement (except for businesses employing only the owner/close family members) and this should be at least £1 million. Please list the insurance that you hold.

- 6.8. Your understanding and summary of the task including how you propose to work with us and our partners to help us to achieve the requirements of the brief.
- 6.9. Value for money.
- 6.10. Expertise in undertaking similar work.
- 6.11. Team structure – lead and contributors.
- 6.12. Costs including a breakdown of each consultant’s role, day rate, number of days working on the project, purchases, travel costs and other expenses.
- 6.13. Risk assessment
- 6.14. Any other information that you consider appropriate to inform us of you/your company’s suitability for this project.

**7. Contract manager:**

- 7.1. The contract manager is Susannah Bleakley. Contact details are Morecambe Bay Partnership, The Factory, Castle Mills, Aynam Road, Kendal, LA9 7DE. sb@morecambebay.org.uk 01539 734888
- 7.2. Please refer to the Cumbria County Council Terms and Conditions, Appendix 2 attached, and ensure you are familiar with them. The contractor, by submitting a quote, will agree and adhere to these.

**8. Award Criteria:**

- 8.1. All submission must meet criteria listed at 6.4 - 6.7 above. These are pass/fail criteria that will determine whether we score your proposals.
- 8.2. Tenders will be scored according to the following:
  - Your understanding and summary of the task..... **10%**
  - Your previous relevant experience as expressed in your application **35%**
  - Key personnel: Evidence of successfully undertaking similar work **30%**
  - Risk management ..... **10%**
  - Value for money ..... **15%**
  - **TOTAL** ..... **100%**



**Cumbria County Council is the Accountable Body for Morecambe Bay Partnership's Headlands to Headspace Scheme**

**TERMS AND CONDITIONS FOR SERVICES**

**1. DEFINITIONS**

"**Acceptance Letter**" means the letter attached hereto accepting the provision of the Services issued by the Council 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 Conditions.

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

"**Council**" means Cumbria County Council.

"**Council's Representative**" means any person named on the Acceptance Letter as a key contact or any person who the Council notifies the Provider is to be regarded as a key contact during the course of the Contract.

"**Key Contact**" means any person named on the Acceptance Letter as a key contact or any person who the Provider notifies to the Council is to be regarded as a key contact during the course of the Services.

"**Price**" means the price or rate for the Services given in the Acceptance Letter (including all expenses of the Provider save where the Acceptance Letter states otherwise).

"**Parties**" means the Council and the Provider.

"**Premises**" means any land or building where the Services are to be performed specified in the Acceptance Letter.

"**Provider**" means the person, firm or company who is to provide the Services identified in the Acceptance Letter.

"**Services**" means the services described in the Acceptance Letter.

"**Terms and Conditions**" means these terms and conditions for the supply of the Services.

**2. GENERAL**

2.1 These Terms and Conditions together with the Acceptance Letter and any other document, plan or specification referred to in the Acceptance Letter constitute the contract between the Parties for the Services ("**the Contract**").

2.2 In the event of any conflict between a clause in these Terms and Conditions and a term of the Acceptance Letter, the terms of the Acceptance Letter shall prevail.

2.3 This 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. Any terms and conditions purported to be imposed by the Provider shall not be binding on the Council under any circumstances.

2.4 Where the Provider appends its standard terms and conditions to any communication and/or invoice the Provider acknowledges that the terms and conditions in this Contract shall prevail.

2.5 The headings to these Terms and Conditions are for convenience only and will not affect construction or interpretation and reference to a clause shall be a reference to a clause of these Terms and Conditions unless explicitly stated otherwise.

2.6 Words denoting anyone gender include all genders and vice versa and the singular includes the plural and vice versa.

2.7 References to persons include individuals, partnerships, bodies corporate and unincorporated associations.

2.8 References to statutes or statutory provision shall be construed to include references to those statutes or provisions as amended or re-enacted from time to time.

2.9 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words.

**3. THE SERVICES**

3.1 The Provider shall provide the Services set out in the Acceptance Letter.

3.2 The Provider shall perform the Services:

- with reasonable skill, care and diligence;
- in accordance with industry best practice and using the best available techniques and standards;
- in accordance with all applicable laws;
- using staff who have appropriate skills, qualifications and experience;
- using the appropriate number of staff; and
- to the reasonable satisfaction of the Council's Representative.

