

ENWORKS

LICENCE AGREEMENT

BETWEEN

ENWORKS

AND

X

ON BEHALF OF X IF RELEVANT

FOR ACCESS TO THE ENWORKS EFFICIENCY TOOLKIT

THIS LICENCE is dated DATE

PARTIES

- (1) ENWORKS of Fourways House, 57 Hilton Street, Manchester M1 2EJ (the accountable body for which is) The Federation of Groundwork Trusts (“ENWORKS”).
- (2) [FULL NAME OR ORGANISATION], incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the “Agency”).

BACKGROUND

- (1) ENWORKS has developed a bespoke web-based software system, herein called the Efficiency Toolkit.
- (2) The Agency wishes to use the Efficiency Toolkit and ENWORKS has agreed to licence the software to the Agency on the terms of this agreement.

AGREED TERMS

Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Agency Modification: Any amendment, improvement or alteration to the Efficiency Toolkit or its functionality proposed by the Agency and approved by ENWORKS pursuant to clause 5.

Data Controller: a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any Personal Data are processed.

Data Processor: a person or organisation that processes Personal Data on behalf of a Data Controller.

Efficiency Toolkit: the ENWORKS Online Resource Efficiency Toolkit, a bespoke web-based software system designed to capture and report economic and environmental outcomes of business support activity.

Fee: the cost payable by the Agency to ENWORKS for access to the Efficiency Toolkit under the terms of this agreement.

General Daily Rate: the consultancy rate of £450 per day together with all associated travel and subsistence expenses for general support services.

Intellectual Property Rights: all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other

rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

Lead Contact: the individual nominated by the Agency to act as the responsible agent for the Region.

Secondary Contact: the individual nominated by the Agency to act as the responsible agent for the Region in the absence of the Lead Contact.

Modifications: any revised, new or amended release of the Efficiency Toolkit by ENWORKS.

Personal Data: any data relating to a living individual who can be identified from that data (or from that data and other information in possession of ENWORKS or the Agency).

Region: *[insert region for which Toolkit is being made available]*.

Resulting Materials: all input to and subsequent output resulting from the Agency's use of the Efficiency Toolkit, including for the avoidance of doubt but without limitation Cost Savings, Resource Efficiencies, Opportunity Status, Baselines Comparison, Toolkit Status and Referrals reports and any other data, reports, analysis of information or associated materials or statistics in whatever form recorded or held.

Review Date: means 31st March 2010.

Services: the services to be provided by ENWORKS more specifically set out in Schedule 1.

Seventh Principle: the seventh data protection principle set out in the 1998 Act.

Term: period of 12 calendar months from the date of this agreement.

- 1.2 The headings in this agreement do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this agreement.
- 1.3 Unless the context otherwise requires:
- (a) references to ENWORKS and the Agency include their permitted successors and assigns;
 - (b) references to statutory provisions include those statutory provisions as amended or re-enacted; and
 - (c) references to any gender include all genders.
- 1.4 In the case of conflict or ambiguity between any provision contained in the body of this agreement and any provision contained in the schedules or

appendices, the provision in the body of this agreement shall take precedence.

1.5 Words in the singular include the plural and in the plural include the singular.

2. LICENCE AND TERM

2.1 In consideration of payment of the sum of £10,000 by the Agency to ENWORKS, ENWORKS grants to the Agency a non-exclusive licence for the Term to use the Efficiency Toolkit to record, capture, report and analyse the economic and environmental outcomes of business support activity.

2.2 ENWORKS shall inform the Agency within 30 days prior to the Review Date whether or not their funding arrangements have been renewed such that it will continue in existence after that time. If such funding is not available, the licence to use the Efficiency Toolkit shall continue in force, but from the Review Date, ENWORKS will no longer be able to provide the Services set out in Schedule 1. In such circumstance, ENWORKS shall repay to the Agency any part of the £10,000 fee that has not been spent by ENWORKS on the Services or otherwise pursuant to this agreement at the end of the Term.

