

Care Leavers App

Standard Terms and Conditions

May 2018

Definitions

In these terms:

'Focus' is the Supplier and is part of This is Focus Ltd.

'Customer' refers to the party to whom the Supplier has agreed to provide the Services and who therefore agrees to abide by these terms.

'Deliverables' refers to all materials produced by the Supplier in relation to the Services.

'Third Party Hosting Provider' is a supplier of Hosting services chosen by Focus to host Systems and perform other Services as appropriate.

'System' refers to web-based software that the Customer wishes to access and use such as the SEND Local Offer Suite, Care Act Suite, Digital Toolkit for Children in Care, Family Service Directory Suite and other Services offered by Focus.

'Project' refers to an agreed Project between the Customer and Supplier as detailed in the Web Services Agreement.

'App' refers to software developed as part of the Project that is intended to run on a mobile phone or tablet device.

'Web Services Agreement' is an agreed document signed by both the Supplier and the Customer that confirms the scope of the project and the System functionality to be supplied.

'Hosting' is the web hosting provided by Focus through a Third Party Hosting Provider.

'Services' means the services to be performed by Focus.

'Fault' refers to any error, fault of the System that causes it to be unavailable or only partially unavailable.

Agreement to Terms

These Terms take effect on the date on which the Customer orders our Services.

The Hosting and Services provided by Focus is at all times subject to these Terms and by using our Services the Customer

confirms their acceptance of, and agree to be bound by them. These Terms together with completed Statement of Work and / or Web Services Agreement and / or otherwise written agreement shall constitute the agreement between the Customer and Focus.

Customer Obligations

The Customer warrants that the company and invoicing information provided is correct and that the Customer will notify us of any changes to this.

The Customer agrees that where milestones and / or deadlines are set in relation to the Project they will adhere to their responsibilities and supply documentation / information / feedback as required, so that the Project may remain on schedule.

The Customer agrees to co-operate with the Supplier in all matters relating to the Services and to appoint a Project Manager or Main Contact in relation to the Services or the Project, who shall have the authority to contractually bind the Customer on matters relating to the Services or the Project.

The Customer warrants the accuracy, truthfulness and reliability of any information (including, where applicable, statements of opinion or advice) which are placed on their App. The Customer warrants that they are authorised to promote and / or provide any information which are promoted and / or provided on their App.

The Customer shall be entirely responsible for the content of their App. The Customer shall not, under any circumstances, use their App to do any of the following:

- publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or unlawful material or information.
- threaten, harass, stalk, abuse, disrupt or violate the legal rights (including rights of privacy and publicity) of others.
- engage in illegal or unlawful activities.
- make available any material protected by intellectual property laws (or by rights of privacy or publicity) unless the Customer owns or control the rights thereto or have received all necessary consents.
- act, or fail to act, in the Customers use of their web pages, in a manner that is contrary to applicable law or regulation.

The Customer is entirely responsible for any civil or criminal liability that is incurred as a result of use of their App, including user generated content from third parties using applications such as forums, news systems, blogs and social media.

The Customer agrees that they use the defined methods of communication, as noted in the Web Services Agreement, when

making work requests or reporting support queries, including Faults, to the Supplier.

Changes to the Service need to be made through the agreed methods of communication and will be discussed prior to being scheduled in for completion. Charges may apply for changes in Service scope or specification.

Supplier Obligations

Focus shall provide to the Customer the Services in accordance with these Terms and shall allocate sufficient resources to comply with this obligation. Focus shall use its best endeavours to achieve a high-quality Service. However, Focus cannot guarantee to provide a fault-free service due to the technically complex nature of the Services provided.

Focus shall perform the Services with care and attention and skill and in accordance with generally recognised best practice commercial activities and standards and in line with procedures from our own quality management system.

Focus, or our Third Party Hosting Providers, may temporarily suspend the Service in order to upgrade, repair or maintain servers, communication links, hardware or software. Focus, or our Third Party Hosting Providers, may alter the technical specification of the Service for operational improvements or amendments.

