



ACCESSINDEPENDENT

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TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

This Agreement is made on **DATE**

and is made between:

Access Independent Ltd. whose registered office is at **17G Sturton Street, Cambridge** (hereafter referred to as 'The Company'); and

Local Authority whose registered office is at **Address**

(hereafter referred to as 'The Funder');

Annexes / Schedules

Schedule 1 – Service Description and Service Level Agreement

Schedule 2 – Rates and Charges

Schedule 3 – Data Sharing Agreement

The headings contained in the Agreement are for convenience only and do not affect their interpretation. Words importing one gender include both genders and words importing the singular include the plural and vice versa (unless the context otherwise requires).

1. Definitions

In this Agreement the following terms and phrases shall have the following meaning unless the context requires otherwise:

Commencement Date – **DATE**

Access Independent Limited 17G Sturton Street, Cambridge CB1 2SN

T: 01223 229 091 E: ot@accessindependent.co.uk W: www.accessindependent.co.uk

Service(s) – The services to be provided by the Company in the course of the appointment hereunder as set out in the Schedule to this agreement, such services to be provided using reasonable skill and care.

Termination Date – the date which the appointment of the Company hereunder is terminated

GDPR - means EU General Data Protection Regulation 2016/679

2. Duration of Agreement

This Agreement shall be in place from the commencement date until such as laid out in the attached schedule unless the agreement is otherwise terminated pursuant to clause 11 of this agreement

3. Appointment

- 3.1. The Company shall provide the Services to the Funder as set out in the attached schedule
- 3.2. Commencement of the Services shall be deemed to be conclusive evidence of the Funder's acceptance of these Conditions.
- 3.3. Exclusivity of provision – The Funder commits to the sole use of the Company for the provision of the services as described in the attached schedule for the duration of this agreement and shall not commission services that are the same as or substantially similar to those provided by the company under this agreement from any of the Company's competitors while this agreement is in place.

4. Fees and Expenses

- 4.1. A fee as set out in the attached Schedule, shall be payable to the Company for the provision of the Services.

5. Invoices

- 5.1. The Company shall raise an invoice at the end of each month detailing services provided to the funder in that month.
- 5.2. This invoice shall be accompanied by any monitoring information to be provided to the Funder as set out in the attached schedule and sent to the Funder's agreed representative or processing system.
- 5.3. Payment terms for all submitted invoice shall be 30 days from date of invoice
- 5.4. The Funder acknowledges that payments not received within the agreed timeframe may impact on the ability of the Company to complete services within any agreed timeframes or targets

6. Funder's Obligations

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- 6.1. The Funder agrees to carry out with reasonable skill and care any and all additional obligations identified within the attach schedule(s) to this agreement.

7. Liability

- 7.1. Nothing in these Conditions shall limit or exclude the Company's liability for:
 - 7.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 7.1.2. fraud or fraudulent misrepresentation;
- 7.2. Subject to clause 7.1:
 - 7.2.1. The Company shall under no circumstances whatever be liable to the Funder, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business or any indirect special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Access Independent or any Therapists provided by it or otherwise), arising under or in connection with the Contract; and
 - 7.2.2. the Company's total liability to the Funder in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of the Charges for the provision of the Services except as expressly provided in these Conditions.

8. Force Majeure

- 8.1. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, epidemic or similar events, or default of suppliers or subcontractors.
- 8.2. The Company shall not be liable to the Funder as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 8.3. If the Force Majeure Event prevents the Company from providing any of the Services for more than 8 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Funder.

9. Confidentiality

- 9.1. Both parties hereby agree that during the course of the Company's appointment under this Agreement, both parties are likely to obtain knowledge of trade secrets and also other confidential information with regard to the business and financial affairs of the other and those of the each parties' clients, customers and suppliers, details of which are not in the public domain ('Confidential Information'), (including in particular sensitive medical information pertaining to the Funder's service users) and accordingly both parties hereby undertakes to and covenants with the other that they:
- 9.1.1. shall not use the Confidential Information other than during the continuance of this Agreement and in connection with the processing arrangements of the Services; and
 - 9.1.2. shall not at any time after the date of this Agreement (save as required by law) disclose or divulge to any person other than to officers or employees of the other whose province it is to know the same, any Confidential Information and shall use their best endeavours to prevent the publication or disclosure of any Confidential Information by any other person; and
- 9.2. shall ensure that any persons engaged in the processing of, or given access to, confidential information shall be committed to a confidentiality agreement or duty of confidence such that the stipulations of clause 9.1 apply to their activities.
- 9.3. The restrictions set out in Clause 9.1 shall cease to apply to information or knowledge which comes into the public domain otherwise than by reason of the default.