3. FEES

3.1 The Agency shall pay the sum of £10,000 (ten thousand pounds) to ENWORKS following submission of an Invoice, quoting the Purchase Order No 26803842. All invoices or other claims for payment correctly rendered in accordance with the provisions of the agreement shall be paid by the Agency within 30 calendar days of the date thereof. All sums including for the avoidance of doubt any payments for additional service charges at the General Daily Rate, due under this agreement are exclusive of VAT, for which the Agency shall be responsible.

3.2 Unless ENWORKS otherwise notifies the Agency in writing, the Agency shall make all payments electronically to the following bank account:

[Insert ENWORKS bank account details]

3.3 If the Agency fails to pay any amount payable by it under this agreement, ENWORKS shall be entitled (but not obliged) to charge the Agency interest on the overdue amount, payable by the Agency forthwith on demand, from the due date up to the date of actual payment, after as well as before

judgment, at the rate of 4% per annum above the base rate for the time being of Lloyds TSB. Such interest shall accrue on a daily basis and be compounded quarterly. ENWORKS reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

4. ACCESS

- 4.1 The Agency shall be responsible for ensuring that the Efficiency Toolkit is only available to approved users with appropriate access rights determined by the Agency. The Agency will not allow access by users not specifically authorised by it to do so and the Agency acknowledges that ENWORKS has no control over such access.
- 4.2 The Agency will provide ENWORKS, with the name and contact details of the Lead Contact and Secondary Contact for the Agency and the anticipated number of users as set out in Schedule 2 at the commencement of this agreement and as amended from time to time during the Term.
- 4.3 The Agency shall procure that individuals who use the Efficiency Toolkit have received appropriate training.

5. MODIFICATIONS

- 5.1 ENWORKS shall inform the Agency of any Modifications which shall be made available to all licensees and may, at its sole discretion, replace any previous version or issue of the Efficiency Toolkit in whole or in part
- 5.2 Where the Agency proposes an Agency Modification, they may submit their proposal for such amendment or modification to ENWORKS. Where ENWORKS, at its absolute discretion considers such Agency Modification to be appropriate or beneficial, it may develop and test the same. The Agency shall provide all reasonable assistance required by ENWORKS in relation to such development and testing. Where successful, the Agency Modification may be incorporated into the Efficiency Toolkit. Any such Agency Modification shall thereafter become available to all users of the Efficiency Toolkit and all Intellectual Property Rights in the same shall vest in ENWORKS pursuant to clause 9.2 below.

6. AGENCY'S OBLIGATIONS

- 6.1 The Agency undertakes that it shall not and procure that all users of the Efficiency Toolkit do not:
- 6.1.1 misuse the Efficiency Toolkit by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful;
 - 6.1.2 attempt to gain unauthorised access to the Efficiency Toolkit, the server on which Efficiency Toolkit is stored or any server, computer or database connected to the Efficiency Toolkit ; or
 - 6.1.3 in any way jeopardise the integrity of the Efficiency Toolkit.
- 6.2 The Agency acknowledges that a breach of clause 6.1 above could constitute a criminal offence under the Computer Misuse Act 1990.
- 6.3 The Agency shall not resell, distribute or commercially exploit the Efficiency Toolkit or develop or produce a software application substantially similar to the Efficiency Toolkit.
- 6.4 The Agency shall ensure that sufficient procedures are in place to ensure the effective dissemination of the "train the trainer" training provided by ENWORKS to the Lead Contact to all other users. Such training shall reflect and be in accordance with such users access rights.

7. ENWORKS' OBLIGATIONS

- 7.1 Subject to clause 4 above, the Efficiency Toolkit shall be available to the Agency and its authorised users through the website at: www.encytoolkit.net.
- 7.2 ENWORKS shall use reasonable endeavours to maintain the integrity of the secure server on which the Efficiency Toolkit is hosted.
- 7.3 Subject to clause 2.2 above, ENWORKS will provide or procure the provision of the Services to the Agency up to the value of £10,000. Any additional support or technical services or training shall be provided at ENWORKS' sole discretion and shall be the subject of a separate agreement with the Agency and shall only be provided following receipt of a written instruction/request to proceed from the Agency. Charges will be for minimum half-day blocks. For the avoidance of doubt where the consultant providing such Services is

required to travel to the Agency's premises, travel time will also be charged for.

8. ENWORKS' WARRANTIES AND LIMITS OF LIABILITY

- 8.1 ENWORKS does not warrant that access to, or the use, of the Efficiency Toolkit will be uninterrupted or error-free. Nor does ENWORKS make any warranty in relation to the accuracy or relevance of the Resulting Materials, which will be solely dependent on the Agency's input.
- 8.2 ENWORKS shall not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect the Agency's computer equipment, computer programs, data or other proprietary material due to the Agency's use of the Efficiency Toolkit.
- 8.3 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality or, fitness for purpose.
- 8.4 Except as expressly stated in clause 8.5:
- (a) ENWORKS shall have no liability for any losses or damages which may be suffered by the Agency (or any person claiming under or through the Agency), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
 - (i) loss of profits;
 - (ii) loss of anticipated savings;
 - (iii) loss of business opportunity;
 - (iv) loss of goodwill; or
 - (v) loss of data;
 - (b) the total liability of ENWORKS, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Fee; and

(c) the Agency agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations and (in either case) ENWORKS shall have no liability otherwise than pursuant to the express terms of this agreement.

8.5 The exclusions in clause 8.4 shall apply to the fullest extent permissible at law, but ENWORKS does not exclude liability for death or personal injury caused by the negligence of ENWORKS, its officers, employees, contractors or agents; for fraud or fraudulent misrepresentation; or for any other liability which may not be excluded by law.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Agency acknowledges that all Intellectual Property Rights in the Efficiency Toolkit and any Modifications belong and shall belong to ENWORKS, and the Agency shall have no rights in or to the Efficiency Toolkit other than the right to use it in accordance with the terms of this agreement.

9.2 The Agency hereby assigns all Intellectual Property Rights in any Agency Modification to ENWORKS.

9.3 The Agency shall:

9.3.1 notify ENWORKS in writing, as soon as reasonably practicable, of any claim or action alleging that the possession, use, development, modification or maintenance of the Efficiency Toolkit (or any part thereof) infringes the Intellectual Property rights of a third party (an "Infringement Claim") of which it has notice; and

9.3.2 not make any admission as to liability or compromise or agree to any settlement of any Infringement Claim without the prior written consent of ENWORKS.

9.4 ENWORKS shall, at its own expense, have the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim, save that the Agency shall provide ENWORKS all reasonable assistance in connection with those negotiations and such litigation at ENWORKS's request and expense.

9.5 The Agency hereby indemnify ENWORKS against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason

of any infringement or alleged infringement of copyright, patent, registered design or other Intellectual Property Rights in the Resulting Materials provided that any such infringement is not knowingly caused, by any act of ENWORKS.

10. RESULTING MATERIALS

- 10.1 The Agency acknowledges and accepts that ENWORKS has access to all levels and aspects of the Efficiency Toolkit, including the Resulting Materials. Where information contained in the Efficiency Toolkit is made available to external organisations for the purpose of, including for the avoidance of doubt but without limitation, reports by public authorities, ENWORKS will inform the Agency prior to any such disclosure and such disclosure shall be subject to the confidentiality provisions set out in 10.3 below.
- 10.2 ENWORKS acknowledges that copyright in the Resulting Materials vest in the Agency.
- 10.3 The Agency hereby grants ENWORKS, in consideration of the rights granted pursuant to this agreement, a non-exclusive, royalty free, irrevocable, world-wide licence to use, with the right to sub-licence the Resulting Materials for any purpose, including for the avoidance of doubt, but without limitation, in collating statistics and producing reports for internal or public distribution or inclusion in audits. Provided that any such use or resulting reports shall not specifically identify any individual business or single delivery partner and that any sub-licence shall be subject to terms of confidentiality which restrict any sublicense from disseminating the Resulting Materials to a third party.