Focus will use its best endeavours to maximise access to and uniformity of any App we create but cannot be held responsible if some legacy / older devices are unable to install or use the App or if the App's appearance on screen to differ from that seen on more modern devices.

Indemnity

Focus shall maintain professional indemnity insurance of an amount not less than £1m whilst performing the Services. Proof of insurance cover can be provided to the Customer on request.

The Customer agrees that Focus have no responsibility for any and all liabilities, expenses (including legal fees) and damages arising out of claims based upon or relating to the App (including user generated content), including but not limited to any claim of libel, defamation, violation of rights of privacy or publicity, loss of service, non supply, fraud, infringement of intellectual property or other rights or other claims whatsoever.

Focus will notify you promptly of any claim for which Focus seeks indemnification. Focus will afford the Customer the opportunity to participate in the defence of such claim, provided that the Customer participation will not be conducted in a manner prejudicial to Focus interests, as reasonably determined by Focus and / or our legal representatives.

Except in respect of death or personal injury caused by Focus's negligence, Focus shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims which arise out of or in connection with the provision of any goods or services by Focus.

Focus shall not be liable or deemed to be in breach of contract by reason of any delay in performing, or failure to perform, any of its obligations if the delay or failure was due to any cause beyond its reasonable control. Any estimates given by Focus as to the time of completion of performance of its Services (whether completion of the whole or a part of those Services) shall be estimates only.

Focus take all possible care to avoid introducing computer viruses to systems used for Hosting and shall not be liable to the Customer for unknowingly introducing such virus to systems used for Hosting, or for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or any claims which arise out of or in connection with such introduction of a computer virus. Focus cannot guarantee that systems used for Hosting will never be infiltrated by unauthorised users or hackers. If the Customer finds evidence of infiltration, they should notify Focus who will take steps both to try and prevent it and to notify the proper authorities. In accordance with this the Customer agrees to keep secure any passwords and other confidential information relating to the web site, administration systems or systems used to host them.

Notwithstanding contrary clauses in this Terms, in the event that Focus are deemed liable to the Customer for breach of this Agreement, the Customer agrees that Focus liability is limited to the amount actually paid by the Customer for the project, which amount calculated in reliance upon this clause. The Customer hereby releases Focus from any and all obligations, liabilities and claims in excess of this limitation. Any additional compensation is entirely at the discretion of Focus.

Charges and Payments

The Customer shall pay the agreed price for the Services, including all applicable value added tax, according to the terms of payment specified in the Web Services Agreement. Upon signing the Web Services Agreement, Focus will usually issue an invoice for minimum 25% of the Project price which is payable within fourteen days. An invoicing structure may be established consisting of regular invoicing as the Project continues or payment of the final balance on completion of the Services.

Where a project stalls or extends beyond reasonable deadlines through actions by the Customer Focus reserve the right to invoice for work completed to that point.

The Customer will pay the invoice by its due date. Failure to pay the sums due within this period entitles Focus, without prejudice to its other rights and remedies, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 4% above the base rate charged by Lloyds TSB plc from the due date until the outstanding amount is paid in full; to suspend work on the Services or any ongoing Projects until all outstanding sums have been paid in full; to terminate the Services and / or suspend any further deliveries to the Customer.

Ownership and Intellectual Property Rights

The Customer acknowledges that any and all of the copyright and other intellectual property rights created, developed, subsisting or used in or in connection with the Project and Services and all rights in any core files or programming logic and code created or developed by Focus in connection with the Projects are and shall remain the sole property of Focus.

Focus grant the Client a non-exclusive right to use all such rights in accordance with the Project and Services.

The ownership of content and data remains with the Customer at all times. Ownership of design work produced as part of the Project remains with Focus until payment has been received in full for all sums owing under the Web Services Agreement.

Once payment has been received, ownership of design and graphics specific to the Project shall pass to the Customer.

The ownership of data held within the App and associated databases remains with the Customer at all times.

Where ownership remains with Focus, the Customer shall not at any time after the completion, expiry or termination of this Agreement in any way question or dispute this ownership.