3.3 The Provider shall provide all equipment and materials necessary for the performance of the Services except as otherwise agreed in writing with the Council. All equipment and materials shall be at the Provider's risk.

3.4 All equipment and materials provided by the Provider shall be of a suitable quality and fit for the purpose for which they are provided.

3.5 The Provider shall ensure that it holds and that all its employees hold all relevant licences permits and authorisations to allow the lawful performance of the Services.

3.6 The Provider shall ensure that all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation any specific requirements set out in the Acceptance Letter ("Necessary Consents") are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

3.7 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

**4. TIME OF PERFORMANCE**

4.1 The Provider shall carry out the Services for the period and/or in accordance with the timescales set out in the Acceptance Letter. In the event that the Acceptance Letter does not specify any timescales, the Provider shall comply with any reasonable timescales notified by the Council.

4.2 The Provider shall submit such programmes of work and progress reports as the Council may from time to time require.

4.3 The Provider shall notify the Council 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 set out in the Acceptance Letter it shall, on the request of the Council, and without prejudice to the Council's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfil its obligations at no additional cost to the Council.

**5. REJECTION OF SERVICES**

5.1 The Council may at any time reject the Services or anything delivered as part of the Services which in the reasonable view of the Council does not comply with the Contract in any material way.

5.2 If the Council rejects all or part of the Services under clause 5.1 above, it shall serve a notice on the Provider stating the reasons for such rejection.

5.3 Following receipt of a notice of rejection of the Services, the Provider shall have 5 Business Days (or such other period as the Parties may agree in writing) during which the Provider shall address the faults or failings which caused the notice of rejection to be issued.

5.4 If the Provider fails to correct the faults or failings which caused the notice of rejection to be issued to the reasonable satisfaction of the Council within 5 Business Days, the Council shall be entitled to terminate this Contract or any part of the Services.

5.5 The Council may require the immediate removal from its premises of anything delivered by the Provider which, in the reasonable view of the Council, is hazardous, not fit for purpose or noxious. The Provider shall comply with any such request at its own expense.

**6. PROVIDER'S PERSONNEL**

6.1 The Provider shall make Key Contacts available for the purposes of the Services and shall not make any changes in the Key Contacts without the prior written approval of the Council.

6.2 If and when requested by the Council, the Provider shall provide the Council with a list of the names of any person being used in the Services

specifying, in each case, the capacities in which they are involved and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.

6.3 The Provider shall comply with any notice reasonably given by the Council stating that a person named in the notice is not to be involved any further in the provision of the Services. The Provider shall replace any such person with someone of equivalent skills and qualifications.

6.4 The Council may terminate the Contract and recover from the Provider the amount of any loss resulting from such termination if under this Contract (or any other contract the Provider has):

- the Provider fails, to ensure provision of equality of treatment for anyone who shares a Protected Characteristic as defined in the Equality Act 2010 (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise) in the provision of services and in the employment of its staff and sub-contractors; and/or
- the Provider unlawfully discriminates either directly or indirectly and does not comply with the obligations of the Equality Act 2010 and or any other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

**7. SECURITY AND USE OF COUNCIL'S PREMISES**

7.1 Where the Services are being carried out at Premises that are owned or occupied by the Council the Provider shall:

- comply and shall ensure that its staff, sub-contractors and agents comply with any rules or regulations applied by the Council in relation to security at its premises;
- comply with any notice given by the Council 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 Council on whether someone may be admitted to its Premises is final. The Provider shall bear the cost of complying with such a notice;
- keep the Premises reasonably clean and tidy while the Services are being performed

- and shall leave them clean and tidy on completion;
- pay the costs of making good any damage to the Premises (including any fixtures and fittings of the Premises) done by its employees, agents or sub-contractors other than fair wear and tear;
- enter and/or occupy such Premises as a licensee; and
- co-operate with any other person, firm or company which is providing services to the Council at the same time as the Provider.

**8. PAYMENT**

8.1 In consideration for the carrying out the Services in compliance with this Contract by the Provider the Council shall pay the Provider the Price.

