

STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF ASSESSMENT SERVICES

1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these conditions (unless the context requires otherwise).

Access Law: The Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Act 1998 and any subordinate legislation made under any of them from time to time;

Assessment: the Assessment to be provided by the Company as set out in the Contract 1;

Assessment Report: the report prepared by the Company and issued to the Client concerning the results of the Assessment.

Assessment Commencement Date: The date that the Assessment activity will commence as set out in the Contract.

Assessor: the person named in the Order or such other person nominated by the Company from time to time;

Award: the Investors in People award granted to the Client in the event that it achieves the Investor in People recognition against framework;

Client: the person, firm or company set out in the Order;

Client's Equipment: any equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the Assessment;

Company: Assessment North East Ltd, company number 3006694, Business and Innovation Centre, Sunderland Enterprise Park, Sunderland, SR5 2TA;

Company's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Company or its subcontractors and used directly or indirectly in the supply of the Assessment which are not the subject of a separate agreement between the parties under which title passes to the Client;

Contract: the Order and the Service Specification;

Deliverables: all Documents, products and materials developed by the Company in relation to the Assessment including but not limited to the Assessment Report;

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

Input Material: all Documents, information and materials relating to the Assessment including, computer programs, data, reports and specifications;

Intellectual Property Rights: Any copyright, registered designs, design rights, patents, trademarks, rights in databases or other intellectual property rights (whether registered or unregistered) and all and any applications to register the same owned or used by the Company in relation to the Assessment or created by the Company in providing the Assessment;

Order: The Client's written request for the Assessment, set out on the Company's standard order form and incorporating these conditions.

Pre-existing Materials: All Documents, information and materials provided by the Company relating to the Assessment which existed prior to the commencement of the Contract including computer programs, data, reports and specifications;

Price: the total price for the Assessment set out the Contract;

Request for Information: a request for information made to the Client pursuant to any Access Law;

Service Specification: the Company's acceptance of the Order setting out the specification for the Assessment;

The Investors in People framework: a business improvement tool designed to advance an organisation's performance through its people, designed, implemented and regulated by Investors in People UK Limited and the UK Commission for Employment and Skills; and

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Condition headings shall not affect the interpretation of these Conditions.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to a law 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.

2. The Company's Obligations

2.1 The Company shall use its reasonable endeavours to provide the Assessment in all material respects in accordance with the Service Specification.

2.2 The Company shall use its reasonable endeavours to meet any performance dates specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence in relation to them.

2.3 The Assessment shall be carried out by the Assessor on the Company's behalf.

2.4 The Company shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises and that have been communicated to it under condition 3.13, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

3. Client's Obligations

3.1 The Client shall:

3.1.1 provide for the Company, its agents, sub-contractors and employees and the Assessor, in a timely manner and at no charge, access to the Client's premises, office accommodation and other facilities as requested by the Company for the purposes of Assessment;

3.1.2 provide, in a timely manner, such Input Material and other information as the Company may request and ensure that it is accurate in all material respects;

3.1.3 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises;

3.1.4 comply with the terms and conditions of the "Recognition Agreement for Investors in People" attached to the Services Specification if, following the completion of the Assessment, the Client is successful in achieving the Investors in People Accreditation.

3.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

3.3 The Client shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Client in writing.

4. Change Control

4.1 If the Client requests a change to the scope or execution of the Assessment (**Change**), the Company shall, within a reasonable time, provide a written estimate to the Client of:

4.1.1 the likely time required to implement the Change;

4.1.2 any variations to the Price and other charges arising from the Change; and

4.1.3 any other impact of the Change on the terms of the Contract

4.2 If the Client wishes the Company to proceed with the Change, the Company has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the Price and other charges, the Assessment and any other relevant terms of the Contract to take account of the Change.

4.3 The Company may, from time to time and without notice, change the Assessment in order to comply with any applicable safety, statutory requirements, or assessment requirements of Investors in People UK Limited and the UK Commission for Employment and Skills. If the Company requests a change to the scope of the Assessment for any other reason, the Client shall not unreasonably withhold or delay consent to it.

5. Charges and Payment

5.1 The Price shall be invoiced by the Company to the Client and paid by the Client to the Company (without deduction or set-off), as set out in the Services Specification.

5.2 Unless otherwise stated in the Services Specification, the Price includes:

5.2.1 the cost of hotel, subsistence, travelling and any other ancillary expenses incurred by the Company and/or the Assessor in connection with the Assessment, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the Assessment. Such expenses, materials and third party services shall be invoiced by the Company and paid by the Client in accordance with the terms set out in the Service Specification ; and

5.2.2 VAT, which the Company shall add to its invoices at the appropriate rate.

5.3 Without prejudice to any other right or remedy that it may have, if the Client fails to pay any sum due to the Company under the Contract by the due date, the Company may:

5.3.1 charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Company may claim interest and debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 as the same may be amended or replaced from time to time; and/or

5.3.2 suspend the Assessment until payment has been made in full; and/or

5.3.3 refuse to issue the Assessment Report and/or any Award; and/or

5.3.4 cancel any Award granted to the Client

5.4 Time for payment shall be of the essence under the Contract.

5.5 All sums invoiced by the Company under the Contract and paid shall become due immediately on its termination, despite any other provision.

5.6 The Company may, without prejudice to any other rights it may have, set off any liability of the Client to the Company against any liability of the Company to the Client.

6. Intellectual Property Rights

6.1 As between the Client and the Company, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Company. Subject to Condition 6.2, the Company licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Assessment Report and the Assessment. If the Company terminates the Contract under condition 10.2, this licence will automatically terminate.

6.2 The Client acknowledges that, where the Company does not own the Intellectual Property Rights or other rights in the Deliverables and/or the Pre-existing Materials (or any part of them), the Client's use of such Intellectual Property Rights, Deliverables and/or Pre-existing Materials (or any part of them) is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Client.

7. Confidentiality and the Company's Property

7.1 Each party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by the other party (**Disclosing Party**), its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business or its products. The Receiving Party shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality save that (subject to condition 7.2) nothing in this condition 7.1 shall prevent either party from disclosing information as may be required by law or by any governmental, regulatory or judicial authority of competent jurisdiction.

7.2 In the event that the Client receives and is required by law to comply with any Request for Information requiring the disclosure of any information covered by the restriction in condition 7.1, it shall immediately notify the Company of such Request for Information and shall consider any submissions made by the Company as to whether the information which is the subject of the Request for Information may be exempt from disclosure pursuant to any Access Law.

7.3 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Client (including Pre-existing Materials and the Company's Equipment) shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

7.4 This condition 7 shall survive termination of the Contract, however arising.

8. Limitation of Liability

8.1 This condition 8 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

8.1.1 any breach of the Contract;

8.1.2 any use made by the Client of the Assessment, the Deliverables or any part of them; and

8.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.3 Nothing in these conditions limits or excludes the liability of the Company:

8.3.1 for death or personal injury resulting from negligence; or

8.3.2 for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Company.

8.4 Subject to condition 8.2 and condition 8.3:

8.4.1 the Company shall not be liable for:

8.4.1.1 loss of profits; or

8.4.1.2 loss of business; or

8.4.1.3 depletion of goodwill and/or similar losses; or

8.4.1.4 loss of anticipated savings; or

8.4.1.5 loss of goods; or

8.4.1.6 loss of contract; or

8.4.1.7 loss of use; or

8.4.1.8 loss of corruption of data or information; or

8.4.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;

8.4.2 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and

8.4.3 the provision of the Assessment by the Company is not a guarantee that the Client will achieve the Award and the Company shall not be liable for any associated loss should the Client fail to achieve the Award.

9. Data Protection

9.1 The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency by the Company, and personal data of the Client (where relevant), its employees, agents and/or subcontractors will be processed by and on behalf of the Company in connection with the Assessment.

9.2 The Client warrants that the processing, (including the transfer) of any personal data provided to the Company in relation to the provision of the Assessment, has been (up to the moment of transfer) and will continue to be carried out in accordance with data protection legislation.

9.3 The Client warrants that any personal data provided to the Company will be made available to any relevant licensing body or subcontractors.

10. Termination

10.1 Subject to condition 10.4, the Contract shall terminate automatically on delivery of the Assessment Report.

10.2 Without prejudice to any other rights or remedies which the parties may have, The Company may terminate the Contract without liability to the Client immediately on giving notice to the other if:

10.2.1 the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of the Client being notified in writing of the breach; or

10.2.2 an order is made or a resolution is passed for the winding up of the Client, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Client; or

10.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the Client, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Client, or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

10.2.4 a receiver is appointed of any of the Client's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Client, or if any other person takes possession of or sells the Client's assets; or

10.2.5 the Client makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

10.2.6 the Client ceases, or threatens to cease, to trade; or

10.2.7 there is a change of control of the Client (as defined in section 574 of the Capital Allowances Act 2001); or

10.2.8 the Client takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

10.3 In the event that the Client should terminate the Contract before the Assessment Commencement Date and in accordance with condition 3.3, the Company will submit an invoice for all or part of the Price as set out in the Contract. This will be determined according to the following:

- Termination of the Contract is less than two weeks before the Assessment Commencement Date (as set out in the Contract), the Price invoiced will be 100%.
- Termination of the Contract is more than two weeks but less than six weeks before the Assessment Commencement Date, (as set out in the Contract), the Price invoiced will be 50%.
- Termination of the Contract is more than six weeks before the Assessment Commencement Date (as set out in the Contract), the Price invoiced will be 25%.

10.4 On termination of the Contract for any reason:

10.4.1 the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of those parts of the Assessment supplied, but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;

10.4.2 the Client shall, within a reasonable time, return all of the Company's Equipment, Pre-existing Materials and Deliverables (excluding, for the avoidance of doubt, the Assessment Report). If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and

10.4.3 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

11. Force Majeure

The Company shall have no liability to the Client under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including 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, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

12. General

12.1 Subject to condition 4, no variation of the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.

12.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

12.3 If any provision of the Contract 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 shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

12.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

12.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

12.7 The Client shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights and obligations under the Contract.

12.8 The Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of the Contract. Nothing in this condition 12.8 shall operate to exclude or limit any liability for fraud.

12.9 Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 12.9 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is business day), at 9.00am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

12.10 A person who is not a party to the Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 save that Investors in People UK Limited and the UK Commission for Employment and Skills shall be entitled to enforce any provision of the Contract and the terms of the "Recognition Agreement for Investors in People" attached to the Service Specification as against the client notwithstanding that it is not a party to the contract.

12.11 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

Assessment North East Limited is a company limited by Guarantee
 Investors in People North East is a trading name of Assessment North East Limited
 Registered in England and Wales (registered number 3006694) and is the
 Investors in People centre for the North East
 Registered Office: Business and Innovation Centre, Sunderland Enterprise Park,
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