**Memorandum of Understanding**

**between**

**Police, Fire & Crime Commissioner for Essex**

**and East of England Probation Service**

**for the co-commissioning of rehabilitative and resettlement interventions**

# Parties, purpose and principles

* 1. The Parties to this Memorandum of Understanding (MoU) are:
     1. East of England Probation Service (a part of His Majesty’s Prison and Probation Service (“**HMPPS**”)), operating on behalf of the Secretary of State for Justice of 102 Petty France, London, SW1H 9AJ (collectively, **“EofEPS**”).
     2. Police, Fire and Crime Commissioner for Essex, Kelvedon Park, London Road, Rivenhall, Witham, Essex CM8 3HB – Lead Commissioner

together, the “**Parties**” or individually a “**Party**”.

* 1. The purpose of this MoU is to agree a general approach to the co-commissioning of and co-investment in rehabilitative and resettlement services between the Parties.
  2. The Parties shall commit to work together to agree co-commissioning plans and the procurement of HGV Driver Training services as set out in Annex 4 (the “**Services**) for a period of 6 months from 1st October 2023 onwards.
  3. The work under this MoU should be conducted in a spirit of cooperation in order to achieve the shared aim of reducing reoffending and delivering public services effectively and efficiently. Both Parties agree to act in good faith to support the objectives and principles of this MoU and adhere to the Co-Commissioning Principles listed in Annex 1 to this MoU.
  4. The following principles will govern any work carried out under this MoU:
     1. Each Party will share relevant information with the other Party as openly as possible and make decisions as transparently as possible with regard to the other Party.
     2. Each Party will ensure that its own internal governance and financial management requirements are satisfied and each Party will provide support as reasonably requested by the other Party to satisfy that Party’s governance and audit requirements. The Lead Commissioner will share evidence of their budgetary and procurement approval with the other Party for their records.
     3. Each Party will have a role in specifying the Services and any supporting requirements (e.g. performance, payment, IT, staff transfer, vetting, estates, eligibility criteria for the service, cohorts to be targeted, outcomes etc).
     4. Each Party will cover its own internal costs related to procurement and contract management.
     5. A governance structure and escalation route is to be established between the Parties to support the co-commissioning and is appended to Annex 3 of this MoU.
     6. Any press release or media on the Services will be agreed and undertaken jointly between the Parties. Both Parties will have the opportunity to review and approve any press release or media relating to the Services before its release.
     7. If either Party becomes aware of any performance concerns or reputational risk involving the Services, they will ensure the other Party is made aware.

# Term and Termination

* 1. This MoU commences upon execution of this MoU by both Parties and shall terminate on 31st March 2024.
  2. The Parties acknowledge and agree that the term of the MoU can only be renewed or extended with the prior written agreement of all Parties.
  3. EofEPS may terminate this MoU immediately by serving a written notice on the Lead Commissioner if the funding contributions made in accordance with Clause 3 or any part of them are being used for any purpose other than in accordance with this MoU and the service requirements and outcomes described in Annex 4.
  4. EofEPS may terminate this MoU by giving 14 days’ written notice if the Lead Commissioner fails to deliver the service requirements and outcomes described in Annex 4.
  5. If the MoU is terminated by EofEPS pursuant to Clause 2.3 or Clause 2.4, the Lead Commissioner will refund EofEPS any funding which EofEPS has pre-paid pursuant to Clause 3.

# Funding Contributions

* 1. EofEPS shall allocate £35,000 in line with its budget for the period up to 31st March 2024, as per the table below.

|  |  |
| --- | --- |
|  | **CY1 (23/24)** |
| **Payment** | £35,000 |

* 1. The Lead Commissioner will allocate £10,000 in total for the duration of this MoU, as per the table below.