8.2 The Provider shall submit monthly in arrears an invoice for the Services to the Council's address for invoices given in the Acceptance Letter. The invoice shall contain the Order Number and a description of the Services carried out and the proportion of the Price payable.

8.3 The Council shall pay the Provider within 30 days of receipt and agreement of invoices, for work completed to the satisfaction of the Council.

8.4 In addition to the Price, the Council shall pay the Provider where lawfully due a sum equivalent to any Value Added Tax chargeable in respect of the Services. Value Added Tax shall be shown as a separate item on the Provider's invoice.

**9. RECOVERY OF SUMS DUE**

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 Council.

**10. AUDIT**

The Provider shall keep and maintain until 6 years after the Contract has been completed records to the satisfaction of the Council of all expenditures that are reimbursable by the Council. 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. The Provider shall on request afford the Council or any person reasonably specified by the Council such access to those records as may be required by the Council in connection with the Contract.

**11. FREEDOM OF INFORMATION/DPA**

11.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with information disclosure requirements under the FOIA or EIR.

11.2 The Council shall be responsible for determining at its absolute discretion whether any information in connection with this Contract is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and/or is to be disclosed in response to a request for information.

11.3 The Provider shall (and shall procure that any of its personnel involved in the provision of the Contract shall) comply with any notification requirements under the Data Protection Act 1998 (DPA) and shall duly observe all their obligations under the DPA, which arise in connection with the Contract.

**12. HEALTH AND SAFETY**

12.1 The Provider shall notify the Council of any health and safety hazards which may arise in connection with the performance of this Contract.

12.2 Where the Services are being carried out at land or premises owned or occupied by the Council, the Council 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.

**13. CONFIDENTIALITY**

13.1 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 by reason of breach of this clause.

13.2 The provisions of this clause shall survive the termination of this Contract however that occurs.

**14. INDEMNITY AND INSURANCE**

14.1 Without prejudice to any rights or remedies of the Council the Provider shall indemnify the Council against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Council may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly from any defect in the Services or any negligence or breach of this Contract by the Provider

14.2 The Provider warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the liabilities and indemnities under this Contract.

14.3 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover as is reasonable (including without limitation any specific requirements set out in the Acceptance Letter) for delivery of the Services. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss.

14.4 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the insurances are in place.

14.5 Where professional indemnity insurance is required the Provider shall continue to maintain such insurance with a reputable insurer for a period of 3 years following completion of the Services.

14.6 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.

14.7 Notwithstanding any other provision of this Contract neither Party limits or excludes its liability for fraud or fraudulent misrepresentation, death or personal injury caused by its negligence, or any other act or omission, liability for which may not be limited under any applicable law.

**15. VARIATION**

15.1 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed signed by both the Council and the Provider.

15.2 The price for any variation (if applicable) shall be the fair and reasonable price taking into account the market price available to the Council for similar services. The Provider shall supply the Council with all information necessary to allow the Council to ascertain whether the price is fair and reasonable.

15.3 These terms and conditions shall apply to any variation as if it were included in the original Acceptance Letter.

#### **16. ASSIGNMENT OR SUB-CONTRACTING**

16.1 The Provider shall not assign, transfer or novate the Services or any part of the Contract.

16.2 The Provider shall not sub-contract the Services or any part of them without the prior written consent of the Council.

16.3 Sub-contracting of this Contract shall not in any way relieve the Provider of its obligations under the Contract.

16.4 Where consent is given by the Council for sub-contracting the Provider shall ensure that the sub-contractor has and maintains adequate insurance having regard to the obligations the sub-contractor is contracted to fulfil.

#### **17. RIGHTS OF THIRD PARTIES**

Unless explicitly stated in a clause of this Contract, this Contract shall not create any rights which are enforceable by anyone other than the Parties.

#### **18. TERMINATION**

18.1 The Provider shall notify the Council 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 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.

18.2 The Council shall be entitled to terminate this Contract by notice to the Provider with immediate effect if:

a) any of the events described in clause 18.1 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 5 Business Days of being required by the Council in writing to do so;

c) the Provider repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or

d) (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.

18.3 Notwithstanding clause 18.2 the Council shall be entitled to terminate this Contract at any time by giving to the Provider not less than 30 days notice to that effect.