Focus may provide ideas or consultative advice as part of a pitch or initial meeting with a Customer; Focus may also provide static design 'concepts' during a pitch or at any other time during a Project to illustrate potential interfaces, information architecture or site flow. Until otherwise agreed, the copyright to these ideas and / or designs remains with Focus and they may not be used for any commercial activity without the written approval of a Director of This is Focus Limited. Focus reserve the right to charge for any design concept work completed, or consultative advice acted upon.

Services

Focus shall use its best endeavours to achieve a high-quality Service. However, Focus cannot guarantee to provide a fault-free service due to the technically complex nature of the Service provided.

Focus or its suppliers may temporarily suspend the Service in order to upgrade, repair or maintain servers, communication links, hardware or software. Focus or its suppliers may alter the technical specification of the Service for operational improvements or amendments.

Focus shall accept no liability whatsoever for the transmission or receipt of any information or data of whatever nature or format. Focus reserves the right to use in any way it wishes any programming tools, skills and techniques acquired or used in performing its duties under this Agreement. In performing the Services Focus is entitled at its own discretion to employ subcontractors. Focus reserves the right to change subcontractors at any time without notice. Subcontractors will adhere to Focus Terms.

Termination

Focus may terminate the Service at any time, upon ninety (90) days' notice. The Customer may also do the same. Where Focus terminates the Service in reliance upon your breach of Agreement, or the Customer terminates the Service there will be no entitlement to any refund of any unused part of charges.

Focus expressly reserves the right to terminate or suspend the Service without prior notice should a Customer fail to comply with clause 3 of these Terms or should Focus deem such action necessary where legal proceedings are threatened or issued regarding the form or content of the App and in such circumstances Focus will confirm such termination or suspension by subsequent notice. Focus may also consider termination should any activity, such as email based newsletter campaigns, result in Focus servers being blacklisted in any way by any third party or any activity that damages our relationship with our Third Party Hosting Providers.

Other Provisions

Unless otherwise instructed Focus reserves the right to make public in promotional or other material its role in carrying out the Services.

Focus reserves the right to suspend the Customers use of the Service if it is having a detrimental effect upon the Service received by any of Focus's other Customers.

General Terms of Law

Focus shall be entitled, without liability on its part and without prejudice to its other rights, to terminate the Terms or any unfulfilled part, or at its option to suspend or make partial deliveries or extend the time or times for delivery, if the performance by Focus of any of its obligations under the Agreement is hindered or delayed whether directly or indirectly by reason of the Client failing to furnish necessary instructions or information, or by war or other hostilities, civil commotion, act of God, government action or legislation, interruption of transport, strike, lockout or other forms of industrial action, accidents or stoppages to works, shortage of labour, materials, equipment, fuel or power, breakdown of machinery or any other cause whatsoever beyond the reasonable control of Focus.

This Agreement is governed by the laws of England and Wales

The Customer acknowledges that no joint venture, partnership, employment, or agency relationship exists between the Customer and Focus as a result of their use of these Services. The Customer agrees not to hold themselves out as a representative, agent or employee of Focus. The Customer agrees that Focus will not be liable by reason of any representation, act or omission to act by the Customer.

Severability

If any of the provisions of these Terms is judged to be illegal or unenforceable, the remainder shall continue in full force and the effect of the remainder of them will not be deemed to be prejudiced (unless the substantive purpose of these Terms is then frustrated, in which case either party may terminate the Services forthwith on written notice).

Entire Agreement

These Terms constitute the entire agreement between Focus and the Customer with respect to use of the Services and / or goods provided by Focus, and it supersedes all prior or contemporaneous communications and proposals, whether oral or written, between Focus and the Customer.

These Terms are governed by the laws of England and Wales.

Each party confirms that it has not relied on any representation not recorded in this document. The address for communication to Focus by conventional mail unless you are otherwise notified shall be:

This is Focus Ltd

604 CityPoint, Temple Gate, Bristol BS1 6PL

The telephone number is 0117 949 8008 The email address is hello@thisisfocus.co.uk