|  |  |
| --- | --- |
|  | **CY2 (23/24)** |
| **Payment** | £10,000 |

* 1. EofEPS shall pay its funding contributions to the Lead Commissioner in accordance with Clause 3.1 and following the receipt of such invoices as are required by EofEPS from time to time.
  2. The Lead Commissioner is responsible for payment of the provider(s) of the Services (the “**Provider(s)**”) pursuant to and in accordance with the terms of the contract(s) or grant(s) (as applicable) entered into between the Lead Commissioner and the Provider(s) (the “**Contract(s)**”). A joint cost impact assessment shall be carried out by the Parties, adhering to the best practice principles of should cost modelling, as appropriate, to agree and seek approval of the total cost for the services to be procured.
  3. Any potential savings from the allocated funding shall be discussed by the Parties in good faith and used either to maximise investment in the existing co-commissioned services or to support future co-commissioning arrangements. Any leftover funding that is carried over at the end of the MoU will be specified in a separate written agreement between the Parties.
  4. The use and/or deployment of any additional funding which becomes available to either Party in relation to the services shall be discussed in good faith with the other Party and its use aligned with the co-commissioned services where possible and appropriate.
  5. If the Contract(s) is terminated in advance of expiry, charges may be recoverable proportionate to funds paid by the EofEPS. The sum may be requested either through an invoice raised by the EofEPS or deducted from any further sum becoming due.
  6. Any proposed increase in allocated funding above which is set out in 3.1 and 3.2 shall be subject to prior written agreement between the Parties.
  7. Should payment not be made in full to any supplier by the Lead Commissioner for whatsoever reason throughout the term of this MoU, the Lead Commissioner shall return the funding contributions owed to the respective Party, relative to their contribution at 3.1 and 3.2 above.

# HMPPS requirements

* 1. It is acknowledged both Parties have various requirements which must be met as part of any funding of Services. The Lead Commissioner commits to, and to procuring that its Provider(s) commit to, working in good faith to include all of these requirements in all Contracts entered into that arise out of or are associated with this MoU.
  2. The following requirements must be included in all Contracts for the co-commissioning of the Services:
     1. The essential services and outcomes (as defined in Annex 4) that need to be provided to any Person on Probation which EofEPS refers.
     2. Providers will need to meet HMPPS information assurance and staff vetting requirements as set out in the relevant Probation Instructions and Policy Frameworks and any guidance issued by EofEPS from time to time (as amended from time to time). The current Probation Instructions, Policy Frameworks and guidance are appended to and/or linked from Annex 5 to this MoU.
     3. Providers will need to demonstrate Good Industry Practice with regards to the Government’s 10 Steps to Cyber Security, currently available at: <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>.
     4. Audit and inspection rights must be included in the Contracts. These should include financial audit as well as HMPPS and HMI Probation representatives inspection rights.
     5. Providers need to be made aware of and accept staff transfer (TUPE) requirements (if applicable) and full details of the potential scale and extent of the TUPE should be provided by the relevant Party at the earliest opportunity.
  3. Any Contract (including any variation to an existing Contract) entered into by the Lead Commissioner in relation to the provision of the Services must be procured in accordance with the Public Contracts Regulations 2015 (PCR 2015) or Grants Functional Standards if applicable, and/or any subsequent applicable legislation. The responsibility for all transparency and publishing requirements for contracts or grants will fall to the Lead Commissioner.
  4. Contracts should not be entered into with Providers that trigger any of the mandatory exclusion grounds set out in regulation 57 of the PCR 2015.

# Confidentiality

* 1. Each Party undertakes that it shall keep any information that is confidential in nature concerning this MoU or the other Party including any details of its business, affairs, customers, clients, suppliers, plans or strategy (“**Confidential** **Information**”) confidential and that it shall not use or disclose the any other Party’s Confidential Information to any person, except as permitted by this Clause 5.
  2. The provisions of this clause shall not apply to any Confidential Information that:
     1. is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its representatives in breach of this clause);
     2. was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party; or
     3. was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party’s knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party.
  3. Each Party may:
     1. disclose any other Party’s Confidential Information to those of its employees, officers, representatives, subcontractors or advisers who need to know the relevant Confidential Information for the purposes of the performance of this MoU, provided that it shall ensure that each of its employees, officers, representatives, subcontractors or advisers to whom Confidential Information is disclosed is aware of its confidential nature and complies with this Clause 5;
     2. disclose any other Party’s Confidential Information to the extent required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction; and
     3. use Confidential Information only as expressly provided under this MoU or otherwise as and to the extent required for the purpose of exploiting its rights and fulfilling its obligations under this MoU.
  4. Each Party shall comply with the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