10. Data Protection

- 10.1. The Company shall (and shall procure that any of its Personnel involved in the provision of the agreement shall) comply with any notification requirements under the GDPR and both Parties shall duly observe all their obligations under the above, which arise in connection with the agreement.
- 10.2. Notwithstanding the general obligation in clause 10.1, where the Company is processing personal data as a Data Processor for the Funder, the Company shall ensure that:
- 10.2.1. all processing of personal data belonging to the Funder shall be limited solely to the instructions set out by the Funder and that such personal data shall not be used for any other means without the express agreement of the Funder;
 - 10.2.2. it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data) and provides suitable assistance to the Funder in ensuring its obligations under Article 32 of the GDPR are met in relation to the service.;

- 10.2.3. It will promptly notify the Funder of any data breach related to the Funder's personal data and shall provide suitable assistance to the Funder in investigating, reporting and notifying appropriate parties of such a breach and otherwise meeting its obligations under Article 33 and Article 34 of the GDPR ;
 - 10.2.4. It provides the Funder with such information necessary to appropriately assess data protection risks, perform data protection impact assessments and otherwise meet its obligations under Article 35 and Article 36 of the GDPR.
 - 10.2.5. It provides the Funder with such information as the Funder may reasonably require to otherwise satisfy itself that the Company is complying with its obligations under the GDPR; and
 - 10.2.6. it agrees to submit to any audit or inspection the Funder may reasonably request to satisfy itself to the compliance of the Company;
 - 10.2.7. it does not knowingly or negligently do or omit to do anything which places the Funder in breach of the Funder's obligations under the GDPR.
- 10.3. The Company shall not outsource or otherwise transfer processing of personal data belonging to the Funder to a 'sub-processor' without the express permission of the Funder, additionally;
- 10.3.1. any 'sub-processor' must be engaged under the data protection obligations contained within clauses 9 and 10 of this agreement and any accompanying schedules or agreements as stipulated by Article 28(3) of the GDPR;
 - 10.3.2. the Company will remain liable to the Funder for ensuring the compliance of any 'sub-processor' engaged to process personal data in relation to the service.
- 10.4. Upon termination of this agreement, the company shall return to the Funder, or securely destroy any personal data belonging to the Funder except that that it would be required to retain by law.

11. Disputes

- 11.1. The Company and the Funder will use their best endeavours to resolve disputes following accepted protocols
- Any party may use the following procedure to resolve disputes:
- (a) Request a meeting or telephone conference call between Authorised representatives within 10 working days or such reasonable period as may be agreed.
 - (b) A further meeting or telephone conference call involving senior representatives may be requested within 14 working days should the dispute remain unsolved.

12. Termination of Agreement

- 12.1. Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 6 months' written notice.
- 12.2. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.2.1. the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 28 days after receipt of notice in writing to do so
 - 12.2.2. the other party suspends payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act
 - 12.2.3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party
 - 12.2.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party
 - 12.2.5. An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party
 - 12.2.6. the other party's financial position deteriorates to such an extent that in the Company's opinion the Funder's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy
- 12.3. On termination of the agreement for any reason:
- 12.3.1. the Funder shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Funder immediately on receipt;
 - 12.3.2. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 12.3.3. Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. Intellectual Property

All intellectual property arising from the performance of this Agreement (“the Arising Intellectual Property”) shall belong to the Company.

14. Entire Agreement

This Agreement and its Annexes / Schedules (which are incorporated into and made a part of this Agreement) together constitute the entire agreement between the parties relating to the Service. Any variation shall be in writing and signed by authorised signatories for both parties

15. Survival of causes of action

The termination of this agreement howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

16. Non-Solicitation and Non-Dealing

16.1. The Funder shall not, solely or jointly with others; either during the continuance of this agreement or for a period of six months following the termination of this agreement;

by any means, directly or indirectly contact or solicit any staff, agents of subcontractors of the Company or any of its subsidiaries with whom the Funder has dealt during the twelve months prior to the termination of this agreement (or where the agreement is terminated before twelve months, such time as the agreement lasted), for the purpose of commissioning or employing those staff, agents or subcontractors to provide any services which are the same as or substantially similar to, or in competition with, the services provided by the Company under this Agreement without first obtaining the written consent of the Company to do so.

16.2. The Funder shall not, solely or jointly with others; either during the continuance of this agreement or for a period of six months following the termination of this agreement;

Commission, employ or attempt to commission or employ to any staff, agents of subcontractors of the Company or any of its subsidiaries with whom the Funder has dealt during the twelve months prior to the termination of this agreement (or where the agreement is terminated before twelve months, such time as the agreement lasted), for the purpose of providing any services which are the same as or substantially similar to, or in competition with, the services provided by the Company under this Agreement without first obtaining the written consent of the Company to do so.

16.3. In respect to clauses 16.1 and 16.2, The Company reserves the right to charge a transfer fee as a condition of its consent.

17. Severability

If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it will, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the parties will uphold the remainder of this Agreement, and will negotiate an amendment which, so far as legally feasible, maintains the economic balance between the parties.

18. Waiver

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Third Parties

A person who is not a party to the Agreement shall not have any rights to enforce its terms.

20. Variation and Change

20.1. These Conditions may not be varied except by the written agreement of a director of the Company

20.2. The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Funder in any such event.

21. Communications

Any communication to be given pursuant to the terms of the agreement shall be in writing and shall be delivered by hand or sent by post to the address of the addressee as set out in this agreement or such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this clause; or sent by email to the addressee's email address as from time to time notified.

22. Law and jurisdiction

Access Independent Limited 17G Sturton Street, Cambridge CB1 2SN
T: 01223 229 091 E: ot@accessindependent.co.uk W: www.accessindependent.co.uk

This agreement is governed by the laws of England and Wales and the parties submit to the jurisdiction of the courts of England and Wales.

The Company

SIGNATURE

Name and Position:

On behalf of:

Date:

The Funder

SIGNATURE

Name and Position:

On behalf of:

Date: