

London Borough of Southwark Southwark Works: Employment Support Service Framework

Section 3b – Collaboration Agreement

**SOUTHWARK WORKS
COLLABORATION AGREEMENT**

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	2
2.	ACCESSION	3
3.	TERM OF THE AGREEMENT	4
4.	PROVISION OF THE COLLABORATION PLAN	4
5.	COLLABORATION ACTIVITIES	5
6.	REQUIRED BEHAVIOURS	6
7.	INVOICING	
8.	CONFIDENTIALITY	7
9.	WARRANTIES	8
10.	LIMITATION OF LIABILITY	8
11.	DISPUTE RESOLUTION PROCEDURE	8
12.	TERMINATION AND CONSEQUENCES OF TERMINATION	9
13.	GENERAL PROVISIONS	10

THIS AGREEMENT IS MADE ON

2023

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** of 160 Tooley Street London SE1 2QH (the “**Authority**”);
- (2) [**Contractor 1**] whose registered office is at [] (the “**Network Co-ordinator**”)
- (3) [**Contractor 2**] whose registered office is at []
- (4) [**Contractor 3**] whose registered office is at []
- (5) [**Contractor 3**] whose registered office is at []
- (6)

(each a “**Collaboration Supplier**” and jointly “**Collaboration Suppliers**”)

- (7) Each of the Collaboration Suppliers who have separately entered into a valid Accession Agreement in the form set out in Schedule 1.

WHEREAS:

- A) The Authority wishes to procure good quality and committed providers with whom it can work in partnership to achieve the best possible outcomes for the Southwark Works Project.
- B) The Authority has entered in a Contract with the Network Co-ordinator for the provision of network co-ordination services for the Southwark Works project. The Authority has also entered into Contracts with each of the other Collaboration Suppliers for the employment support services to support the Southwark Works Project.
- C) The Collaboration Suppliers wish to provide for the ongoing cooperation of the Collaboration Suppliers in the provision of services under their respective Contracts to the Authority.

In consideration of the mutual covenants contained in the Contracts and this Agreement and intending to be legally bound, the parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 As used in this Agreement, the capitalised expressions shall have the following meanings unless the context requires otherwise:

“Accession Agreement” means an agreement between the Authority and a Collaboration Supplier in the form set out in Schedule 1;

“Agreement” means this collaboration agreement, comprised of the Clauses and Schedules;

“Contract” means each contract that is let by the Authority to one of the Collaboration Suppliers under the:

- the Authority’s tender for the Southwark Works Network Co-ordinator; and
- the Authority’s tender for the Southwark Works Framework Agreement.

“CEDR” means the Centre For Effective Dispute Resolution;

“Collaboration Supplier” means a supplier who has entered into this Agreement;

“Confidential Information” means the Authority Confidential Information and/or any Collaboration Supplier's Confidential Information;

“Collaboration Activities” means the activities set out in this Agreement where 2 or more Collaboration Suppliers work together to achieve common goals and outcomes consistent with the strategic aims and objectives of the Southwark Works project.

“Default” means any breach of the obligations of any Collaboration Supplier or any default, act, omission, negligence or statement of any Collaboration Supplier, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Collaboration Supplier is liable to the other parties;

“Detailed Collaboration Plan” has the meaning given to it in Clause 4.2;

“Dispute Resolution Procedure” means the procedure described in Clause 10;

“Effective Date” means the date of this agreement;

“Force Majeure Event” has the meaning given to it in Clause 12.1.1;

“Mediator” has the meaning given to it in Clause 10.3.1;

“Term” has the meaning given to it in Clause 3.1; and

"Working Day" means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 General

1.2.1 As used in this Agreement:

1.2.1.1 the masculine includes the feminine and the neuter; and

1.2.1.2 the singular includes the plural and vice versa.

1.2.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.2.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.2.4 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.

1.2.5 Except as otherwise expressly provided in this Agreement, all remedies available to any party under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

2. ACCESSION

2.1 The Authority may at any time agree with a supplier that it will become a Collaboration Supplier for the purposes of this Agreement through the conclusion of an Accession Agreement. Upon conclusion of an Accession Agreement, the Authority shall notify the existing Collaboration Supplier(s) of the addition of the new Collaboration Supplier to this Agreement.

2.2 No Collaboration Supplier shall be entitled to object to the addition of a new Collaboration Supplier to this Agreement following the conclusion of an Accession Agreement between the Authority and that new Collaboration Supplier. The parties to this Agreement prior to the conclusion of an Accession Agreement shall remain bound by the terms of this Agreement

following conclusion of the Accession Agreement and in addition, from the date on which the relevant Accession Agreement was concluded, the new Collaboration Supplier shall accede to this Agreement and shall have all of the rights and obligations of a Collaboration Supplier under this Agreement.

3. TERM OF THE AGREEMENT

- 3.1 This Agreement shall come into force on the Effective Date and, unless earlier terminated in accordance with Clause 11, shall expire six (6) months after the expiry or termination (however arising) of the exit period of the last Contract (the “**Term**”).
- 3.2 A Collaboration Supplier’s duty to perform the Collaboration Activities shall continue until the end of the exit period of its own Contract.

4. PROVISION OF THE COLLABORATION PLAN

- 4.1 The Collaboration Suppliers shall, within one (1)) month (or such longer period as notified by the Authority in writing) of the Effective Date, meet to discuss and agree proposals for the Collaboration Activities they require from each other in order for these activities to be effective including but not limited to “full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each Collaboration Supplier’s respective Contract, by the Authority and shall send the agreed proposals to the Authority within five (5) Working Days of the meeting.
- 4.2 Within twenty (20) Working Days (or such other period as agreed in writing by the Authority and the Collaboration Suppliers) following receipt by the Authority of the agreed proposals, the Authority shall prepare a plan for the Collaboration Activities (the “**Detailed Collaboration Plan**”). The Detailed Collaboration Plan shall include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each Collaboration Supplier’s respective Contract, by the Authority. The Detailed Collaboration Plan shall be based on the agreed proposals submitted to the Authority by the Collaboration Suppliers under clause 4.1 and shall be submitted to the Collaboration Suppliers for approval.

- 4.3 The Collaboration Suppliers shall provide such assistance as is required by the Authority in the preparation of the Detailed Collaboration Plan.
- 4.4 The Collaboration Suppliers shall, within ten (10) Working Days of receipt of the Detailed Collaboration Plan, either:
- 4.4.1 approve the Detailed Collaboration Plan; or
 - 4.4.2 reject the Detailed Collaboration Plan, giving reasons for such rejection.
- 4.5 The Collaboration Suppliers may reject the Detailed Collaboration Plan pursuant to Clause 4.4.2 only if it is not consistent with the agreed proposals submitted to the Authority under clause 4.1 in that it imposes additional, more onerous, obligations on them.
- 4.6 If the parties fail to agree the Detailed Collaboration Plan in accordance with Clause 4.4, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5. COLLABORATION ACTIVITIES

- 5.1 The Collaboration Suppliers shall perform the Collaboration Activities and all other obligations of this Agreement in accordance with the Detailed Collaboration Plan.
- 5.2 The Collaboration Suppliers shall provide all additional cooperation and assistance as is reasonably required by the Authority to ensure the continuous delivery of the services under the Contract(s).
- 5.3 The Collaboration Suppliers shall procure that their respective sub-contractors provide all cooperation and assistance as set out in the Detailed Collaboration Plan.
- 5.4 The Collaboration Suppliers shall review the Detailed Collaboration Plan on a regular basis and shall meet to discuss the Detailed Collaboration Plan no less than six monthly ("**Collaboration Review Meeting**"). No later than ten (10) Working Days prior to each Collaboration Review Meeting each Collaboration Supplier shall:

- 5.4.1 provide a summary of the progress made with respect to the Detailed Collaboration Plan; and
 - 5.4.2 provide a summary of any suggested amendments or recommendations to the Detailed Collaboration Plan and the reasons for suggesting those amendments.
- 5.5 The Collaboration Suppliers shall agree a summary report within twenty (20) Working Days following each Collaboration Review Meeting which shall be provided to the Authority with any recommendations for amendments to the Detailed Collaboration Plan.
- 5.6 The Authority shall at its sole discretion accept such amendments to the Detailed Collaboration Plan and shall notify the Collaboration Suppliers of any such changes. Following such written notice from the Authority, the Collaboration Suppliers shall comply with the updated Detailed Collaboration Plan.

6. REQUIRED BEHAVIOURS

- 6.1 In order to ensure the effective delivery of the Contracts, the Collaboration Suppliers shall act in the following way:
 - 6.1.1 collaborate and co-operate with one another in pursuit of the key objectives for the Southwark Works project. The Collaboration Suppliers shall use problem-solving methods that promote a co-operative atmosphere;
 - 6.1.2 communicate openly about major concerns, issues or opportunities relating to the Southwark Works project. The Collaboration Suppliers should focus on the solution to a problem or issue rather than seeking to blame the Authority or the other Collaboration Suppliers;
 - 6.1.3 learn, develop and seek to achieve the key objectives of the Southwark Works project. Share information and experience to learn from each other, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
 - 6.1.4 adopt a positive outlook. Behave in a positive, proactive manner and make a commitment to mutual success in their relationships with the Authority and the other Collaboration Suppliers;
 - 6.1.5 provision of joint training: the Collaboration Suppliers shall seek to arrange joint training (where this is relevant) of their employees/other parties.

7. CONFIDENTIALITY

7.1 Each Collaboration Supplier warrants that:

- 7.1.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall only use Confidential Information for the purposes of this Agreement;
- 7.1.2 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of the other party;
- 7.1.3 it shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by its employees, servants, agents or sub-contractors; and
- 7.1.4 neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, shall use the Confidential Information for the solicitation of business from the other or from the other party's servants or consultants or otherwise.

7.2 The provisions of Clauses 7.1.1-7.1.4 shall not apply to any information which:

- 7.2.1 is or becomes public knowledge other than by breach of this Clause 7; or
- 7.2.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- 7.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- 7.2.4 is independently developed without access to the Confidential Information; or
- 7.2.5 is required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction.

7.3 The Authority's rights, obligations and liabilities in relation to using and disclosing any Collaboration Supplier's Confidential Information provided under this Agreement and the Collaboration Supplier's right, obligations and liabilities in relation to using and disclosing any of the Authority's Confidential Information provided under this Agreement, shall be as set out in the Contract.

8. WARRANTIES

8.1 Each Collaboration Supplier warrant and represent that:

8.1.1 it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Collaboration Supplier; and

8.1.2 its obligations hereunder shall be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 8) in accordance with its own established internal procedures.

8.2 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

9. LIMITATION OF LIABILITY

9.1 None of the parties exclude or limit their liability for death or personal injury resulting from negligence, or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

9.2 Nothing in this Agreement shall exclude or limit the liability of any party in respect of fraud or fraudulent misrepresentation.

10. DISPUTE RESOLUTION PROCEDURE

10.1 All disputes between any of the parties arising out of or relating to this Agreement shall be referred, by any party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.

10.2 If the dispute cannot be resolved by the parties' representatives nominated under Clause 10.1 within a maximum of five (5) Working Days (or such other time as otherwise agreed in writing by the parties) after it has been referred to them under Clause 10.1, then except where a party seeks urgent injunctive relief, the parties shall refer it to mediation pursuant to the procedure set out in Clause 10.3 unless the Authority considers (acting reasonably and considering any objections to mediation raised by the other

parties) that the dispute is not suitable for resolution by mediation.

10.3 The procedure for mediation and consequential provisions relating to mediation are as follows:

10.3.1 a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one party to the other parties to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, any party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to the parties that he is unable or unwilling to act, apply to the CEDR to appoint a Mediator;

10.3.2 the parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held;

10.3.3 unless otherwise agreed by the parties in writing, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

10.3.4 if the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives;

10.3.5 failing agreement, any of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the parties; and

10.3.6 if the parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

10.4 The parties must continue to perform their respective obligations under this Agreement and under their respective Contracts pending the resolution of a dispute.

11. TERMINATION AND CONSEQUENCES OF TERMINATION

11.1 Termination

11.1.1 The Authority has the right to terminate this Agreement at any time by notice in writing to the Collaboration Suppliers whenever the

Authority has the right to terminate a Collaboration Supplier's Contract.

- 11.1.2 Failure by any of the Collaboration Suppliers to comply with their obligations under this Agreement shall constitute a Default under their Contract. In this case, the Authority also has the right to terminate by notice in writing the participation of any Collaboration Supplier to this Agreement and sever its name from the list of Collaboration Suppliers, so that this Agreement will continue to operate between the Authority and the remaining Collaboration Suppliers.

11.2 Consequences of Termination

- 11.2.1 Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Authority shall continue to comply with their respective obligations under the Contracts following the termination (however arising) of this Agreement:
- 11.2.2 Except as expressly provided in this Agreement, termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement.