# Data Protection

* 1. If any personal data (as defined in applicable data protection laws) is proposed to be shared between the Parties (“**Shared Personal Data**”), the Parties shall enter into a data sharing agreement, to be provided by EofEPS, prior to sharing such personal data. Each party shall comply with all applicable laws in respect of the processing of any Shared Personal Data, including (without limitation) the provision of privacy notices where required.
  2. Each Party shall enter into a separate data sharing agreement with the Provider(s) as required in accordance with applicable data protection laws.
  3. Each Party shall notify the other Party within 24 hours of it becoming aware of any personal data breach or loss of data by the Provider(s).
  4. The Parties have agreed certain obligations relating to the sharing of information that is not personal data in Annex 2 to this MoU.

# Notices

* 1. Notices under this MoU shall be in writing and sent to the address as set out on the first page of this MoU or to the following email address:
     1. [louise.renyard@justice.gov.uk] in the case of HMPPS; and
     2. [greg.myddelton@essex.police.uk] in the case of the Lead Commissioner.

This Clause does not apply to notices given in legal proceedings or arbitration.

# Announcements

No announcement or other public disclosure concerning this MoU or any of the matters contained in it shall be made by, or on behalf of, a Party without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any court, any governmental, regulatory or supervisory authority (including any recognised investment exchange) or any other authority of competent jurisdiction.

# Variation

No variation of this MoU shall be valid or effective unless it is in writing, refers to this MoU and is duly signed or executed by, or on behalf of, each Party.

# Third Party Rights and Agency

A person who is not a Party to this MoU shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this MoU.

Save to the extent expressly stated in this MoU, neither of the Parties shall be entitled to contract on behalf of or otherwise bind or act as an agent for the other Party in any way.

# Governing Law

This MoU and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

# Jurisdiction

The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this MoU, its subject matter or formation (including non-contractual disputes or claims).

# Counterparts

This MoU may be executed in any number of counterparts. All counterparts taken together when all signed, constitute one agreement. A Party may execute this MoU by signing any counterpart.

**Annex 1: Principles for co-commissioning and alignment of commissioned services**

The following principles should be adhered to irrespective of whether a co-commissioning or “alignment of commissioning” route is adopted:

* A Joint Needs Assessment should be undertaken to underpin current and future commissioning of services. This should ensure the voice of the person on probation is included.
* A shared outcomes framework should be agreed in order to monitor progress and performance against the Joint Needs Assessment.
* All services should aim to achieve better outcomes for offenders, ex-offenders and victims.
* Service design should be evidence-based, building on recognised best practice and/or testing new innovation and allow for continuous evaluation and improvement throughout the delivery period.
* Both Parties should be able to comment on specifications.
* Both Parties should have a role in the evaluation and the letting of the contracts.
* Both Parties should have a role in regular contract/grant monitoring of the Provider(s).
* Each Party can commission services independently from one another where it is appropriate to do so.
* A governance structure will be identified to support these processes.
* The Lead Commissioner will share all business case and procurement strategy approval evidence with the other Party for audit and accountability purposes before launching with market.

Principles of Co-commissioning

* Services and specifications should be designed through collaboration.
* The Parties will agree at the outset which of them will be the lead commissioner for the co-commissioned rehabilitative services and what the respective roles and responsibilities of each Party will be throughout the process.
* The services commissioned shall reflect the priorities set out in the Joint Needs Assessment.
* The Parties will agree at the outset as to which of them will take the lead role in procurement and contract management (this will take account of financial contribution, resources and expertise).
* Sufficient time is to be given in the design and procurement phases to ensure each Party’s governance/sign off processes are achievable.
* Co-commissioning should be the first option where the above points can be achieved and where it represents the best value for money, and enhances social value~~.~~

Principles of “alignment of commissioning”

* The Parties should consult with each other before the development and commissioning of new services to ensure that services align and to avoid duplication.
* Where services are already in existence that have a clear overlap with a new service, alignment should be considered in order to avoid duplication.
* Outside of contract management, performance information, issues of concern, and examples of best practice will be shared to ensure learning is applied across services.

**Annex 2: Contract Management Information Sharing Protocol**

* This Annex sets out the information sharing arrangement between EofEPS and the Lead Commissioner who have jointly engaged in securing the provision of the Services in the EofE region.
* This Annex is not intended to address the sharing of any Shared Personal Data (as defined in Clause 7 of the MoU). If any Shared Personal Data is proposed to be shared between the Parties, the Parties shall enter into a data sharing agreement in accordance with Clause 7 of the MoU.
* This Annex does not remove or reduce any existing legal obligations or responsibilities of either Party, for example as data controllers or data processors under the UK GDPR and the Data Protection Act 2018. All Parties will be recognised as data controllers in their own right unless otherwise agreed in a data sharing agreement signed by the Parties.
* The information shared between EofEPS and the Lead Commissioner shall enable both Parties, and the Provider(s), to obtain an understanding of the effectiveness of provision of the Services. This increased understanding will allow for public resources to be targeted at areas where they have the greatest impact and ensure that the public purse is getting value for money.
* Information transferred between the Parties throughout the duration of the MoU shall be for the purpose of evaluating the Services received from the Provider(s) including performance monitoring and compliance activities. All data provided by the Probation Service will be anonymised and will be in the form of statistical data only. All information pertaining to or identifying any living individual will be removed.
* The routine information exchange will be for the purposes of collaborative contract management.
* It is acknowledged that it is each Party’s obligation to maintain an adequate and effective system of controls to govern information within their organisations and that EofEPS places reliance on those controls as the underpinning of this MoU.

****

**Annex 3: Governance and Escalation Route**

The contract management relationship between EofEPS and the Lead Commissioner in relation to governance and escalation shall be underpinned by the following principles:

**1. Contract Management**

1.1 During the funding period identified in Clause 2.1, the Lead Commissioner and EofEPS shall meet the Provider(s) on a quarterly basis at a minimum in a medium which suits attendees for the purposes of performance management and contract meetings. These meetings will include a discussion on performance, targets and spend.

1.2 During the same said funding period identified, the Provider(s) will provide a monthly performance report to the Lead Commissioner and EofEPS which is based upon the agreed performance measures.

**2. Service Changes**

2.1 Any service changes proposed by the Lead Commissioner and/or the Provider(s) shall be disseminated to EofEPS for comment. In the event service changes are required by EofEPS, the Lead Commissioner shall enable direct discussions with the Provider(s) to be undertaken. Any subsequent Contract Change Variations driven by EofEPS shall require EofEPS to approve the reflective documentation prior to contract incorporation to ensure all requirements have been captured.

**3. Supplier Reviews**

3.1 In addition to the quarterly meetings scheduled with the Provider(s), as a minimum EofEPS and the Lead Commissioner shall meet separately no less than once each contract year for the purposes of an annual review. The meeting shall be diarised and minuted, and the agenda shall be developed based on operational requirements which shall capture as a minimum:

* overall supplier performance,
* potential service changes,
* supplier innovation(s),
* emerging risks and issues, and
* financial stability review of the supplier.

3.2 Any barrier(s) identified by either of the Parties that would affect performance shall be raised and discussed with the other Parties, and a plan to address any shortfall in performance will be agreed.

3.3 In the event of a Provider(s) service failure event, the Lead Commissioner shall notify EofEPS of any contractual levers it may invoke prior to enactment, to enable EofEPS to ascertain likely service impacts to the Criminal Justice element of delivery, and in the event delivery and performance is impacted, how these shall be managed.

**4. Assigned Personnel**

4.1 Initial assigned personnel are detailed in the tables below. In the event any or all or the personnel change throughout the duration of the MoU, replacement personnel shall be notified and confirmed through email correspondence and an audit trail to this effect shall be maintained.

4.2 EofEPS local points of contact are confirmed as:

|  |  |  |  |
| --- | --- | --- | --- |
| Operational | Martin Lucas | Head of Probation Delivery Unit – South Essex |  |
| Contract Management | Louise Renyard | Commissioning & Partnerships Manager |  |

4.3 Lead Commissioner local points of contact are confirmed as:

|  |  |  |  |
| --- | --- | --- | --- |
| Operational | Greg Myddelton | Strategic Head of Partnerships & Delivery |  |
| Contract Management | Greg Myddelton | Strategic Head of Partnerships & Delivery |  |

**5. Escalation**

5.1 Escalation personnel are detailed in the tables below. In the event any or all or the personnel change throughout the duration of the Agreement, replacement personnel shall be notified and confirmed through email correspondence and an audit trail to this effect shall be maintained.