18.4 The rights to terminate the Contract set out in this clause 18 are in addition to any other right to terminate set out elsewhere in this Contract.

18.5 Where this Contract provides for termination other than under clause 18 the exercise of such rights shall not be subject to the requirements of clause 18.

#### **19. CONSEQUENCES OF TERMINATION**

19.1 On the expiry of the term or if this Contract is terminated in whole or in part for any reason the Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a replacement provider.

19.2 On expiry or termination of this Contract the Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith.

19.3 On expiry or termination of this Contract the Provider shall collect any equipment and or materials on the Council's premises placed there by

the Provider as part of the Services and the title of said equipment and or materials has not transferred to the Council.

19.4 Where the Contract is terminated due to Provider default the Provider shall be liable for any costs incurred by the Council in finding a substitute provider to deliver the Services whether incurred before or after the termination of the Contract.

#### **20. NOTICES**

20.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be sent by first class post and must be sent to the address for communications given in the Acceptance Letter (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address).

20.2 Communications to the Council must be sent to its address given for on the Acceptance Letter not its address for invoice and marked for the Council's Representative's attention.

20.3 A notice or communication shall be deemed to have been received 2 Business Days after posting.

#### **21. GOVERNING LAW**

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

#### **22. BRIBERY AND CORRUPTION**

22. The Council may terminate the Contract and recover from the Provider the amount of any loss resulting from such termination:

a) If the Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for so doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract, with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or

b) If the like acts shall have been done by any person in the employ or on behalf of the Provider (whether with or without the Provider's knowledge); or

c) If in relation to any contract with the Council the Provider or any person in the employ of or acting on the Provider's behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

#### **23. SEVERANCE**

23.1 If any provision of this Contract shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, that provision shall be severed from the remainder of the Contract which shall remain in full force and effect to the extent permitted by law.

23.2 If any provision of this Contract is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision was deleted, the provision in question shall apply with any necessary modifications to make it valid.

#### **24. WAIVER**

No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Provider in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Provider of its obligations to deliver the Services in accordance with the provisions of this Contract.

#### **25. RIGHTS & REMEDIES**

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

#### **26. SURVIVAL**

Any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Contract including but not limited to clauses 10, 13, 14.1, 14.5, 14.7, and 21 shall remain in full force and effect.

#### **27. TUPE**

27.1 Where Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) does apply the Provider agrees that it shall

comply with all of its obligations under TUPE and the Acquired Rights Directive as applicable.

27.2 The Provider agrees to indemnify the Council against any claim howsoever arising from the application of TUPE or the Acquired Rights Directive.

27.3 During the term of this Contract, the Provider shall, on request by the Council, provide the Council within 10 Business Days, accurate and complete information as is necessary to allow bidders to assess the application of TUPE. The Provider shall warrant the accuracy of all the information provided to the Council and authorises the Council to use any and all of the information as it may consider necessary for the purposes of its business or as part of the procurement exercise. The Provider shall indemnify the Council against any financial losses arising from any differential between the information disclosed and the actual position should the Council suffer any extra cost or loss by relying on the information provided.

#### **28. PUBLICITY**

The Provider shall not make any press announcements or publicise this Contract or its contents in any way or use the Council's name or brand in any promotion or marketing or announcement of orders, without the prior written consent of the Council

#### **29. INTELLECTUAL PROPERTY**

29.1 The 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 Council. This clause shall survive the termination of this Contract.

29.2 Save where the Services uses documents and materials supplied by the Council, the Provider warrants that none of the documentation and materials used or created as part of the Services shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.

29.3 The Provider shall indemnify the Council against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and Council basis) which the Council may incur as a result of or in connection with any breach of clause 29.2.

#### **30. PENSIONS**

30.1 The Provider shall ensure that all transferring employees who were originally employed by the Council are offered membership of the pension scheme of which they were, or were eligible to be, members of prior to the relevant transfer date under this Contract, or are afforded pension rights which are certified by the Government actuary department or by a professionally qualified actuary as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members of prior to the relevant transfer under this Contract.

30.2 Transferring employees may in their own right enforce clause 30, even though they are not party to this Contract. This does not extend to any other clause in this Contract.