11. TERMINATION

- 11.1 Either party may terminate this agreement at any time on written notice to the other if the other:
- (a) is in material breach of any of the terms of this agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
 - (b) is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer

appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

11.2. Termination by either party in accordance with the rights contained in clause 11 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

11.2 On expiry or termination for any reason:

- (a) all rights granted to the Agency under this agreement shall cease;
- (b) the Agency shall cease all activities authorised by this agreement;
- (c) each party shall immediately pay to the other any sums due to that other party under this agreement; and
- (d) ENWORKS shall provide one final data transfer to the Agency.

12. CONFIDENTIALITY AND PUBLICITY

12.1 Subject to the licences provided in 10.3 above each party shall, during the term of this agreement and thereafter, keep confidential all, and shall not use for its own purposes nor without the prior written consent of the other disclose to any third party any, information of a confidential nature (including, without limitation, information relating to the Efficiency Toolkit, trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party.

12.2 The terms of this agreement are confidential and may not be disclosed by either party without the prior written consent of the other.

12.3 The provisions of clause 12 shall remain in full force and effect notwithstanding termination of this agreement for any reason.

13. FREEDOM OF INFORMATION ACT 2000 (“FOIA”)

13.1 Where ENWORKS or the Agency is a public authority, or based on the nature of its work is or may be deemed to be a public authority, within the meaning of FOIA or similar regulations and either party receives a request to disclose any advice, documentation or information relating to the Efficiency Toolkit, the

Resulting Materials or this agreement, including for the avoidance of doubt a request to disclose whether or not such information is held, the party receiving the request will promptly consult the other party, and take the other party's comments into account prior to making any disclosure and, if requested by the other party, work with the other party to ensure that exemptions or other legitimate means of ensuring that no disclosure is made are utilised to the extent reasonably possible.

14. DATA PROTECTION

14.1 The Agency agrees that it shall, in relation to Personal Data processed in connection with this agreement:

- (a) process the Personal Data in accordance with the Data Protection Act 1998 ("the **1998 Act**") and any other applicable data protection legislation;
- (b) procure the consent of the Lead Contact or any other individual whose details are disclosed or made available as a result of use of the Efficiency Toolkit to such Personal Data being so recorded and held.
- (c) not disclose Personal Data to or allow access to it other than by employees or third parties engaged by the Agency to perform their obligations and ensure that such employees or third parties are subject to written contractual obligations concerning the Personal Data which are no less onerous than those imposed on the Agency by this agreement; and
- (d) use all reasonable efforts to assist ENWORKS to comply with such obligations as are imposed on ENWORKS by the 1998 Act. This includes the obligation to:
 - (i) provide ENWORKS with reasonable assistance in complying with any subject access request served on ENWORKS under section 7 of the 1998 Act;
 - (ii) promptly inform ENWORKS about the receipt of any subject access request received by the Agency; and
 - (iii) not disclose or release any Personal Data in response to a subject access request without first consulting with and obtaining the consent of ENWORKS.

14.2 **Process** and **processing** mean obtaining, recording or holding personal data or carrying out any operation or set of operations on the personal data, including:

- (e) organisation, adaptation or alteration;
- (f) retrieval, consultation or use;
- (g) disclosure by transmission, dissemination or otherwise making available; and
- (h) alignment, combination, blocking, erasure or destruction.

14.2 The Agency shall indemnify ENWORKS against all claims and proceedings and all liability, loss, costs and expenses incurred by ENWORKS as a result of any claim made or brought by an individual or other legal person in respect of any loss, damage or distress caused to them as a result of the Agency's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Agency, its employees or agents.

15. **ASSIGNMENT**

15.1 This agreement is personal to the Agency who, may not, without the prior written consent of ENWORKS assign, transfer, mortgage, charge, declare a trust of, sub-contract, delegate or deal in any other manner with this agreement or any of their rights and obligations under it (or any document referred to in it); the Agency's business, or purport to do any of the same.

15.2 ENWORKS may, at any time, assign (absolutely or by way of security and in whole or in part), transfer, mortgage, charge or deal in any other manner with the benefit of any or all of the Agency's obligations or any benefit arising under this agreement provided that ENWORKS provides the Agency with 30 days prior written notice of any such assignment, transfer or dealing.

16. **WAIVER**

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

17. SEVERABILITY

If any provision of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

18. AMENDMENTS

Any amendment, waiver or variation of this agreement shall not be binding on the parties unless set out in writing, expressed to amend this agreement and signed by or on behalf of each of the parties.

19. NOTICES

19.1 Any notice required to be given pursuant to this agreement shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party as set out below, or as otherwise advised by the one party to the other from time to time.

19.2 Notices may be sent by first-class mail or fax, provided that faxes are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed faxes shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out in clause 19.

19.3 The addresses for delivery of all communications or notices shall be as follows:

(a) ENWORKS:

(i) Samantha Nicholson, ENWORKS Operations Manager

(ii) Address: Fourways House, 57 Hilton Street, Manchester M1 2EJ

(iii) Telephone Number: 0161 236 6348

(iv) Fax Number: 0161 237 3211

(b) The Agency:

(i) Name

(ii) Address

(iii) Telephone

(iv) Fax

20. ENTIRE AGREEMENT

This agreement and the documents annexed as appendices to this agreement or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

21. GOVERNING LAW AND JURISDICTION

This agreement shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English courts.

22. INDEMNITIES

With regard to clauses 9.5 and 14.3, if a third party makes a claim against ENWORKS, the Agency will indemnify ENWORKS against the claim provided that (i) ENWORKS notifies the Agency promptly in writing, not later than 30 days after ENWORKS receives notice of the claim (or sooner if required by law); and (ii) that the Agency shall have sole control of the defence, settlement or other proceedings relating to any such claim.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1

The Service

The Service may include:

ENWORKS – Set up Services:

- To work with the Agency to enable mapping of relevant business support projects/programmes that will use the Efficiency Toolkit.
- To work with the Agency to enable planning and co-ordinating the 'roll-out' of the Efficiency Toolkit to all relevant projects/programmes.
- To work with the Agency to enable identification of bespoke reporting groups, which can be groups of programmes, partners or businesses, where necessary.
- To work with the Agency to enable identification of core people within projects/programmes to undergo 'train the trainer' on Efficiency Toolkit use.
- To deliver one 'train the trainer' session for the identified people from projects/programmes.
- To create a 'Region' and 'Regional Toolkit Administrator' user(s) for the Agency so that the identified projects/programmes and associated users can be given access to the Toolkit by the Agency Administrator(s).
- To provide limited customisation of the "look and feel" of the Efficiency Toolkit.

ENWORKS – Ongoing support:

- To provide advice to the Agency on issues of general functionality and applicability of the Efficiency Toolkit to the specific projects/programmes using the Efficiency Toolkit.
- To provide advice on Modifications or Agency Modifications.
- To create 'bespoke' users as and when this functionality is required by the Agency.
- To provide support in data analysis as and when reasonably required by the Agency.
- To ensure default values for resources are up to date where appropriate.
- To ensure CO₂ conversion figures are up to date where appropriate.

ENWORKS – Technical support:

- To provide, through sub-contractors, support with any technical issues of the Efficiency Toolkit functionality (e.g. issues of server access or core functionality).

ENWORKS – Additional Support resources:

- Additional resources may be provided to help users demonstrate the benefits of the Efficiency Toolkit and its functionality, as they are, or become available.

Schedule 2

Access Rights

The AGENCY	
Name of Lead Contact	
Title	
Email Address	
Telephone Number	
Address	
Name of Secondary Contact	
Title	
Email Address	
Telephone Number	
Address	

Anticipated number of programmes during the Term:	
Anticipated number of partners during the Term:	
Anticipated number of users during the Term:	
Anticipated number of businesses during the Term:	

Signed by NAME &
 POSITION
 for and on behalf of
 ENWORKS

Signed by NAME &
 POSITION
 for and on behalf of
 The Agency