5.2 In the event either Party has any concerning issue which cannot be resolved to adequate satisfaction through the local points of contact, escalation is required to achieve this. Resolution shall be achieved when both Parties are content with the outcome derived.

5.3 EofEPS escalation tiers:

|  |  |  |  |
| --- | --- | --- | --- |
| Tier 1 | Alex Osler | Head of Operations |  |
| Tier 2 | Hilary Collyer | Head of Community Integration |  |
| Tier 3 | Steve Johnson-Proctor | Regional Probation Director |  |

5.4 Lead Commissioner escalation tiers:

|  |  |  |  |
| --- | --- | --- | --- |
| Tier 1 | Pippa Brent-Isherwood | Chief Executive & Monitoring Officer |  |
| Tier 2 |  |  |  |

5.5 Escalation requires both Parties to be provided an initial information set by email comprising of all relevant details. Acknowledgment of the escalation is required within five working days of receipt, following which both Parties shall endeavour to resolve the escalation within fourteen [14] working days.

**Annex 4: Service Requirements & Outcomes**

1. **Purpose:**

* **To deliver HGV Driver Training to a selected number of people on probation in the Essex North and South PDU areas. The service will be offered with the following criteria:**
* **The person on probation must be ‘work ready’**
* **The person on probation must have a local connection to Essex**
* **The person on probation must be over the age of 21 (the minimum age is 18 but we suggest 21)**
* **The person on probation must have held a driving licence for a minimum of 2 years**
* **To provide the person on probation with training in order to:**
* **Achieve long-term stable employment**
* **Take control of their lives**
* **Achieve greater stability from gaining employment.**
* **Achieve long-term desistance from crime.**

**b) Key Deliverables**

* **The person on probation is successful in passing their HGV Driving Test and gains employment**

**c) Outcomes**

**The key outcomes measures to be achieved, as demonstrated by monitoring (using feedback from the provider and peer mentors) are:**

* **The person on probation fully engages with the service and complies to any rule and/or legislation applicable**
* **Successful employment.**
* **Personal stability, health and wellbeing.**
* **Achievement of wider life goals, including ease of access to accommodation due to having a good income, social activity, training and employment.**
* **Long-term desistance from crime.**

1. **Finance Information/Total of Grant Award**

**The total fund available for this training across Essex, using 2 providers (one North, one South) will be £35,000 – co-commissioned with Essex PFCC**

1. **Financial Breakdown of budget for a 1 year service**

|  |  |
| --- | --- |
| **Financial Year Breakdown** | **2023/24** |
| **ROIF Amount** | £35,000 |
| **Essex PFCC contribution** | £10,000 |

**Schedule 1 Financial Breakdown**

|  |  |
| --- | --- |
| Financial Years | Year 1 2023/24 |
| Dates TBC | £45,000 |

Please kindly note that a £400pp deposit is required for those people on probation for training in Essex South at the point of referral.

Payments will be made to the training providers via Essex PFCC. Essex PFCC will invoice Probation for the £35,000 at the point of the MOU being signed off.

**Annex 5: HMPPS Information Security and Provider Staff Vetting requirements**

**HMPPS Information Security Policy Framework**

[Information Security Policy Framework (publishing.service.gov.uk)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/996355/information-security-pf.pdf)

**HMPPS Security Vetting Probation Instructions**

Available here: [Probation instructions (PIs) - GOV.UK (www.gov.uk)](https://www.gov.uk/guidance/probation-instructions-pis)

Guidance:



Agreed by the Parties through their duly authorised representatives:

**Execution**

|  |  |  |  |
| --- | --- | --- | --- |
| **Signature on behalf of the Secretary of State for Justice** | | **Signature on behalf of [Lead Commissioner]** | |
| **Signature** |  | **Signature** |  |
| **Print Name** | **David Rainbird** | **Print Name** | **Pippa Brent-Isherwood** |
| **Position** | **Commercial Business Partner** | **Position** | **Chief Executive and Monitoring Officer** |
| **Date** |  | **Date** |  |