12. GENERAL PROVISIONS

12.1 Force Majeure

- 12.1.1 For the purposes of this Agreement, the expression “**Force Majeure Event**” shall mean any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to any party, the party's personnel or any other failure of a sub-contractor.
- 12.1.2 Subject to the remaining provisions of this Clause 12.1, any party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
- 12.1.3 A party cannot claim relief if the Force Majeure Event or its level of exposure to such event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

- 12.1.4 The affected party shall immediately give the other parties written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the affected party, and any action the affected party proposes to take to mitigate its effect.
- 12.1.5 The affected party shall notify the other parties in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise in writing by the parties.

12.2 Assignment and Subcontracting

- 12.2.1 Subject to Clause 12.2.2 and 12.2.3, the Collaboration Suppliers shall not assign, transfer, novate, sub-license or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage hereof without the consent of the Authority first being obtained in writing.
- 12.2.2 Any sub-contractors identified in the Detailed Collaboration Plan are permitted to perform those elements identified in the Detailed Collaboration Plan to be performed by such sub-contractors.
- 12.2.3 If a Contract terminates for whatever reason the relevant Collaboration Supplier shall, at the request of the Authority, novate its rights and obligations under this Agreement to a new supplier. The parties shall enter into such agreement and/or deed as may reasonably be required to give effect to such novation.

12.3 Notices

- 12.3.1 Any notices given under or in relation to this Agreement shall be deemed to have been properly delivered if sent by recorded or registered post or by fax and shall be deemed for the purposes of this Agreement to have been given or made at the time the letter would, in the ordinary course of post, be delivered or at the time shown on the sender's fax transmission report.
- 12.3.2 For the purposes of Clause 12.3.1, the address of each of the parties shall be those specified in the Detailed Collaboration Plan.

12.4 Entire Agreement

12.4.1 This Agreement, together with the documents and agreements referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties in relation to such matters.

12.4.2 Each of the parties acknowledges and agrees that in entering into this Agreement and the documents and agreements referred to in it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to each party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

12.4.3 Nothing in this Clause 12.4 shall operate to exclude any liability for fraud.

12.5 Rights of Third Parties

12.5.1 Nothing in this Agreement shall be deemed to grant any right or benefit to any person other than the parties or their respective successors in title or assignees, or entitle a third party to enforce any provision hereof and the parties do not intend that any term of this Agreement should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

12.6 Severability

12.6.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the parties shall immediately commence good faith negotiations to remedy that invalidity

12.7 Variations

12.7.1 No purported amendment or variation of this Agreement or any provision of this Agreement shall be effective unless it is made in writing by the parties.

12.8 No waiver

12.8.1 The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a party waives a breach of

any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

12.9 Governing Law and Jurisdiction

12.9.1 This Agreement shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

EXECUTED AND DELIVERED as an agreement by the parties or their duly authorised attorneys the day and year first above written.

FOR AND ON BEHALF OF THE AUTHORITY

Signed by:

Full name (capitals):

Position:

Date:

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON **BEHALF** OF [Contractor 1]

Signed by:

Full name (capitals):

Position:

Date:

.....
.....
.....

FOR AND ON **BEHALF** OF [*Contractor 2*]

Signed by:

Full name (capitals):

Position:

Date:

.....
.....
.....

SCHEDULE 1: PRO-FORMA ACCESSION AGREEMENT

This Accession Agreement is made on 20[]
Between
(1) [] of [] (the "Authority");
(2) [] a company incorporated in [] under
registration number [], whose registered office is at []
[]; (the "Supplier").

1. Background

- 1.1. On [INSERT DATE] the Authority entered into a collaboration agreement with [INSERT NAME] (the "Collaboration Agreement").
- 1.2. The Authority and the Supplier have agreed that the Supplier shall become a party to the Collaboration Agreement as a Collaboration Supplier.

2. Accession

- 2.1. The Authority agrees that, in entering into this Accession Agreement, the Supplier shall become a Collaboration Supplier under the Collaboration Agreement in accordance with clause 2 of that agreement.
- 2.2. The Supplier agrees that, in entering into this Accession Agreement, it will have all of the rights and obligations of a Collaboration Supplier under the Collaboration Agreement in accordance with clause 2 of that agreement.

3. Governing Law

- 3.1. This Accession Agreement shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

EXECUTED AND DELIVERED as an agreement by the parties or their duly authorised attorneys the day and year first above written.

FOR AND ON BEHALF OF THE AUTHORITY

Signed by:
Full name (capitals):
Position:
Date:

FOR AND ON BEHALF OF []

Signed by:
Full name (capitals):
Position:

Date: