

DATED: [Insert in manuscript the date of the last signature to this contract] 200[ ]

THE SECRETARY OF STATE FOR WORK AND PENSIONS  
(The Authority)

- and -

[COMPANY NAME]

[OR]

[NAME OF PARTNERSHIP OF [– TRADING AS ]]

---

---

MULTI – PROGRAMME CONTRACT

---

---

## CONTENTS

Clause	Page
<b>PART 1 - PRELIMINARY</b>	1
1 INTERPRETATION	1
<b>PART 2 – DURATION</b>	1
2 COMMENCEMENT AND CONTINUATION	1
<b>PART 3 – THE SERVICES</b>	1
3 PROVIDER OBLIGATIONS	2
4 THE AUTHORITY OBLIGATIONS	3
5 CHANGE CONTROL	3
6 CITY STRATEGY	5
7 VOLUMES	5
8 PROVIDER’S EMPLOYEES AND SUB-CONTRACTORS	5
<b>PART 4 – CONTRACT MANAGEMENT</b>	6
9 CONTRACT MANAGEMENT	6
10 MONITORING OF PROVIDER PERFORMANCE	6
<b>PART 5 – INTELLECTUAL PROPERTY RIGHTS</b>	7
11 INTELLECTUAL PROPERTY RIGHTS	7
12 INTELLECTUAL PROPERTY RIGHTS INDEMNITY	8
13 DATA PROTECTION	9
<b>PART 6 – CONFIDENTIALITY AND FREEDOM OF INFORMATION</b>	10
14 CONFIDENTIALITY AND FREEDOM OF INFORMATION	10
<b>PART 7 – WARRANTIES AND LIABILITY</b>	15
15 WARRANTIES	15
16 INDEMNITY AND LIABILITY	16
17 INSURANCE	17
<b>PART 8 – REMEDIES</b>	17
18 PROVIDER DEFAULT	17
19 TERMINATION	19
<b>PART 9 – CONSEQUENCES OF EXPIRY OR TERMINATION</b>	22

20	TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION AND ARRANGEMENTS LEADING UP TO IT	22
21	EMPLOYEE PROVISIONS ON EXPIRY OR TERMINATION	23
	<b>PART 10 – GENERAL PROVISIONS</b>	25
22	ASSIGNMENT AND SUB-CONTRACTING	25
23	REPUTATION AND PUBLIC SERVICE CONSIDERATIONS	26
24	VISITS AND PUBLICITY	27
25	AUDIT ACCESS	27
26	RECORDS	28
27	ISSUED PROPERTY	28
28	CHANGES IN LAW	29
29	DISCLOSURE OF INFORMATION	29
30	PREVENTION OF CORRUPTION	29
31	HEALTH AND SAFETY	29
32	SET OFF AND WITHHOLDING	30
33	JOBCENTRE PLUS CUSTOMER’S CHARTER	30
34	FRAUD	30
35	STATUS OF PROVIDER	30
36	FORCE MAJEURE	31
37	AMENDMENT AND VARIATION	31
38	SEVERABILITY	32
39	WAIVER	32
40	EUROPEAN SOCIAL FUND AND OTHER FUNDING	32
41	ENTIRE CONTRACT	33
42	NOTICES / COMMUNICATIONS	33
43	DISPUTE RESOLUTION PROCEDURE	33
44	COSTS	34
45	EURO	34
46	JOBCENTRE PLUS PREMISES (INCLUDE ONLY WHERE LIKELY TO BE APPLICABLE)	34
47	LAW AND JURISDICTION	34
	SCHEDULE 1 – INTERPRETATIONS	35

SCHEDULE 2 – THE PROGRAMME	42
SCHEDULE 3 – INFORMATION REQUIREMENTS	45
SCHEDULE 4 – MANAGING PERFORMANCE	46
SCHEDULE 5 – ACCOUNTING REQUIREMENTS	50
SCHEDULE 6 – PAYMENT SCHEDULE	56
ANNEX 1	57
SCHEDULE 7 – DISPUTE RESOLUTION PROCEDURE	59
SCHEDULE 8 – EQUALITY AND DIVERSITY REQUIREMENTS	61
SCHEDULE 9 – ACCREDITED PROVIDER INFORMATION	64
SCHEDULE 10 – COMMERCIALLY SENSITIVE INFORMATION	65
SCHEDULE 11 – WELSH LANGUAGE SCHEME	66
SCHEDULE 12 - SUSTAINABILITY	68

**THIS CONTRACT** is made on \_\_\_\_\_200[ ] [**Insert in manuscript the date of the last signature to this Contract**]

**BETWEEN** (the "**Parties**"):-

- (1) **THE SECRETARY OF STATE FOR WORK & PENSIONS**) whose Head Office is at Mayfield Court, 56 West Street, Sheffield S1 4EP ( '**The Authority**' ); and
- (2) **[COMPANY NAME]** (No. [ ]) whose registered office address is at [address] (the '**Provider**');]

**OR**

- (2) **[insert name of Partnership and 'trading as' if relevant]** a partnership whose principal place of business is at [address] (the '**Provider**')

(and hereinafter called the '**Parties**').

## **RECITALS**

The Provider has agreed to provide the Programme on the terms and conditions set out in this Contract. The Authority's reference number for this Contract is "[Ref. No.]".

## **PART 1 – PRELIMINARY**

**IT IS AGREED** as follows:-

### **1. INTERPRETATION**

The definitions of contract terms, and provisions relating to the interpretation of this Contract and the precedence of the clauses, schedules and annexes are set out in Schedule 1 to this Contract. The definitions and interpretations as set out in Schedule 1 shall be deemed to be set out in this Clause 1 for the purposes of construing and interpreting this Contract.

## **PART 2 – DURATION**

### **2. COMMENCEMENT AND CONTINUATION**

2.1 The Provider shall carry out the Programme or Programmes with effect from the relevant Commencement Date(s) set out in Schedule 2 for a period of [ ] [years] after the relevant Commencement Date, subject to earlier termination of this Contract, or of the relevant Programme, in accordance with the other provisions of this Contract. For the avoidance of doubt this Contract shall expire on the expiry or termination of the last Programme.

2.2 The Authority may, with the agreement of the Provider:-

2.2.1 extend the period of any one or more Programme by one or more periods; and/or

2.2.2 add additional Programmes to Schedule 2.

2.3 The references to Programme(s) in this Contract shall be construed at any point in time according to whether the Provider is providing one or more Programmes (as the case may be).

## **PART 3 – THE SERVICES**

### **3. PROVIDER OBLIGATIONS**

3.1 The Provider shall promptly and efficiently provide each Programme in accordance with:

- 3.1.1 the Specification;
- 3.1.2 Good Industry Practice;
- 3.1.3 the Provider Guidance;
- 3.1.4 all applicable Laws;
- 3.1.5 the Method Statement.

3.2 The Provider shall comply with Schedule 11 in relation to those programmes which it delivers in Wales under this Contract.

3.3 The Provider shall not in the performance of this Contract:

- 3.3.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to Part II (Discrimination in the Field of Employment) or Part III (Discrimination in Other Fields) of the Race Relations Act 1976 (the "**RRA**");
- 3.3.2 contravene Part IV of the RRA (Other Unlawful Acts); or
- 3.3.3 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of:
  - (a) disability, age, sexual orientation, religion or belief; or
  - (b) any criterion which is unlawful under the applicable Laws

and any breach by the Provider of Clauses 3.3.1 to 3.3.3 above shall be a Serious Breach for the purposes of Clause 18 (Provider Default).

3.4 The Provider shall provide each Programme in accordance with the Equality and Diversity Requirements under Schedule 8. Any breach by the Provider of Paragraphs 3 to 7 (inclusive) of Schedule 8 shall be a Serious Breach for the purposes of Clause 18 (Provider Default).

3.5 The Provider is responsible for obtaining all surveys and information necessary for carrying out its obligations under this Contract. The Provider shall not rely and shall be deemed not to have relied on information provided by the Authority on matters covered by this Contract and, save in the case of fraudulent misrepresentation, the Authority shall not be liable to the Provider (whether in contract, tort, statute or otherwise) in respect of any inaccuracy, error, omission, defect or inadequacy of any kind whatsoever arising from, or contained in, any such information provided by the Authority.

3.6 The Provider shall comply with the information, accounting and other provisions set out or referred to in the Schedules. In particular the Provider acknowledges that the keeping of such records is necessary for the Authority to verify the Provider's entitlement to payment under this Contract.

3.7 The Provider acknowledges that it is of paramount importance to ensure that funds paid under this Contract are used effectively to assist Participants into long term employment. The Provider understands that the effectiveness of the Provider's delivery of the Programme(s) will be measured against general and specific performance targets agreed in writing between the Authority and the Provider from time to time (such agreement not to be unreasonably withheld or delayed). In delivering the Programme(s) the Provider shall be under an obligation to meet such general and specific performance targets. If the Provider fails to meet all or any such targets, the Authority shall be entitled to serve notice on the Provider in accordance with Clause 18 (Provider Default).

3.8 The Provider acknowledges that the continuity of the Programme(s) for Participants is of paramount importance. The Provider undertakes during the term of this Contract to use all reasonable endeavours to facilitate such continuity for Participants so far as it is able to do so.

3.9 The Provider shall, and shall procure that its employees, agents and sub-contractors, comply with the "the Authority Accuracy of Information Standards" (as notified to the Provider by the Authority from time to time) concerning the provision of information, general and specific advice. Under no circumstances should the Provider recommend a particular course of action to Participants, and Participants must be presented with all the available options.

#### 4. **THE AUTHORITY'S OBLIGATIONS**

4.1 The Authority shall perform its responsibilities in relation to each Programme delivered under this Contract as set out in the Schedules.

4.2 The Authority shall comply with the provisions set out in Schedule 5 (Accounting Requirements) provided that the Provider has supplied full and proper delivery of the Programme(s) in accordance with this Contract, supported by full and accurate information and documentation to the reasonable satisfaction of the Authority.

4.3 The Authority shall use all reasonable endeavours to provide to the Provider all such information as the Provider reasonably requires in order to provide properly the Programme(s) and comply with its obligations under the terms of this Contract.

#### 5. **CHANGE CONTROL**

5.1 The Authority has the right to propose variations (including a request by the Authority for the Provider to cease any one or more of the Programmes or Provisions) to the Programmes in accordance with this Clause 5. If the Authority proposes a variation in the Programme(s) The Authority shall serve a Change Control Request on the Provider, and the Provider shall promptly comply with such Change Control Request.

5.2 The Provider shall accommodate any changes to the needs and requirements of the Authority provided that it shall be entitled to payment for any agreed additional costs it incurs as a result of any such changes on the basis set out in this Clause 5.

5.3 Without prejudice to the generality of the Authority's right to vary this Contract, such variations include, but are not limited to the following:

5.3.1 cessation of any part of the Programme(s);

5.3.2 additions to any part of the Programme(s);

5.3.3 change of the Authority's business or policies imposed by Her Majesty's Government;

5.3.4 change of a business asset;

- 5.3.5 quality of Programme(s).
- 5.4 The Change Control Request shall:
- 5.4.1 set out the change to the Programme(s) required by the Authority in sufficient detail to enable the Provider to provide an estimate in accordance with Clause 5.5 below; and
- 5.4.2 request the Provider to provide the Authority with an estimate ("**the Estimate**") of the effect on the charges of the variation based on the Pricing Schedule in Schedule 6
- 5.5 The Provider shall provide the Authority with the Estimate within ten (10) Working Days of the receipt of the Change Control Request or such longer period as is reasonable in all the circumstances. The Estimate shall include a statement of opinion of the Provider on:
- 5.5.1 the impact of the proposed change on the provision of the Programme(s); and
- 5.5.2 any amendment required to this Contract or the Schedules to accommodate the proposed change including without limitation, any changes to the labour requirements and the key performance indicators; and
- 5.5.3 (having regard to the Provider's general duty of cost efficiency under this Contract) the overall part year and/or full year cost of, savings from, implementing the proposed variation as the case may be (for the avoidance of doubt where the proposed variation constitutes either in whole or in part a cessation of any part of the programme(s), other than the variation is based on the Authority considering that the Provider's performance is unsatisfactory, the cost or savings as the case may be shall be calculated in accordance with Clause 19.6.6) and
- 5.5.4 any other information reasonably requested by the Authority or appearing to the Provider to be relevant.
- 5.6 As soon as practicable after the Provider provides the Authority with the Estimate, the Authority and the Provider shall meet to discuss and agree any issues arising from the Change Control Request or from the Estimate provided by the Provider.
- 5.7 If the Authority and the Provider cannot agree any part of the content of the Estimate within a reasonable time of the meeting under Clause 5.6 then the Change Control Request shall be withdrawn by the Authority.
- 5.8 As soon as practicable after any part of the contents of the Estimate have been agreed in accordance with Clause 5.6 above the Authority shall:
- 5.8.1 confirm in writing that it wishes to proceed with the Change Control Request (or that part of it which has been agreed or determined as above); or
- 5.8.2 withdraw the Change Control Request (or the relevant part).
- 5.9 If the Authority confirms that it wishes to proceed with the Change Control Request, the Programme(s) shall be deemed to have been amended accordingly. The annual cost of, or savings from, implementing the variation (as agreed or determined) shall be added to or deducted from the payments, as appropriate.
- 5.10 If the Authority has not confirmed or withdrawn the Change Control Request with twenty (20) calendar days of the date of agreement in accordance with Clause 5.6

above then the Change Control Request (or the relevant part) shall be deemed to have been withdrawn.

- 5.11 The Authority shall not be liable for any costs incurred by the Provider in implementing the procedures pursuant to this Clause 5 save that the Authority shall be liable for the Provider's reasonable costs where the Authority withdraws the Change Control Request.

#### **Minor Variations**

- 5.12 Variations of a minor or temporary nature may be required to the Programme(s) from time to time and such variations shall be agreed in writing between the Authority and the Provider. The Provider shall comply with such minor or temporary variations, which shall normally be accommodated at no extra cost to the Authority, provided they do not involve additional cost to the Provider.

### **6. CITY STRATEGY**

The Provider acknowledges that where the City Strategy contemplated in the Government's Green Paper "A new deal for Welfare: Empowering people to work" launched on 24 January 2006 has been implemented by the formation of a partnership to deliver that strategy locally (the "City Partnership") this will impact on the delivery of the Programme(s). Therefore the Provider shall deliver the Programme(s) in a spirit of collaboration and co-operation with and shall liaise accordingly with the relevant City Partnership(s).

### **7. VOLUMES**

The Provider acknowledges and has submitted its tender and price on the understanding that no guarantee is given by the Authority in respect of the number or volume of Participants participating in the Programme during the term of this Contract. Any levels or values of goods and/or services referred to in the Schedules are indicative only and shall not be binding on the Authority.

### **8. PROVIDER'S EMPLOYEES AND SUB-CONTRACTORS**

- 8.1 The Provider shall include in its contracts with suppliers or sub-contractors engaged for the purposes of providing the Programme(s) a written condition undertaking to make payment for the supply of their goods and/or services within thirty (30) calendar days of receipt of the supplier's or sub-contractor's invoice (provided that such goods and/or services have been supplied in accordance with the relevant contract).
- 8.2 The Provider shall be responsible for ensuring that its employees and sub-contractors (and their respective employees) are not claiming any state benefit, where payment of that benefit is precluded due to earnings. The Provider shall further use all reasonable endeavours to ensure that its employees and sub-contractors (and their respective employees) who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Provider shall at all times take reasonable steps to ensure compliance with this Clause 8.2.
- 8.3 The Provider shall satisfy itself that its employees and / or sub-contractors (and / or their respective employees) are suitable in all respects to provide the Programme(s).
- 8.4 The Provider shall be responsible for ensuring that its employees and sub-contractors and their respective employees comply with the provisions of Clause 3 in the performance of this Contract.
- 8.5 The Provider shall upon becoming aware forthwith notify the Authority of any claim brought against the Provider arising out of or relating to the Provider's delivery of the Programme(s) including any claim made against any sub-contractor of the Provider.

## **PART 4 – CONTRACT MANAGEMENT**

### **9. CONTRACT MANAGEMENT**

- 9.1 The Provider shall appoint a named Provider Manager who shall co-operate with the Authority's Contract Manager to ensure that the Programme(s) is or are delivered as specified in this Contract, that the quality of service is at least maintained, that required standards and performance levels are at least met and that management and other information is provided to the Authority as specified in this Contract.
- 9.2 Each Party shall promptly notify the other of the name of the Provider Manager or Contract Manager (as appropriate) and of any subsequent replacement.
- 9.3 The Provider shall promptly comply with all reasonable requests or directions of the Authority in respect of this Contract.
- 9.4 The Provider shall address any enquiries or notify any difficulties about procedural or contractual matters to the Contract Manager (to be confirmed by the Provider in writing if requested), or such other person as the Authority may nominate in his/her place. The Authority will then provide such advice and/or assistance as it reasonably can to help the Provider to resolve the difficulty which has arisen. In the event that the Provider and the Authority cannot resolve any difficulties, the Parties shall comply with the formal dispute resolution procedures set out in the Dispute Resolution Procedure.

### **10. MONITORING OF PROVIDER PERFORMANCE**

- 10.1 The Authority shall monitor the Provider's performance of the Programme(s) in accordance with the provisions of Schedule 4 (Managing Performance). The Authority will organise, regular monitoring and spot checks of the Provider's Sites at any time to ensure that the Provider is complying with its obligations under this Contract and the Provider shall co-operate fully, at its own cost, with the Authority.
- 10.2 The Authority may also appoint an external assessor to participate in the monitoring of the Provider's performance of the Programme(s) and the Provider will co-operate with the assessor and take all reasonable and necessary steps to implement recommendations made. Any changes to any Programme made as a result of a recommendation of any such persons shall be made in writing and in accordance with Clause 37.
- 10.3 The Provider shall ensure that the Authority (and its authorised representatives) have access upon reasonable notice to all relevant property, including the Provider Sites, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in this Clause 10 including putting in place arrangements to permit legal access to information as may be required (for example under the Data Protection Act 1998).
- 10.4 With effect from the date of this Contract the Authority and the Provider shall meet at the times and with such frequency as specified in Schedule 4 (Managing Performance). Such meetings shall be convened by the Authority upon the Authority giving reasonable notice to the Provider.

## **PART 5 – INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION**

### **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 The Provider acknowledges that:
- 11.1.1 all Intellectual Property Rights owned at the date of this Contract by the Authority shall remain so owned;

- 11.1.2 any Intellectual Property Rights arising from the modification, adaptation or enhancement to any Materials in which the Authority Intellectual Property Rights subsist, shall belong to the Authority notwithstanding the identity of its creator and shall thereafter fall within the definition “the Authority Intellectual Property Rights”;
  - 11.1.3 The Authority hereby grants to the Provider a non-exclusive, non-transferable royalty-free licence to use the Authority Intellectual Property Rights in the UK only to the extent that and for so long as such use is strictly necessary for the delivery of the Programme(s) by the Provider in accordance with this Contract;
  - 11.1.4 the Provider shall comply in all respects with the terms of any third party licence relating to the Authority Intellectual Property Rights;
  - 11.1.5 The Authority shall be responsible for paying all third party licence fees and/or support fees for the Authority Intellectual Property Rights for the period of the Contract.
- 11.2 The Authority acknowledges that:
- 11.2.1 all Intellectual Property Rights owned at the date of this Contract by the Provider shall remain so owned;
  - 11.2.2 the Provider hereby grants to the Authority a non-exclusive, non-transferable, royalty-free licence to use the Provider Intellectual Property Rights in the UK with the right to grant sub-licences only to the extent that and for so long as such use is strictly necessary for the delivery of the Programme(s) in accordance with this Contract;
  - 11.2.3 the Provider shall be responsible for paying all third party licence fees and/or support fees for the Provider Intellectual Property Rights for the period of this Contract.
- 11.3 The Provider agrees that the Authority shall be legally and beneficially entitled to any and all Generated Intellectual Property Rights which shall include any Materials forming Participant Records. The Provider hereby assigns all such Generated Intellectual Property Rights to the Authority with full title guarantee. To the extent that it is not possible in law to assign any Generated Intellectual Property Rights created on or after the Commencement Date, the Provider shall assign to the Authority such Generated Intellectual Property Rights immediately on their creation. Subject to such assignment the Authority grants to the Provider a non-exclusive, non-transferable royalty-free licence to use those Generated Intellectual Property Rights in the UK only to the extent that and for so long as such use is strictly necessary for the delivery of the Programme in accordance with this Contract.
- 11.4 The Provider hereby irrevocably waives any and all moral rights under the Copyright, Designs and Patents Act 1988 in respect of any copyright works created as part of the Generated Intellectual Property Rights by the Provider or any personnel employed or engaged by it at any time before, on or after the Commencement Date. The Provider shall procure that all personnel employed or engaged by it in the creation of such works shall waive any and all moral rights under the Copyright, Designs and Patents Act 1988 in respect of such works without charge to the Authority.
- 11.5 The Provider warrants that it will obtain from each and every owner of Third Party Intellectual Property Rights in Materials it provides under this Contract a perpetual non-exclusive, irrevocable royalty-free licence with the right to grant sub-licences for the Authority to use, copy and modify all such Third Party Intellectual Property Rights.

11.6 The Provider shall upon the request of the Authority and at the Authority's expense, do all such things and execute (or procure the execution of) all such documents necessary to perfect and complete the Authority's title to any Intellectual Property Rights to which it is entitled under this Clause 11.

## 12. **INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

12.1 The Provider shall indemnify the Authority against all claims, demands, actions, costs, (including legal costs and disbursements on a solicitor and client basis), and losses arising from or incurred by reason of any infringement or alleged infringement in the UK of any Intellectual Property Right in connection with provision of the Programme(s) by the Provider.

12.2 The Provider shall promptly notify the Authority if any claim or demand is made or action brought against the Provider for infringement or alleged infringement of any Third Party Intellectual Property Rights which may affect the provision of the Programme(s).

12.3 The Authority shall promptly notify the Provider if any claim or demand is made or action brought against the Authority to which Clause 12.1 may apply. The Provider shall at the Authority's option and at the Provider's expense conduct any dispute arising therefrom and all negotiations in connection therewith in accordance with all instructions provided by the Authority, and shall provide detailed reports to the Authority concerning the status of any dispute(s) within fourteen (14) calendar days of any such request by the Authority. The limitations on liability in Clause 16 shall not apply to the indemnities under Clauses 12.1 and 12.3.

12.4 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority to which Clause 12.1 may apply or any claim or demand made or action brought against the Provider to which Clause 12.2 may apply. The Provider shall reimburse the Authority for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.

12.5 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 12.1 may apply or any claim or demand made or action brought against the Provider to which Clause 12.2 may apply.

12.6 If a claim or demand is made or action brought to which Clause 12.1 may apply or in the reasonable opinion of the Provider is likely to be made or brought, the Provider may at the Authority's option and at the Provider's own expense either:

12.6.1 modify any or all of the Programme(s) without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the Programme(s), so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Authority, such acceptance not to be unreasonably withheld; or

12.6.2 procure a licence from a third party to continue to deliver the Programme(s) on terms which are acceptable to the Authority.

12.7 The foregoing provisions of this Clause 12 shall not apply insofar as any such claim or demand or action is in respect of:

12.7.1 any modification carried out by or on behalf of the Authority to any item supplied by the Provider under this Contract if such modification is not authorised by the Provider in writing; or

- 12.7.2 any use by or on behalf of the Authority of the Programme(s) in a manner not reasonably to be inferred from the Specification or requirements of the Authority.
- 12.8 If a modification or substitution in accordance with Clause 12.6.1 above is not possible so as to avoid the infringement or the Provider has been unable to procure a licence in accordance with Clause 12.6.2, the Provider shall be liable for the value of the replacement Programme(s) or part thereof together with additional costs incurred in implementing and maintaining such replacements.
13. **DATA PROTECTION**
- 13.1 In relation to the Processing of all Personal Data in connection with this Contract, the parties shall at all times comply with the DPA and all subordinate and related legislation as enacted from time to time. Jobcentre Plus shall be a Data Controller of the Personal Data collected and held by the Provider in performing the Services, and such Personal Data shall form part of Jobcentre Plus's Data.
- 13.2 The Provider shall at all times:
- 13.2.1 only use the Personal Data which it holds in connection with the provision of the Programme in accordance with the written instructions of the Authority and in accordance with the terms and conditions of this Contract and shall not use it for any other purpose;
  - 13.2.2 not disclose Personal Data to any third parties other than (i) to the extent required by a court order, or (ii) employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Provider to carry out the Programme provided that such disclosure is made subject to written terms substantially the same as the terms contained in this Clause 13 and provided that such disclosure has been approved in advance by the Authority;
  - 13.2.3 put in effect and maintain appropriate technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including taking reasonable steps to ensure the reliability of staff having access to the Personal Data;
  - 13.2.4 put in place and maintain appropriate security programmes and procedures which are necessary and appropriate in all the circumstances including those which specifically address the nature of any Sensitive Personal Data collected and held by the Provider in the provision of the Programme;
  - 13.2.5 procure that it shall only undertake processing of Personal Data reasonably required and/or necessary in connection with this Contract and shall not transfer any Personal Data to any country or territory outside the European Economic Area; and
  - 13.2.6 promptly provide the Authority with all necessary Personal Data which is in the possession of or under the control of the Provider including in a situation where the Authority is served with a subject access request under the DPA and the Authority informs the Provider in writing that this is the case.
- 13.3 In addition to the obligation at Clause 13.2 if the Provider should at any time receive a request for information (a subject access request) from any person for whom it holds Personal Data, as a result of the provision of the Service, it shall immediately inform the the Authority of such request and the Parties shall take all actions necessary in order to ensure that the requirements of the DPA with regard to such request are fulfilled including complying with applicable time limits.

- 13.4 The Authority may request a written description of the technical and organisational methods employed by the Provider and/or any sub-contractors and in this regard, the Provider shall procure that any sub-contractor complies with this obligation. Within thirty (30) calendar days of such request the Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with Personal Data, the Provider is complying with the obligation under Clause 13.2.3 and the seventh principle under the DPA. If in the Authority's reasonable opinion such measures employed by the Provider are not sufficient to ensure compliance with such obligations, the Provider shall take all steps which are reasonably required to ensure that such compliance is required.
- 13.5 The Provider shall indemnify and keep the Authority indemnified from and against all costs and losses arising in connection with any breach of this Clause 13 by the Provider.

## **PART 6 – CONFIDENTIALITY AND FREEDOM OF INFORMATION**

**[DN: Two versions of this clause are set out below. The first version covers the more usual scenario where the Authority contracts with a body which is NOT subject to the FOIA, such as a privately owned limited company. The second version covers the less usual scenario where the Authority contracts with another public sector authority which is itself subject to the FOIA. PLEASE DELETE the version which does not apply and the associated drafting notes.]**

### **14. CONFIDENTIALITY AND FREEDOM OF INFORMATION**

**[DN: Scenario 1 – the Authority contracting with a body which is NOT subject to the FoIA.]**

- 14.1 Without prejudice to the application of the Social Security Administration Act 1992, Section 123 to any Confidential Information, the Provider acknowledges that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.
- 14.2 Each Party:-
- 14.2.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- 14.2.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract or required by Law.
- 14.3 The Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Contract:-
- 14.3.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
- 14.3.2 is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the Contract.
- 14.4 The Provider shall ensure that staff or its professional advisors or consultants are aware of the Provider's confidentiality obligations under this Contract.

- 14.5 The Provider shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of this Contract.
- 14.6 The provisions of Clauses 14.1 to 14.5 shall not apply to any Confidential Information received by one Party from the other:-
- 14.6.1 which is or becomes public knowledge (otherwise than by breach of this Clause 14);
  - 14.6.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - 14.6.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 14.6.4 which is independently developed without access to the Confidential Information; or
  - 14.6.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to sub-Clauses 14.11 to 14.17 inclusive below (Freedom of Information).
- 14.7 Nothing in this Clause 14 shall prevent the Authority:-
- 14.7.1 disclosing any Confidential Information for the purpose of:-
    - (a) the examination and certification of the Authority's accounts; or
    - (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
  - 14.7.2 disclosing any Confidential Information obtained from the Provider:-
    - (a) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
    - (b) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to this Contract;

provided that in disclosing information under sub-Clause 14.7.2 the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 14.8 Nothing in this Clause 14 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 14.9 In the event that the Provider fails to treat information belonging to the Authority as confidential or discloses Confidential information in breach of this Clause 14 or fails to afford the Authority the assistance which the provider should under this Clause 14 and

clause 18.1 so that the Authority is in breach of its duties under either the FOI or the Environmental Information Regulations the Authority may terminate this Contract by notice in writing with immediate effect.

- 14.10 The provisions under this Clause 14 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

### **Freedom of Information**

- 14.11 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Provider's expense) to enable the Authority to comply with these Information disclosure requirements.

- 14.12 The Provider shall and shall procure that its sub-contractors shall:

14.12.1 transfer all Requests for Information to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;

14.12.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the other Party may reasonably specify) of the other Party requesting that Information; and

14.12.3 provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

- 14.13 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or other Information:

14.13.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

14.13.2 is to be disclosed in response to a Request for Information, and

in no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

- 14.14 The Authority acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "Code") shall take all reasonable steps to consult with the Provider in relation to any Request for information relating to this Contract.

- 14.15 The Provider acknowledges that the Authority may, acting in accordance with the Code, be obliged under the FOIA or the Environmental Information Regulations to disclose information:-

14.15.1 without consulting with the Provider; or

14.15.2 following consultation with the Provider and having taken its views into account.

Provided always that where Clause 14.15.1 applies then in accordance with the Code the Authority shall draw this to the attention of the provider prior to any disclosure.

- 14.16 The Provider shall ensure that all information produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 14.17 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 14.15.

**[DN: Scenario 2 – the Authority contracting with a body which IS ALSO subject to the FoIA.]**

- 14.1 Without prejudice to the application of the Social Security Administration Act 1992, Section 123 to any Confidential Information, the Provider acknowledges that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.
- 14.2 Each Party acknowledges that section 81 of the FOIA applies where both Parties are government departments within the meaning of section 84 of the FOIA.
- 14.3 Each Party:-
- 14.3.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;
  - 14.3.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract or required by Law.
- 14.4 The Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Contract:-
- 14.4.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
  - 14.4.2 is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the Contract.
- 14.5 The Provider shall ensure that staff or its professional advisors or consultants are aware of the Provider's confidentiality obligations under this Contract.
- 14.6 The Provider shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.
- 14.7 The provisions of Clauses 14.3 to 14.6 shall not apply to any Confidential Information received by one Party from the other:-
- 14.7.1 which is or becomes public knowledge (otherwise than by breach of this Clause 14);
  - 14.7.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - 14.7.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- 14.7.4 which is independently developed without access to the Confidential Information; or
- 14.7.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to sub-Clauses 14.11 to 14.17 inclusive below (Freedom of Information).
- 14.8 Nothing in this Clause 14 shall prevent the Authority:-
- 14.8.1 disclosing any Confidential Information for the purpose of:-
- (a) the examination and certification of the Authority's accounts; or
  - (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- 14.8.2 disclosing any Confidential Information obtained from the Provider:-
- (a) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
  - (b) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Contract;
- provided that in disclosing information under sub-Clause 14.8.2 the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 14.9 Nothing in this Clause 14 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 14.10 In the event that the Provider fails to treat information belonging to the Authority as confidential or discloses Confidential information in breach of this Clause 14 or fails to afford the Authority the assistance which the provider should under this Clause 14 and clause 18.1 so that the Authority is in breach of its duties under either the FOI or the Environmental Information Regulations the Authority may terminate this Contract by notice in writing with immediate effect.

### **Freedom of Information**

- 14.11 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and each Party shall assist and cooperate with the other (at their own expense) to enable the other Party to comply with these Information disclosure obligations.
- 14.12 Where a Party receives a Request for Information in relation to Information which it is holding on behalf of the other Party, it shall (and shall procure that its sub-contractors shall):-

- 14.12.1 transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
  - 14.12.2 provide the other Party with a copy of all Information in its possession or power in the form that the other Party requires within five (5) Working Days (or such other period as the other Party may reasonably specify) of the other Party requesting that Information; and
  - 14.12.3 provide all necessary assistance as reasonably requested by the other Party Plus to enable the other Party to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 14.13 Where a Party receives a Request for Information which relates to the Contract, it shall inform the other Party of the Request for Information as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information.
- 14.14 If either Party determines that Information (including Confidential Information) must be disclosed pursuant to Clause 14.13, it shall notify the other Party of that decision at least two (2) Working Days before disclosure.
- 14.15 Each Party shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:-
- 14.15.1 is exempt from disclosure under the Code of Practice on Access to Government Information (2<sup>nd</sup> Edition), the FOIA or the Environmental Information Regulations;
  - 14.15.2 is to be disclosed in response to a Request for Information.
- 14.16 Each Party acknowledges that the other Party may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000", be obliged under the FOIA or the Environmental Information Regulations to disclose Information:-
- 14.16.1 without consulting with the other Party, or
  - 14.16.2 following consultation with the other Party and having taken its views into account.
- 14.17 Each Party acknowledges that any lists or schedules provided by it outlining Confidential Information, are of indicative value only and that the other Party may nevertheless be obliged to disclose Confidential Information in accordance with Clause 14.16.

## **PART 7 – WARRANTIES AND LIABILITY**

### **15. WARRANTIES**

- 15.1 The Provider warrants and represents to the Authority that:
- 15.1.1 any goods supplied by the Provider pursuant to the delivery of any part of the Programme(s) shall be of satisfactory quality and fit for their purpose and shall be free from defects in design, material and workmanship and that any software and/or firmware supplied by it and/or used by it to provide the Programme will be Euro Compliant;

- 15.1.2 the Provider has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Provider;
- 15.1.3 the provision of the Programme(s), and the Authority's and each Participant's use thereof, shall not infringe any Third Party Intellectual Property Rights;
- 15.1.4 the Provider will not do anything (and shall ensure that none of its employees or other personnel do anything) which constitutes an offence under the Computer Misuse Act 1990, and that it has appropriate security measures in place to prevent/detect unlawful use of its IT systems;
- 15.1.5 it is not, and has not been, in default of any obligations to which it is subject to by reason of membership of any association or body; and
- 15.1.6 that so far as the Provider is aware the information contained in the Provider's Method Statement document is true and accurate.

## 16. INDEMNITY AND LIABILITY

- 16.1 Neither Party excludes or limits its liability to the other for death, personal injury, fraudulent misrepresentation or any breach of any obligations implied by Section 12 of the Sales of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 16.2 The Provider shall indemnify the Authority against all costs and losses (including legal costs and disbursements on a solicitor and client basis) arising from death or personal injury to any Participant or any other person caused by the negligent act or omission or wilful Default of the Provider (including any sub-contractors), except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.
- 16.3 The Provider shall indemnify the Authority against all costs and losses (including costs and disbursements on a solicitor and client basis) in respect of loss or damage to the Authority's Premises or to property whether belonging to the Authority or a Participant or otherwise given or made by any court of competent jurisdiction or mutually agreed as part of any settlement arising out of or in the course of or caused by the negligent act or omission or wilful Default of the Provider, (including any sub-contractors), except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.
- 16.4 All property of the Provider whilst on the Authority premises shall be there at the risk of the Provider and the Authority shall accept no liability for any loss or damage howsoever occurring to it, except to the extent (if any) that it was caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.
- 16.5 Responsibility for the control, management and supervision of all Participants shall rest entirely with the Provider subject to the Participant complying with all reasonable instructions and directions which the Provider may issue to the Participant from time to time. The Authority shall not be liable for any personal injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Participant, except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.
- 16.6 Except as set out in Clauses 16.1 to Clause 16.3, Clause 19.6 and Clause 40.8 (ESF and other funding) in no event will the liability per single occurrence or series of

directly connected occurrences of each Party for its Defaults in any year of this Contract, whether in contract, tort (including breach of statutory duty and negligence) or otherwise exceed greater than 100% of the amount payable by the Authority in respect of all Programme(s) delivered during that year.

16.7 Except as set out in Clauses 16.1 to Clause 16.3 in no event shall either Party be liable to the other for:

16.7.1 loss of profits, business revenue or goodwill (whether direct or indirect); and

16.7.2 consequential or indirect loss.

provided that this Clause shall not be taken as limiting either the right of the Authority to claim from the Provider for additional or unnecessary operational or administrative costs, expenses, expenditure or charges in each case as a result of any Default by the Provider or the right of the Provider to claim a reasonable termination charge under Clause 19.6.

16.8 The Parties expressly agree that should any limitation or provision contained in this Clause 16 be held to be invalid under any applicable statute or rules of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded, such liability shall be subject to the other limitations and provisions as set out herein.

## 17. **INSURANCE**

17.1 The Provider shall ensure that it and its sub-contractors shall have at all times in force adequate and suitable insurance to cover all claims referred to in Clause 16 (Indemnity and Liability).

17.2 Where the Provider (or its sub-contractors) is a person or body exempted from the obligations of the Employers Liability (Compulsory Insurance) Act 1969, the Provider shall not be required to carry insurance for which it is exempted by the said Act if alternative arrangements for meeting such liabilities are made to the satisfaction of the Authority.

17.3 The Provider, when requested, shall produce to the Authority certificates of insurance showing the actual coverage in force at the time of the request and shall give the Authority written notice before any such insurance is altered or cancelled. For the avoidance of doubt, the Provider shall not be entitled to receive any payment in respect of the cost of such insurances other than the payment of the fees set out in Schedule 6.

## **PART 8 – REMEDIES**

### 18. **PROVIDER DEFAULT**

18.1 The Parties acknowledge and agree that the Programme(s) is/are to be provided in the spirit of co-operation. Each Party shall do all things reasonably necessary to co-operate, aid and assist the other in its performance of its obligations under this Contract.

18.2 For the purposes of this Clause 18 the following terms shall have the meanings set out below:

18.2.1 “Minor Breach” shall mean a delay or non-performance by the Provider of its obligations hereunder which does not materially, adversely and substantially affect the performance or delivery of the Programme;

18.2.2 “Serious Breach” shall mean

- (a) any breach or a series of Minor Breaches by the Provider of its obligations hereunder which adversely, materially and substantially affects the performance or delivery of the Programme(s) (or adversely affects the health and safety of staff or Participants); or
  - (b) a Minor Breach of a specific obligation in respect of which the Authority has served two consecutive Notices under Clause 18.4.1 concerning the same or similar circumstances from where the Provider has failed to remedy that breach under Clause 18.4.2.
- 18.3 Any one instance of failure by the Provider to meet any general or specific performance targets set pursuant to Clause 3.7 shall constitute Minor Breach whilst repeated or continual failure to meet such performance targets shall constitute Serious Breach.
- 18.4 In the event of a Minor Breach the Authority will adopt the following procedure:
- 18.4.1 the Authority shall serve notice on the Provider via the Provider Manager specifying that it is a formal warning notice and giving reasonable details of the breach sufficient for the Provider to identify the breach;
  - 18.4.2 within five (5) Working Days of receipt of notification under Clause 18.4.1 above, the Provider Manager shall meet with the Contract Manager to discuss why the breach has occurred and how it will be remedied. The Provider shall have a reasonable period (such period to be agreed, and in the absence of agreement to be no longer than twenty eight (28) calendar days) following such meeting to remedy the breach. Notwithstanding any other remedy under this Contract the Authority shall be entitled to require the Provider to promptly re-perform or replace the relevant part of the Programme without additional charge to the Authority.
- 18.5 In the event of a Serious Breach, the Parties shall adopt the following procedure:
- 18.5.1 the Authority shall serve written notice on the Provider via the Provider Manager giving reasonable details of the breach sufficient for the Provider to identify the breach and requiring the Provider Manager to meet with the Contract Manager forthwith;
  - 18.5.2 upon receiving notification under Clause 18.5.1 above, the Provider Manager shall meet with the Contract Manager forthwith to determine and agree in good faith and acting reasonably whether a contingency plan is available to deal with the Serious Breach. In the event that a contingency plan is activated, the Provider shall reimburse the Authority in respect of any costs incurred by the Authority in activating the same (as set out in the contingency plan) provided that the Authority shall do all things to mitigate such costs including by using the resources of the Provider as appropriate. In the event that a contingency plan is not available the Provider shall within five (5) Working Days (i) provide to the Authority a plan that, to the Authority's reasonable satisfaction, will when implemented resolve the breach; or (ii) remedy the breach itself;
  - 18.5.3 In the event that (i) the Provider fails to meet any required action in a contingency plan or (ii) in the event that a contingency plan is not available and the Provider does not present a satisfactory alternative plan Clause 18.6 shall apply and/or at any time thereafter the Authority shall be entitled, at its discretion, to serve twenty eight (28) calendar days notice on the Provider of its intention to terminate the relevant Programme in respect of which the aforesaid breach has occurred or to terminate the Contract as a whole.
- 18.6 The Authority shall notify the Provider in writing of the following:

- 18.6.1 the action it needs to take that is reasonably necessary to provide the Programme(s);
- 18.6.2 the reason for such action;
- 18.6.3 the date it wishes to commence such action;
- 18.6.4 the time period which the Authority believes will be necessary for such action

provided that the Authority shall limit the scope of such action and its duration to the minimum it reasonably considers necessary taking into account all the circumstances. Upon service of such notice The Authority shall take such action as notified under Clause 18.6.1 above, (the "Required Action") and the Provider shall give all reasonable assistance to the Authority while it is taking such Required Action.

- 18.7 For so long as and to the extent that the Required Action is taken which prevents the Provider from providing any part of one or more Programmes:

- 18.7.1 the Provider shall be relieved of its obligation to provide such part of the Programme carried out by the Authority under Clause 18.6 or otherwise prevented by the Required Action (subject to providing all reasonable assistance to the Authority under Clause 18.6 above); and

- 18.7.2 in respect of the period in which the Authority is taking the Required Action, the Authority shall be entitled to deduct from any sums due to the Provider under this Contract, an amount equal to the Authority' reasonable costs in taking the Required Action (including where relevant the costs of any sub-contractors), provided that the Authority shall do all things to mitigate such costs including by using the resources of the Provider (in each case as appropriate) .

- 18.8 The Authority shall at its discretion be entitled to continue the Required Action until the failure has been remedied and the Provider has demonstrated to the Authority' reasonable satisfaction that it can deliver the Programme without a material probability of repeating the failure.

## 19. **TERMINATION**

- 19.1 The Authority may at any time by giving notice in writing terminate this Contract as from the date of service of such notice if:

- 19.1.1 there is a change of control of the Provider, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988;

- 19.1.2 the Provider, being an individual or where the Provider is a firm any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against it or shall make any composition or arrangement with or for the benefit of its creditors, or shall make any conveyance or assignment for the benefit of its creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or in Scotland it shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of its estate, or a trust deed shall be granted by it for behalf of his creditors, or any similar event occurs under the law of any other jurisdiction; or

19.1.3 the Contractor being incorporated is the subject of any of the following events (or any event analogous to any of the following occurs in a jurisdiction other than England and Wales):-

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholder's meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) calendar days of its service) or an application is made for the appointment of a provisional liquidator or a creditor's meeting is convened pursuant to s.98 of Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of s.123 Insolvency Act 1986.
- (g) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

19.2 The Authority may only exercise its rights under Clause 19.1.1 within 6 months after the change of control occurs and where it apprehends that the change of control has or may detrimentally affect the delivery of the Programme(s) and/or the performance of the Provider's obligations under this Contract, and shall not be permitted to do so where it has agreed in advance to any particular change in control. The Provider shall notify the Authority immediately when any change of control occurs.

19.3 Notwithstanding the provisions of Clause 2, either party may terminate the Contract or any one or more of the Programmes, or any one or more of the Provisions at any time by giving the other at least 12 months notice in writing, or other such period as may be agreed between the Parties, without the need to give any reason for the termination. In that event neither party shall have any right or rights against the other arising out of or as a consequence of such termination, other than as provided for by Clause 19.6. For the avoidance of doubt, where a Party terminates any one or more Programme or Provision rather than the whole Contract, the Contract shall continue in full force and effect in respect of the remaining Programmes and Provisions.

19.4 Termination of the Contract or of any one or more of the Programmes or Provisions shall not affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract including, in particular, Clauses 11, 12, 13, 14, 15, 16, 17, 20, 19, 34, 35, 43 and 47. Termination shall not affect any prior rights either Party may have under the Contract and shall be without prejudice to any additional rights to seek a remedy other than termination in respect of any breach of contract by the other party.

- 19.5 The Provider may by notice in writing to the Authority terminate this Contract or, at its option, the Programme to which the breach relates, if the Authority commits a breach of its payments obligations under this Contract (except to the extent that there is a dispute as to the relevant payment) and fails to remedy such breach within sixty (60) calendar days of written notification by the Provider of such breach.
- 19.6 On the expiry or termination of this Contract or any one or more Programmes or Provisions:
- 19.6.1 the Provider shall repay forthwith to the Authority all moneys paid up to and including such date of termination other than moneys in respect of any Programme or part thereof properly performed in accordance with this Contract;
- 19.6.2 the Provider shall promptly return to the Authority all Issued Property in its possession supplied in relation to the Contract or any one or more Programmes or Provisions being terminated, as directed by the Authority;
- 19.6.3 the Provider shall, if requested, transfer to the Authority (or to such other person as the Authority may direct) all Participant's Records or specific Participants Records as identified by the Authority. Where ownership of the Participant's Records is not vested in the Authority the Provider shall transfer, or procure the transfer of all rights, title and interest in and to the Participant Records to the Authority (or to the third party the Authority has directed as above) at no cost to the Authority (or the third party as the case may be). For the avoidance of doubt if the Provider, in compliance with a request by the Authority under this Clause 19.6.3 transfers Participant Records then upon receipt by the Authority (or a relevant third party if applicable) of the Participant Records the Provider shall be relieved of its obligations under Clause 26 in respect of the transferred records. Unless transferred under this Clause the Participant Records must be retained in accordance with Clause 26;
- 19.6.4 if requested by the Authority the Provider shall use all reasonable endeavours to ensure the transfer of any licences, or the granting of an appropriate licence or sub-licence, to the Authority or a replacement provider of any Third Party Intellectual Property Rights that are necessary for the continued performance of the Programme(s) following termination or expiry of this Contract. Where the owner of Third Party Intellectual Property Rights requires payment in consideration for transferring or granting such licences or sub-licences, as the case may be (a "**Transfer Fee**") the Provider shall first notify the Authority. If the Authority informs the Provider that the transfer/granting of a licence should proceed the Authority shall (unless this Contract has been terminated due to the Provider's breach) be responsible for paying the Transfer Fee. For the avoidance of doubt the Authority shall have no liability for any Transfer Fee that the Provider has incurred without obtaining the Authority' prior approval; and
- 19.6.5 the Provider shall cease all use of all the Authority Intellectual Property Rights, Generated Intellectual Property Rights, and any Trade Mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same.
- 19.6.6 In the event of termination by the Authority pursuant to Clause 19.3 or a variation pursuant to Clause 5, which constitutes a cessation of part of the Programme(s), unless such termination or variation is based on the Authority considering that the Provider's performance is unsatisfactory, the Authority shall pay to the Provider a reasonable termination charge to compensate the Provider for unavoidable losses, which the Provider has suffered by reason of the termination or variation as the case may be. This termination charge

shall take account of any commitments, liabilities or expenditure reasonably proportionately and actually incurred by the Provider as a consequence of this Contract, which cannot be avoided, reduced, abated or mitigated. The Provider shall take all practicable measures to avoid, reduce, abate or mitigate such commitments, liabilities and expenditure to the greatest extent possible. In calculating the termination charge full account shall be taken of any contractual provision under which the Authority may be able to terminate the Contract other than Clause 19.3 or a variation under Clause 5 constituting a cessation of part of the Programme(s). Any sum due to the Authority under the Contract in respect of any liability of the Provider to the Authority which arose prior to the termination or variation as the case may be shall be set against the amount of the termination charge. The Provider shall provide a fully itemised and costed list of the commitments, liabilities and expenditure (avoided, reduced, abated and mitigated in accordance with the obligations of the Provider under this Clause 19.6.6) reasonably, proportionately and actually incurred by the Provider and in respect of which it seeks recompense under this Clause 19.6.6 to the Authority within four weeks of the date of termination (for the avoidance of doubt the Parties confirm that this obligation to provide a fully itemised and costed list of the commitments, liabilities and expenditure for which the Provider seeks recompense under this Clause 19.6.6 does not apply to a variation constituting a cessation of part of the Programme(s), where Clause 5.5 applies instead). If the Authority disputes the Provider's calculation of the termination charge the matter shall be referred to the Dispute Resolution Procedure. Upon agreement of or determination pursuant to the Dispute Resolution Procedure of the termination charge the Authority shall pay the termination charge to the Provider within 30 days of the receipt by the Authority of a VAT invoice from the Provider for the amount of the termination charge. The Parties for the avoidance of doubt expressly confirm that no payment shall be made by the Authority pursuant to this Clause 19.6.6 save in the event of a termination by the Authority pursuant to Clause 19.3 or a variation constituting a cessation of part of the Programme(s) pursuant to Clause 5 except for a termination or variation based on the Authority considering that the Provider's performance is unsatisfactory

## **PART 9 – CONSEQUENCES OF EXPIRY OR TERMINATION**

### **20. TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION AND ARRANGEMENTS LEADING UP TO IT**

20.1 The Provider acknowledges that on termination or expiry of this Contract or of any one or more of the Programmes or Provisions for any reason, the continuity of the Programme or remaining Programmes is of paramount importance. Accordingly the Provider acknowledges that the Authority may, amongst other reasonable actions, suspend referral of Participants to a Programme(s) if, following service of notice to terminate this Contract or anyone or more of the Programmes by the Authority, the referral of further Participants to the relevant Programme(s) would be unfair to Participants because their participation in the Programme would, due to the length of the Programme, not have completed before the expiry of the notice to terminate.

20.2 Both before and for a reasonable time after termination or expiry of this Contract the Provider shall promptly provide assistance at no extra cost to the Authority. The Provider shall do its utmost to minimise disruption caused to Participants and assist with the implementation of any contingency plan proposed by the Authority to deal with the effects of such termination or expiry in so far as it is practicable to do so. At the option of the Authority the Provider may be required:

20.2.1 to continue to deliver or procure the delivery of the Programme(s) until Participants have completed their participation on the Programme(s) in accordance with Schedule 2 and where relevant the Authority shall continue

to pay the fees in accordance with the provisions of Schedule 5 and Schedule 6; or

20.2.2 to transfer the Provider's obligations in respect of Participants whose participation on the Programme(s) has not been or will not be completed in accordance with Schedule 2 to an alternative provider designated by the Authority.

20.3 The Provider shall comply with such timetable as the Authority may reasonably require, for the purpose of ensuring an orderly transfer of responsibility for provision of the Programme (or its equivalent) or remaining Programmes (or their equivalent) upon the expiry or other termination of this Contract or of any one or more of the Programmes. The Provider shall use all reasonable endeavours to ensure that its employees and its sub-contractors are under a similar obligation.

20.4 In order to facilitate a smooth and orderly transfer of responsibility on the expiry or termination of this Contract:-

20.4.1 the Provider undertakes to:-

- (a) act fairly and in good faith at all times in connection with any re-tender process for provision of the Programmes (or their equivalent) conducted by the Authority;
- (b) comply with the Authority's reasonable requests in connection with any re-tender process so as to enable the Authority to facilitate a fair and open competitive re-tender of the provision of the Programmes (or their equivalent);
- (c) comply with the Authority's reasonable requests in preparing, agreeing and implementing an exit plan setting out the duties and responsibilities of the Provider, the Authority and any Incoming Service Provider, leading up to and covering the expiry or termination of this Contract and the transition process for the transfer of the provision of the Programmes (or their equivalent);
- (d) co-operate and liaise with any Incoming Service Provider appointed by the Authority to provide the Programmes (or their equivalent);
- (e) do or perform such other acts and things as may reasonably be required in order to facilitate the re-tender or transition process;
- (f) deliver any documents, information, manuals and data (in any form whatsoever but for the avoidance of doubt, any machine readable or electronic data shall be provided in a readily readable form) in the possession or control of the Provider which relate to:
  - (i) the performance, monitoring, management and reporting of the Programmes;
  - (ii) the terms and conditions of employment and the employment records of those of the Provider's employees who may be affected by the TUPE Regulations upon any transfer of responsibility for the provision of the Programmes (or their equivalent); and
- (g) not knowingly do or omit to be done anything which may adversely affect the ability of the Authority to ensure an orderly transfer of responsibility of the Programmes (or their equivalent).

- 20.4.2 the Provider agrees to provide such information and data as is reasonably required by the Authority for the purpose of any re-tender or transition process, such information and data to be provided to such timetable or deadlines as the Authority reasonably requires; and
- 20.4.3 the Provider shall ensure that all information and data provided to the Authority in connection with any re-tender or transition process is accurate and complete in all material respects, to the best of the Provider's knowledge (having made due enquiry). This requirement shall apply to all the information that may be requested by the Authority and supplied by the Provider in connection with the re-tender or transition process.
- 20.5 The Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Authority to ensure an orderly transfer of responsibility for provision of the Programme or remaining Programmes.
- 20.6 The Provider is referred to the ESF reporting obligations under Clause 40.5 which may arise on expiry or termination of this Contract.

## 21. **EMPLOYEE PROVISIONS ON EXPIRY OR TERMINATION**

- 21.1 Without prejudice to the provisions of Clause 19, prior to, and for a reasonable period after, the expiry or termination of this Contract, the Provider shall upon request by the Authority and to the extent permitted by law, supply to the Authority all information reasonably required by the Authority as to the identity, date of commencement of employment, date of birth, job title, accrued holiday entitlement and terms and conditions of employment of any Relevant Employees and as to any disputes or potential disputes arising in connection with the employment of the Relevant Employees of which the Provider or the relevant sub-contractor is aware, and the Provider shall warrant that such information is true, complete and accurate in all material respects.
- 21.2 The Provider shall permit the Authority to disclose the information disclosed in accordance with Clause 21.1 to, and to use it for informing, any tenderer for the Services (or their equivalent) and shall enable and assist the Authority and such other persons as the Authority may determine to communicate with and meet the employees referred to in Clause 21.1 and their trade union or employee representatives as the Authority may reasonably request.
- 21.3 During the period of six (6) months preceding the expiry of this Contract, or at any time after the Authority or the Provider has given notice to terminate this Contract for whatever reason, the Provider shall not (and shall procure that any sub-contractor shall not):-
- 21.3.1 materially amend the rates of remuneration or hours to be worked or any other terms and conditions of employment of any employee engaged in providing the Services or any part of the Services; or
- 21.3.2 replace any of the employees engaged in providing the Services or any part of the Services or deploy any person other than those already providing the Services to perform the Services or materially increase the number of employees performing the Services or terminate or give notice to terminate the employment of any such person
- without the written agreement of the Authority, such agreement not to be unreasonably withheld or delayed.
- 21.4 The Provider shall indemnify and keep indemnified the Authority for itself and as trustee for the Incoming Service Provider (or any other person to whom information is disclosed pursuant to Clause 21.2) from and against all liabilities, costs and losses

arising in connection with the provision of information under Clause 21.1 or any breach by the Provider of its obligations under Clause 21.3.

- 21.5 The Provider shall be responsible for all emoluments and outgoings in respect of the Relevant Employees (including, without limitation, all wages, holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and otherwise) arising prior to the Relevant Date and shall indemnify and keep indemnified the Authority for itself or as trustee for the Incoming Service Provider against all liabilities, costs and losses arising in connection with emoluments or outgoings arising prior to the Relevant Date or a failure by the Provider to discharge them. To the extent that the employment of such Relevant Employees does transfer to the Authority or the Incoming Service Provider, the Authority shall (or the Authority shall procure that the Incoming Service Provider shall) be responsible for all such emoluments and outgoings arising on or after the Relevant Date. the Authority shall (or shall procure that the Incoming Service Provider shall) indemnify and keep indemnified the Provider against all liabilities, costs and losses arising in connection with emoluments or outgoings arising on or after the Relevant Date or a failure by the Authority or the Incoming Service Provider to discharge them.
- 21.6 Where the Provider shall cease (for whatever reason) and whether directly or indirectly to provide the Services or any part of the Services, and the Services (or part) are thereafter provided by the Authority or an Incoming Service Provider, then should the transfer of the Services (or part) to the Authority or Incoming Service Provider constitute a Relevant Transfer:-
- 21.6.1 the Provider shall indemnify the Authority, for itself or as trustee for the Incoming Service Provider, from and against:-
- (a) all liabilities, costs and losses arising in connection with any claim against the Authority or the Incoming Service Provider by any Relevant Employee arising from any act, fault or omission of the Provider or its sub-contractor or their staff as the case may be prior to the Relevant Date including any claim for breach of contract, redundancy, unfair dismissal, sex, race or disability discrimination, or any other claim within the jurisdiction of an employment tribunal or arising at common law, in tort or otherwise (in all cases whether arising under British or European law); and
  - (b) all liabilities, costs and losses incurred by the Authority or Incoming Service Provider arising in connection with or from any claim or proceedings by any trade union, elected employee representative or staff association in respect of any Relevant Employee and which arises from or is connected with any failure by the Provider or its sub-contractor to comply with their legal obligations in relation thereto under Regulation 10 of the TUPE Regulations or the Directive.
- 21.6.2 where the Relevant Transfer is to the Authority, the Authority shall indemnify the Provider in respect of:
- (a) all liabilities, costs and losses arising in connection with any claim against the Provider by any Relevant Employee arising from any act, fault or omission of the Authority on or after the Relevant Date including any claim for breach of contract, redundancy, unfair dismissal, sex, race or disability discrimination, or any other claim within the jurisdiction of an employment tribunal or arising at common law, in tort or otherwise (in all cases whether arising under British or European law); and

- (b) all liabilities, costs and losses arising in connection with or from any claim or proceedings by any trade union, elected employee representative or staff association in respect of any Relevant Employee and which arises from or is connected with any failure by the Authority to comply with their legal obligations in relation thereto under Regulation 10 of the TUPE Regulations or the Directive.

21.6.3 where the Relevant Transfer is to an Incoming Service Provider then the Authority shall procure that the Incoming Service Provider shall indemnify the Provider in respect of the liabilities, costs and losses referred to in Clauses 21.6.2(a) and 21.6.2(b) (with references to the Authority being replaced with references to the Incoming Service Provider).

## **PART 10 – GENERAL PROVISIONS**

### **22. ASSIGNMENT AND SUB-CONTRACTING**

22.1 Elements of any Programme or Provision may be sub-contracted with the prior written consent of the Authority. the Authority reserves the right to withdraw its consent to any sub-contractor where it has reasonable grounds no longer to approve of the sub-contractor or the sub-contracting arrangement. In respect of any such sub-contracting:

22.1.1 the Provider shall ensure that so far as is possible the terms of this Contract are properly and reasonably reflected in the terms of any contract with a sub-contractor and that so far as is possible each one of them shall at all times be bound by the obligations of the Provider under this Contract; and

22.1.2 the Provider shall include and maintain provisions in Principal Sub-Contracts, in terms suggested by or acceptable to the Authority, which provide that:

- (a) the Principal sub-contractor cannot terminate the sub-contract without first informing the Authority and giving the Authority at least thirty (30) calendar days to discuss with the Provider any issues raised by the sub-contractor; and

- (b) the Provider shall have the right to be able to assign the sub-contract to a third party such assignment to be subject to the Principal sub-contractor's consent which shall not be unreasonably withheld; and

- (c) the Principal sub-contractor cannot assign the sub-contract to a third party without the Provider's consent.

22.1.3 the Authority reserves the right to see and approve copies of sub-contracts; and

22.1.4 no sub-contracting by the Provider under this Clause 22.1 or otherwise, and no approval or consent by the Authority in relation thereto, shall relieve the Provider of any liability or obligation under this Contract. The Provider shall not be entitled to any additional fees solely by reason of the appointment of any sub-contractor; and

22.1.5 any material breach by the Provider of a term of a Principal Sub-Contract shall constitute a Serious Breach of this Contract and will accordingly be dealt with by the Authority under the provisions of Clause 18.

- 22.2 For the avoidance of doubt, the Provider cannot substitute or permit the substitution of a Principal Sub-Contractor without the Authority's consent and as a condition of giving such consent the Authority can require the incoming sub-contractor to execute a sub-contract on the same basis.
- 22.3 Without prejudice to Clause 22.1 above the benefit and or burden of this Contract may not be sub-contracted, assigned or novated or otherwise disposed of in whole or in part by the Provider without the prior written consent of the Authority. Such consent may be given subject to any conditions which the Authority considers reasonably necessary, but shall not be unreasonably withheld or delayed.
- 22.4 The Provider agrees that all or any part of the benefit and/or burden of this Contract may be assigned, transferred or sub-contracted in whole or in part by the Authority to any Minister of the Crown or other officer or emanation of the Crown without the need for the consent of the provider, provided that the Authority shall give such notice of such assignment, transfer or sub-contract as it practicable in the circumstances, otherwise the Authority may assign, transfer or sub-contract all or any part of the benefit and/or burden of this Contract with the prior consent of the Provider such consent not to be unreasonably withheld, delayed or conditioned.
- 22.5 The Authority shall be entitled to disclose to any transferee any Confidential Information from the Provider which relates to the performance of the Programme(s). Any such disclosure shall be subject to similar obligations of confidentiality as set out in Clause 14 and such disclosure shall not be a breach of Clause 14 by the Authority.

### **23. REPUTATION AND PUBLIC SERVICE CONSIDERATIONS**

- 23.1 In providing the Programme(s) the Provider shall pay the utmost regard to the standing and reputation of the Authority and the Secretary of State for Work and Pensions and shall not do (by act or omission) anything that may bring the standing or reputation of the Authority or the Secretary of State into disrepute or attract adverse publicity to the Authority or the Secretary of State or which may harm the confidence of any of the public in the Authority or the Secretary of State.
- 23.2 The Provider shall at all times provide the Programme with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.

### **24. VISITS AND PUBLICITY**

- 24.1 Each Party shall give the other advance notice of proposed visits to the Provider's premises or any premises of its sub-contractor's (including Members of the Parliament, representatives of unemployment centres, members of the press and media) to observe the delivery of the Programme(s) by the Provider or its sub-contractors.
- 24.2 The Provider shall undertake the marketing and communications activities as set out in Schedule 2 (The Programme). The Provider's marketing and communications activities shall support the Authority's objectives in contracting for the Programme(s).
- 24.3 If so requested by the Authority the notepaper and other written material of the Provider and their sub-contractors relating to the delivery of the Programme(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to such banner or logo as the Authority shall use to identify the Programme(s) or services ("Trade Mark") from time to time. All publicity and marketing material produced by the Provider (or its sub-contractors) in relation this Contract and or the Programme(s) shall be submitted to the Contract Manager or person nominated in his/her place) for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.

24.4 The Provider shall not make any public statement with regard to the Programme or this Contract without the prior approval of the Authority. For the avoidance of doubt, this is not intended to prevent the Provider from making internal announcements to staff and sub-contractors about the Programme or Contract; nor is it intended to prevent the Provider from making discreet reference to the existence of this Contract in the context of bids for work to other potential clients.

## 25. **AUDIT ACCESS**

25.1 The Provider shall at all times:

25.1.1 maintain a full record of the costs of performing each Programme;

25.1.2 when requested by the Authority, provide a summary of any of the costs of performing each Programme in such form and detail as the Authority may reasonably require; and

25.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records maintained under this Clause 25 are held and to examine the records for the purposes of carrying out an examination into the economy, efficiency and quality of the Programme(s) and effectiveness with which the Provider has used the Authority's resources in the performance of this Contract.

25.2 The Provider shall keep books of accounts in accordance with best accountancy practice with respect to this Contract and such items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract.

25.3 The Provider shall provide (or procure provision of) access at all reasonable times to the Authority internal auditors or other duly authorised staff or agents to inspect such documents (including those of sub-contractors) as the Authority considers necessary in connection with this Contract. The Authority shall be entitled to interview staff of the Provider (or its sub-contractors) in order to obtain appropriate oral explanations of documents and the Provider shall provide (or procure provision of) access to the relevant staff at such times as may be reasonably required to enable the Authority to do so.

25.4 Duly authorised staff or agents of the Authority shall have the right to visit Sites used by the Provider to provide the Programme(s) and to be given free access to the Provider's staff (and / or its sub-contractors' staff) and to Participants during the hours when the Provider is providing the Programme(s) with a view to verifying that the Provider is providing the Programme(s) in accordance with this Contract.

25.5 The Provider shall provide the rights set out in Clause 25.1 and Clause 25.2 to any duly authorised staff or agents of the National Audit Office, the European Court of Auditors or the European Commission, the Department for Work & Pensions, Ofsted, the Estyn and any third parties as notified by the Authority from time to time.

25.6 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Provider or any third party in relation to the Programme(s), the Authority reserves for itself, any statutory auditors of the Authority and their respective authorised agents or any Crown Body the right of immediate access to all records referred to in Clause 25.1 to Clause 25.2 and the Provider agrees to render all necessary assistance to the conduct of such investigation at all times during the currency of this Contract or at any time thereafter. For the avoidance of doubt, the Provider shall only be repaid its reasonable expenses incurred in giving assistance pursuant to this Clause 25.6 in the event that the result of such investigation reveals no fraudulent activity or other impropriety by the Provider, its servants, agents or sub-contractors.

## 26. **RECORDS**

- 26.1 The Provider and any sub-contractors appointed by it shall maintain the records referred to in Clause 25 (Audit Access) and such other documents as the Authority may reasonably require throughout the period of this Contract and for a period of six (6) years from the end of the financial year in which the last payment is made by the Authority under the terms of this Contract. Without prejudice to the foregoing, where the Authority funds the delivery of this Contract using ESF funds or in its role as a Co-financing Organisation uses this contract as a match for ESF provision, the Provider and any sub-contractors appointed by it shall maintain records until at least 31 December 2022.
- 26.2 During the period(s) referred to above, the Provider and any sub-contractors shall make the records and documents available for auditing purposes in accordance with Clause 25 (Audit Access) upon reasonable request by the Authority.
- 26.3 In accordance with Clause 22.1.1 the Provider shall ensure that any contracts with sub-contractors include obligations reflecting the requirements of the Authority under this Clause 26.
- 26.4 The Provider shall indemnify and keep indemnified the Authority against all claims, demands, actions, costs (including legal costs and disbursements) and losses howsoever incurred resulting from any breach by the Provider of the provisions of Clauses 25 and 26.

## 27. **ISSUED PROPERTY**

- 27.1 Issued Property shall remain the property of the Authority (or such third party owner, as appropriate). The Issued Property shall be used for the delivery of the relevant Programme in accordance with this Contract and for no other purpose whatsoever, except with the prior written approval of the Authority.
- 27.2 The Provider shall keep an up-to-date inventory of all Issued Property. The inventory shall be available for inspection during normal working hours upon request from time to time by the Contract Manager or other nominated person.
- 27.3 The Provider shall be responsible for the safe custody of Issued Property and its prompt return upon expiry or termination of the relevant Programme for which the Issued Property was issued to the Provider or upon expiry or termination of this Contract (as the Authority deems appropriate).
- 27.4 As soon as reasonably practicable, the Authority shall repair or replace and re-issue Issued Property agreed to be defective or requiring replacement.
- 27.5 The Provider shall be responsible for any deterioration in the Issued Property save for any deterioration resulting from its normal and proper use for the purposes of this Contract provided that such deterioration resulting from normal and proper use is not contributed to by any want of due maintenance and repair.
- 27.6 Neither the Provider, nor any sub-contractor, nor any other person, shall have a lien on any Issued Property for any sum due to the Provider, sub-contractor or other person, and the Provider shall take all reasonable steps to ensure that the title of the Authority and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with any Issued Property.

## 28. **CHANGES IN LAW**

The Provider shall (at no additional cost to the Authority) throughout the term of this Contract make all necessary changes to the Programme(s) to take account of and remain compliant with all applicable changes in Law.

29. **DISCLOSURE OF INFORMATION**

The Provider agrees, in relation to each Programme delivered under this Contract, to promptly make full disclosure to the Authority of any and all information as may be specified in the Schedules in particular Schedule 2 (The Programme), Schedule 3 (Information Requirements), Schedule 4 (Managing Performance), Schedule 5 (Accounting Requirements) and together with all such other information which it is able to disclose as may come into their possession or otherwise come to their attention during the period of this Contract which may be beneficial to and/or assist the Authority.

30. **PREVENTION OF CORRUPTION**

30.1 The Provider shall not (and it is a condition of this Contract that in entering into this Contract it did not) offer or give, or agree to give, to any member, employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.

30.2 The attention of the Provider is drawn to the Prevention of Corruption Acts 1889 to 1916. Any offence committed by the Provider, its employees, sub-contractors or by anyone acting on its behalf under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract with the Crown shall entitle the Authority to terminate the Contract and recover from the Provider the amount of any loss resulting from such termination and/or to recover from the Provider the amount or value of any gift, consideration or commission.

31. **HEALTH AND SAFETY**

31.1 The Provider shall take all necessary steps to ensure the health, safety and welfare of all Participants to the same extent and in the same manner as an employer is required to do in relation to employees by or under the relevant legislation for the time being in force in that part of the UK where the Provider is providing the Programme(s).

31.2 The Provider shall inform the Authority immediately, in the case of a death, and as soon as is reasonably practicable in any case of serious injury or serious illness occurring to a Participant that arises as a result of the provision of the Programme(s).

31.3 The Provider shall promptly inform the Authority of any health and safety hazards which may arise or exist in connection with the performance of this Contract.

31.4 The Provider shall inform the Authority immediately of any changes to the circumstances reflected in the health and safety information submitted by the Provider to The Authority.

31.5 Either Party whilst on the premises of the other Party shall comply with any health and safety measures implemented by the other Party in respect of those premises.

31.6 The Provider shall ensure that where relevant its sub-contractors comply with all obligations on the Provider under this Clause 31.

32. **SET OFF AND WITHHOLDING**

If any sum of money shall be due or is believed by the Authority to be due from the Provider, the same may be deducted or withheld (as the case may be) from any sum then due or which at any time thereafter may be due to the Provider under this Contract or any other contract with the Authority or with any department, office or

agency of the Crown. The Authority shall notify the Provider by issue of a written notice before making any deductions or withholding.

**33. JOBCENTRE PLUS CUSTOMER'S CHARTER**

The Authority is committed to the principles of the "Jobcentre Plus Customer's Charter". The Provider shall and shall procure that its sub-contractors shall, comply with the principles of the "Jobcentre Plus Customer's Charter" in relation to the provision of the Programme(s).

**34. FRAUD**

34.1 The Provider shall use its best endeavours to safeguard the Authority's funding of the Programme(s) against fraud generally and, in particular, fraud on the part of the Provider's directors, employees or sub-contractors. The Provider shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.

34.2 The Provider shall co-operate with the Authority and assist it in the identification of Participants who may be unlawfully claiming state benefits. the Authority may from time to time brief the Provider as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Participants. On receipt of the information, further evidence may be collected by the Authority or other department, office or agency of Her Majesty's Government with a view to prosecution.

34.3 Any act of fraud committed by the Provider (whether under this Contract or any other contract with any other Contracting Authority shall entitle the Authority to terminate this Contract, and any other contract the Authority has with the Provider, by serving written notice on the Provider.

**35. STATUS OF PROVIDER**

35.1 In carrying out its obligations under this Contract the Provider agrees that it shall be acting as principal and not as the agent of the Authority. The Provider shall not say or do anything that may lead any other person to believe that the Provider is acting as the agent of the Authority.

35.2 Nothing in this Contract shall be deemed to constitute or create a partnership (as defined in the Partnership Act 1890) between the Parties to this Contract.

**36. FORCE MAJEURE**

36.1 For the purposes of this Contract the expression "Force Majeure" shall mean any cause affecting the performance by a Party to its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) fire, flood, or any disaster or war. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its servants, agents or employees.

36.2 Neither Party shall be deemed to be in breach of this Contract where it is unable to perform its obligations under this Contract due to a Force Majeure provided that the Party claiming to be so affected shall:

36.2.1 notify the other Party as soon as possible of the matter giving rise to Force Majeure; and

- 36.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure;  
and
- 36.2.3 provide such details regarding the Force Majeure as may be reasonably requested from time to time, including details of the likely duration of the Force Majeure and the steps being taken to mitigate its effects.
- 36.3 The Party affected by the Force Majeure shall only be released from its obligations under this Contract to the extent of, and for the duration of, the Force Majeure.
- 36.4 If any event of Force Majeure continues for a period of 2 months or more, the Party unaffected by the event may terminate this Contract immediately by notice in writing to the other.
- 36.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

**37. AMENDMENT AND VARIATION**

- 37.1 Any variation to the terms of this Contract not dealt with under the provisions of Clause 5 (Change Control) must be recorded in writing and before it takes effect it must
  - 37.1.1 be signed by the Provider Manager and an authorised representative of the Authority on behalf of each of the Parties; and
  - 37.1.2 address all consequential amendments required to be made to the Contract as a result of such variation.
- 37.2 Variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.
- 37.3 Each record of variation must be dated and sequentially numbered. Each Party will be entitled to an original executed counterpart of the record of variation.
- 37.4 In all respects other than as provided in such record of variation, this Contract will continue in full force and effect.

**38. SEVERABILITY**

If any provision of this Contract shall be held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract the Authority and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

**39. WAIVER**

- 39.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not be considered to be relaxation of the obligations established by this Contract.
- 39.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

39.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 42.

#### 40. **EUROPEAN SOCIAL FUND AND OTHER FUNDING**

40.1 In April 2003, Jobcentre Plus became a European Social Fund (ESF), Co-Financing Organisation (CFO) in England only. This means that Jobcentre Plus applies to Government Offices (GOs), using its own match funding, to support ESF measure level bids.

40.2 In England, where Jobcentre Plus does not have co-financing responsibilities covering ESF activity for which the Provider wishes to bid, then the Provider will need to submit their bid to the respective CFO with the appropriate remit.

40.3 Providers may submit direct bids to GOs in England, the Scottish Executive in Scotland, or the Welsh European Funding Offices in Wales. Any application proposed for domestic match funding to support the delivery of ESF under contracts not funded by the Authority must be cleared by the Jobcentre Plus Regional ESF Team. Jobcentre Plus cannot guarantee it will be able to provide match funding for alternative bids or direct bid projects.

40.4 The Provider shall observe the European Commission's and the Secretary of State for Work and Pensions' publicity requirements and regulations regarding ESF projects, as amended from time to time. The Provider shall ensure that sufficient publicity is given to all ESF supported activity so that Participants and the general public are made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF and to provision used as a match for ESF purposes. Upon request by the Authority, the Provider shall provide a copy of its formal publicity policy clearly setting out the publicity arrangements used by the Provider and its sub-contractors (if any). Whether or not a copy of the foregoing policy is requested by the Authority, the Provider shall retain copies of its policy (as revised from time to time) as part of the Provider's record keeping obligations under Clause 26.

40.5 Where the Authority funds this Contract using ESF funds the Contractor shall within four (4) weeks of expiry or termination of this Contract provide evaluation information to the Authority which:

40.5.1 summarises the project, focusing on how it has helped to achieve the project objectives set out in the specification; and

40.5.2 is concise, being no more than one A4 page in length; and

40.5.3 indicates whether the objectives have been fully achieved or only partly achieved and sets out any other relevant issues in this context.

40.6 The Provider acknowledges the obligation the Authority has to evaluate all ESF projects by ESF measure and to submit, within strict timescales, a final claim to Government Office including an assessment of performance in each of the measures. Accordingly, the Provider agrees that time shall be of the essence in relation its obligation under Clause 40.5 above.

40.7 The Provider understands and shall comply with the regular ESF MI reporting obligations set out at Paragraph 3 of Schedule 3. The Provider acknowledges that the Authority depends on timely provision of this information in order to claim and receive ESF funds from the Government Office.

40.8 The Provider shall indemnify and keep indemnified the Authority in respect of any and all costs, claims and losses howsoever incurred resulting from any breach by the

Provider of this Clause 40. The Provider's liability under this indemnity is not limited under Clauses 16.6 or 16.7.

**41. ENTIRE CONTRACT**

41.1 This Contract shall together with the documents referred to herein and any additional contract terms formally agreed between the Authority and the Provider constitute the entire understanding between the Parties relating to the subject matter of this Contract and, except as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.

41.2 The Parties do not intend any third parties to have any right to enforce any provision of this Contract under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights or remedy of a third party which exist or are available apart from that Act.

**42. NOTICES / COMMUNICATIONS**

42.1 The Parties shall each identify a number of representatives who shall be the other Party's principal points of contact for day-to-day communications between the Parties.

42.2 Without prejudice to Clause 42.1, all formal notices or other communications whatsoever which either Party is required or authorised to give or make to the other under this Contract shall be given by letter delivered by hand, or sent by pre-paid first class post, or in emergencies by facsimile transmission confirmed by pre-paid first class post to the Contract Manager (in the case of the Authority) or the Provider Manager (in the case of the Provider).

42.3 Any such notice shall be deemed to be served if delivered by hand at the time of delivery; or if sent by post 48 hours after posting, or if sent by facsimile transmission 12 hours after proper transmission and confirmed in writing within 48 hours of transmission, provided such letter is not returned as being undelivered.

**43. DISPUTE RESOLUTION PROCEDURE**

In the event of any dispute arising between the Authority and the Provider in relation to the Programme which cannot be resolved directly by the Parties the issue in dispute will be referred for dispute resolution in accordance with the "Dispute Resolution Procedure" as set out at Schedule 7 to this Contract and both the Authority and the Provider shall comply with the procedure contained therein.

**44. COSTS**

Except as otherwise provided herein, the Parties shall bear and be responsible for their own costs in connection with the negotiation, execution, completion and implementation of this Contract.

**45. EURO**

45.1 During the term of this Contract, any legislative requirement to account for the payment of services in the Euro, instead of and/or in addition to Sterling, shall be implemented by the Provider at nil charge to the Authority.

45.2 The Authority shall provide all reasonable assistance to facilitate such changes.

46. **THE AUTHORITY'S PREMISES (INCLUDE ONLY WHERE LIKELY TO BE APPLICABLE)<sup>1</sup>**

46.1 If any of the Authority's Premises are made available to the Provider this will be under the terms and conditions of a "Licence to Occupy" to be entered into in respect of each such premises and shall be used by the Provider solely for the purpose of performing its obligations under this Contract. The Provider shall have the use of the Authority's Premises as licensee and shall have no right to exclusive possession and shall vacate all of the Authority's Premises on termination of this Contract, or in the case of termination of a specific Programme, the Authority Premises being used for the provision of that Programme, at the request of the Authority, and in either case shall hand over all keys and security passes to the Authority.

46.2 The Provider shall ensure that its employees and sub-contractors carry out their duties and behave while on the Authority's premises in such a way as to cause no unreasonable or unnecessary disruption to the routines and procedures of the Authority, its employees, visitors or other Providers.

46.3 The Provider shall ensure that its employees and sub-contractor comply with all reasonable rules and regulations issued from time to time by the Authority relating to the use and/or security of the Authority's premises (including the use of photo passes or other passes).

46.4 The Provider shall take the steps reasonably required by the Authority to prevent unauthorised persons entering on to the Authority's premises. If the Authority gives the Provider reasons why any person should not be admitted to its premises, and it is agreed between the Parties that exclusion is reasonable in the circumstances, then the Provider shall take all reasonable steps to prevent that person being admitted.

47. **LAW AND JURISDICTION**

The formation, interpretation and operation of this Contract and any disputes arising under or in any way connected with the subject matter of this Contract (whether of a contractual or tortious nature or otherwise) shall be subject to English law and (subject to Clause 43) the exclusive jurisdiction of the English Courts.

---

<sup>1</sup> Include if any part of the services of the provider will be performed on the Authority property, even if the majority of the services will be performed in their own premises.

## SCHEDULE 1

### INTERPRETATIONS

<b>"Additional Services"</b>	means any additional services to be provided to the Authority in accordance with Clause 5;
<b>"Commencement Date"</b>	means the date from which the Provider is to provide each of the Programmes as specified in the relevant annexes to Schedule 2;
<b>"Commercially Sensitive Information"</b>	means the subset of Confidential Information listed in Schedule 10 comprised of information:  (a) which is provided by the Provider to the Authority in confidence for the period set out in that Schedule; and/or  (b) that constitutes a trade secret
<b>"Confidential Information"</b>	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Programme(s), goods and services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information
<b>"Contract"</b>	means this Contract including the clauses and schedules and any document referred to herein, including, for the avoidance of doubt, the Provider Guidance;
<b>"Contract Area"</b>	means the geographical area in which the Provider must provide the Programme(s) to Participants, the boundaries of which are set out in the Annexes of Schedule 2 (Programme Specification) although Participants may come from outside this area;
<b>"Contract Manager"</b>	means the person or persons appointed by the Authority who will act in its interests;
<b>"Contracting Authority"</b>	means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) Regulations 2000
<b>"Crown"</b>	means Queen Elizabeth II and any successor;
<b>"Data Controller"</b>	shall have the meaning given to it under the DPA;
<b>"Delivery Payment"</b>	The payment set out at Annex 1 to Schedule 6 of this contract and more particularly described at Schedule 5 of this contract.

<b>"DPA "</b>		means the Data Protection Act 1998 (as amended);
<b>"Default"</b>		means any breach of the obligations of either Party (including fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or mis-statement of either Party, its employees, servants, agents or sub-contractors in connection with or in relation to this Contract and in respect of which such Party is liable to the other;
<b>"Directive"</b>		means the Acquired Rights Directive 77/187 (as amended, re-enacted or extended from time to time)
<b>"Dispute Procedure"</b>	<b>Resolution</b>	means the procedure detailed in Schedule 7 for resolving disputes that may arise between the Parties in connection with this Contract;
<b>"Environmental Information Regulations"</b>		means the Environmental Information Regulations 2004
<b>"Euro Compliant"</b>		means that the relevant software and firmware is capable of performing all functions in Sterling and Euros; of complying with all legal requirements now or hereafter (at the time of their becoming law) applicable to the Euro including the rules on conversion and rounding set out in EC Regulation number 1103/97 (as amended); and of displaying and printing and will (at the time of the enactment of law requiring it to be the case) incorporate in all relevant screen layouts all symbols and codes adopted by any government or any other European Union body or other regulatory authority in relation to the Euro;
<b>"FOIA"</b>		means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
<b>"Good Industry Practice"</b>		means the exercise of that degree of competence which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of business as the Provider and under the same or similar circumstances
<b>"Generated Property Rights"</b>	<b>Intellectual</b>	means any and all Intellectual Property Rights generated, developed, created or produced by or on behalf of the Provider for or in connection with the delivery of the Programme(s) or any part thereof. For the avoidance of doubt, Generated Intellectual Property Rights shall include but not be limited to any Intellectual Property Rights arising as a result of any enhancement, modification or adaptation to Materials in which Provider Intellectual Property Rights subsist (which were or are carried out by or on behalf of the Provider for or in connection with the delivery of the Programme(s));
<b>"Incoming</b>	<b>Service</b>	means any contractor appointed (or to be appointed) by the Authority to provide the Programmes (or their

<b>Provider"</b>	equivalent) on expiry or termination of this Contract
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000
<b>"Intellectual Property Rights"</b>	means patents, trade marks, service marks, design rights, domain names, applications for any of the foregoing, copyright (including rights in computer software and in websites), database rights, inventions, know-how, trade or business names including rights in any get-up or trade dress, rights under licences, consents, orders, statutes or otherwise in respect of any of the foregoing, and any other similar rights whether registerable or not, in any country (including but not limited to the UK);
<b>"Issued Property"</b>	means all items of property belonging to, lent to, leased by or rented by the Authority and issued to the Provider for the purposes of the provision of the Programme(s) including any item purchased by the Provider and subsequently paid for as an identified item by the Authority;
<b>"Job Outcome"</b>	<p>For ESF eligible JSA customers: means a job comprising at least 16 hours work per week expected to last 13 weeks and started whilst on or within 6 weeks of leaving provision;</p> <p>For ESF eligible Non-JSA customers: means 8 hours per week expected to last 13 weeks and started whilst on or within 6 weeks of leaving provision.</p>
<b>"Job Outcome Target"</b>	The number of Job Outcomes offered by the Provider as set out in Schedule 6 Annex 1
<b>"The Authority Intellectual Property Rights"</b>	means any and all Intellectual Property Rights owned by the Authority in Materials which the Provider requires to use in connection with this Contract for the purpose of delivering the Programme(s);
<b>"Law"</b>	<p>means:</p> <p>(a) any and all statutes or proclamations or any delegated or subordinate legislation;</p> <p>(b) any enforceable community right within the meaning of Section 2(1) of the European Communities Act 1972;</p> <p>(c) any applicable mandatory guidance, direction, determination, standards or approvals having the force of law; and</p> <p>(d) any applicable and binding judgment of a relevant court of law</p> <p>in each case in force from time to time in England and Wales (or Scotland if applicable)</p>

<b>“Lower Delivery Payment”</b>	The revised Delivery Payment set out at Annex 1 to Schedule 6 of this contract.
<b>“Lower Tolerance Threshold”</b>	The point at which, due to a reduced number of programme starts, the Delivery Payment element of the Providers’ costs will decrease.
<b>"Management Information"</b>	means the information required from the Provider in connection with each Programme as set out in Schedule 3;
<b>"Materials"</b>	means any and all documents, information, materials, data, text, drawings, diagrams, images or sound recorded or embodied in any tangible or electronic medium whatsoever (including) paper based materials, computer programs, software, CDs , audio and/or visual tapes which are created, developed, generated and/or used in connection with the Programme(s) and for the avoidance of doubt, Participant Records (in whatever form) shall be Materials;
<b>“Measurement Period”</b>	Calendar month
<b>“Method Statement”</b>	means the Provider’s statement as to how it will deliver each of the Programmes to be delivered under this Contract, as set out in Schedule 2;
<b>“Participants”</b>	means the persons on the Programme(s) run by the Provider and directly receiving the services specified in this Contract;
<b>“Participant’s Records”</b>	means the records prepared and maintained by the Provider (in whatever form or storage media) concerning an individual Participant;
<b>"Personal Data"</b>	shall have the meaning given to it under the DPA;
<b>"Principal Sub-Contractor"</b>	means any sub-contractor appointed by the Provider under Clause 22 which through its employees or agents directly provides Programme services to Participants;
<b>"Processing"</b>	shall have the meaning given to it under the DPA;
<b>“Programme”</b>	means a programme for the delivery of goods and services the details of which are more fully described in Schedule 2 (The Programme) to this Contract and the relevant Annex to that Schedule. For the avoidance of doubt, the Provider may be delivering one or more Programmes under the terms of this Contract;

<b>“Programme Start”</b>	means the first day a customer attends to start activity on the programme.
<b>"Provider Guidance"</b>	means any instructions and recommended practices, including any instructions of an operational nature, and/or relating to Sustainable Development and promotion of race equality and non-discrimination which the Authority notify to the Provider from time to time;
<b>"Provider Intellectual Property Rights"</b>	means any and all Intellectual Property Rights in Materials which as at the date of this Contract were already in existence and which were owned by the Provider or licensed to the Provider by a third party.
<b>"Provider Manager”</b>	means the person appointed by the Provider as described in Clause 9.1;
<b>“Provision”</b>	means a defined element or elements of a Programme;
<b>“Qualification”</b>	means a qualification as defined in Schedule 2, where appropriate;
<b>“Region”</b>	means Jobcentre Plus Region [Name];
<b>"Relevant Date"</b>	means in respect of any Relevant Employees the date of a Relevant Transfer from the Provider to the Authority or an Incoming Service Provider
<b>"Relevant Employee"</b>	means those employees of the Provider or of any sub-contractors who are wholly or substantially engaged in the provision of the Programmes (in whole or in part) that reverts to the Authority or transfers to an Incoming Service Provider (as the case may be) as at the Relevant Date
<b>"Relevant Transfer"</b>	means a relevant transfer for the purposes of the TUPE Regulations or the Directive
<b>"Requests for Information"</b>	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations
<b>"Sensitive Personal Data"</b>	shall have the meaning given to it under the DPA;
<b>"Site"</b>	means any premises from where the Programme(s) is provided or from which the Provider manages, organises or otherwise directs the provision or the use of the Programme(s), including for the avoidance of doubt any such premises used by the Provider's agents or sub-contractors from time to time;
<b>"Specification"</b>	means the Authority's specification for the Programme referred to in Schedule 2;
<b>"Third Party Intellectual"</b>	means any Intellectual Property Rights owned by third

<b>Property Rights"</b>	parties;
<b>"Tracking Period"</b>	means the six week period (or such other period as the Authority shall agree with the Provider from time to time) during which the Provider is required (as detailed in Schedule 5) to track the destination to which the Participant leaves the Programme. This period starts on the date the relevant Participant leaves the Programme, or in relation to the final claim provisions of Schedule 5 Paragraph 20.2, the date on which the Contract expires or terminates;
<b>"Trade Mark"</b>	means any trading name, brand name, style, logo or mark which is directly related to or is created in respect of the Programme(s) whether created by the Authority or the Provider and whether registered or not;
<b>"TUPE Regulations"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 1981, as amended;
<b>"Upper Delivery Payment"</b>	The revised Delivery Payment as set out at Annex 1 to Schedule 6 of this contract
<b>"Upper Tolerance Threshold"</b>	The point at which, due to a higher number of programme starts, the Delivery Payment element of the Providers' costs will increase.
<b>"Voluntary and Community Sector"</b>	means registered charities, voluntary and community organisations as well as non-charitable, non-profit organisations and associations, self-help groups and community groups;
<b>"Working Day"</b>	means any day which is not a Saturday, a Sunday or a bank or public holiday in England [Scotland] and excluding any other specified date on which the Provider has been notified the Authority will be closed.
1.1	References in this Contract 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	Headings included in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
1.3	If there is any conflict between the terms of this Contract and any of the Schedules or annexes referred to in this Contract and it is unclear which is to take precedence then the provisions shall be interpreted so that they are given precedence in the following order:-
1.3.1	the Clauses of this Contract;
1.3.2	the Schedules to this Contract (and in relation to the Schedules, the Specification is to be given precedence over the Method Statement in establishing the nature and quality of the services to be provided by the Provider under this Contract);
1.3.3	the Annexes in this Contract.
1.4	References to the singular include the plural and vice versa and references to any gender include all genders. References to a person include any individual, firm, unincorporated

association or body corporate. References to "including" or "includes" shall be construed without limitation.

- 1.5 References in this Contract, unless the context otherwise requires, to (a) "**costs**" includes costs, charges, outgoings and expenses of every description and (b) "**losses**" includes loss, harm, damages and liabilities of every description.

**SCHEDULE 2**  
**THE PROGRAMME**

1. This Schedule sets out the requirements which are applicable to the provision of the Programmes.
2. The contents of the following documents and the Annexes to this Schedule shall be deemed to be incorporated into this Schedule:-

## ANNEX 1 - [DN: Insert NAME OF PROGRAMME/SERVICE]

### Commencement

1. The Provider shall carry out this Programme (Ref. No. [insert]) with effect from [enter date] ("Commencement Date") until "[enter date three years later]" subject to extension or early termination of this Programme in accordance with the terms of the Contract.

### Contents

2. The contents of the following documents shall be deemed to be incorporated into this Schedule:-
  - 2.1 E.g. the Specification as provided in the Invitation to Tender pack (Ref. No. [ ]) issued and dated [\_\_ \_\_\_\_\_];
  - 2.2 E.g. the Method Statement (Ref. No. [ ]) issued and dated [\_\_ \_\_\_\_\_];
  - 2.3 E.g. list here full details (including dates) of the specification, proposal document and relevant PTN correspondence;

## APPENDIX 1 TO ANNEX 1 – [DN: Insert NAME OF PROGRAMME/SERVICE]

### PERFORMANCE TARGETS

#### General

1. In accordance with Clause 3.7 of this Contract the following performance targets have been agreed between the Parties. In delivering the Programme/Programmes <sup>(delete if not appropriate)</sup> the Provider acknowledges that it shall be under an obligation to meet the following performance targets and furthermore that failure to meet all or any defined such targets, shall entitle the Authority to serve notice on the Provider in accordance with Clause 18 of this Contract.
- 1.1 Also, and for ease of reference, provided at Annex [ ] to Schedule 6 is an anticipated profile of Outcome Targets which the Provider may, on achievement of the necessary defined outcomes, claim.

#### Agreed Performance Targets

2. The following performance targets relate specifically to the Programme described in Annex [*insert*] to Schedule 2.
- 2.1 [*DN: This Appendix may be used either as an appendix to each Programme Annex or to show all agreed performance target for Schedule 2 in which case it should be as an Appendix to the entire Schedule 2 (amend the header accordingly)*].

### SCHEDULE 3

#### INFORMATION REQUIREMENTS

This Schedule sets out the information requirements which are applicable to the provision of the Programme.

#### GENERAL

1. During the term of this Contract, the Provider shall provide the Authority with information it requests from time to time to monitor and evaluate the success of the Programme and the Provider's management and delivery of it. The Provider shall supply information (including details of Participant's age, gender, ethnicity) to the Authority, using formats and to timescales specified by the Authority, covering areas such as (but not limited to):
  - 1.1 number of Participants who start on the Programme, or defined elements of it together with when the Participants started ;
  - 1.2 number of Participants who leave the Programme, or defined elements of it (with an explanation for them leaving and of their destination) together with their leaving dates;
  - 1.3 number of Participant entries into employment ("Job Outcomes");
  - 1.4 number of defined Qualifications obtained by Participants via the Service; and
  - 1.5 for purposes of validating the outcome, details of individual Participants Job Entries and/or Qualifications.
  - 1.6 In addition Providers will be evaluated and monitored on measurable outcomes, which may include but not limited to: sustained job outcomes, health outcomes, earnings, mechanisms for engaging customers, processes, customer experience and diversity.
2. The Authority intends, wherever it can, to capture and collate information through its IT system(s). However, the Authority does reserve the right to make reasonable requests for information (at no additional charge) from the Provider including ad-hoc requests for information from time to time.
3. Where the Authority funds the delivery of this Contract using ESF funds the Provider shall regularly and accurately complete the ESF Provider monthly performance report as set out in the Authority Provider Guide at Chapter 12 (or any such replacement guidance issued from time to time).
4. By the last Friday in January of each year of this Contract, the Provider shall provide the Authority with a report detailing the amount paid by the Provider to each of its Voluntary And Community Sector sub-contractors for delivery under this Contract during the previous year ending 31 March. The report shall be delivered in the format specified by the Authority from time to time and shall be sent to Department for Work & Pensions, Commercial |Employment Provision, Level 4, Mayfield Court, West Street, Sheffield, S1 4EP.
5. Any additional requests for additional information shall be considered in consultation with the Provider as shall the process of defining the methods of collection.
6. Where an ongoing, short term or one off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Schedule 3 (Information Requirements).

## SCHEDULE 4

### MANAGING PERFORMANCE

This Schedule sets out the contract management requirements that are applicable to the provision of the Programme.

#### 1. **Reviewing Contract Performance**

- 1.1 The Provider shall work with the Authority to establish and maintain an effective and beneficial working relationship and to ensure the Contract is delivered to at least the minimum required standard as specified in Schedule 2 (The Programme).
- 1.2 The Provider shall work with the Authority to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract. The Provider will be responsible for managing and reporting on any sub-contractual arrangements. Arrangements shall include mechanisms for the provision of management information, feedback to and from employers and participants, change control procedures and the prompt resolution of any problems. The Authority will agree with the Provider day-to-day relationship management, contact points, communication flows and escalation procedures. Roles and responsibilities will be documented and the personnel involved in managing the relationship identified and suitably empowered.
- 1.3 The Provider will be expected to continuously improve the quality of the provision including that delivered by sub-contractors. Where quality falls below acceptable levels the Provider will be expected to have suitable escalation procedures in place and, in respect of sub-contracted provision, take action where necessary to terminate the contract.
- 1.4 The Authority will regularly monitor provider performance at least monthly. Every three to six months (or any other period to be notified as appropriate) the Authority will undertake a contractual review and award a formal risk rating to the Provider. The initial contract review will be informed by the award of contract process and reviewed thereafter. The risk rating will be based on a number of criteria including: performance against contractual targets; annual contract value; and, quality (including external inspection grades where appropriate) and continuous improvement activity. The risk rating will be used to inform the frequency of subsequent Provider Performance Reviews and supporting monitoring activity.
- 1.5 Provider reviews may be undertaken formally or informally depending on risk and any identified issues. Risk ratings will be communicated to the provider. The Provider will be expected to provide any additional management information required by the Authority to facilitate this process and arrange where necessary access to any of their delivery locations, including those operated by sub-contractors.
- 1.6 The purpose of the Provider Performance Reviews is to encourage an open and regular dialogue between the Parties with the purpose of ensuring that the Programme, including the standards and outputs specified are being delivered appropriately and to drive up the performance and quality of the provision. They will encourage the Parties to review performance, discuss opportunities for continuous improvement and raise and address any complaints or persistent problems encountered with the Contract. Where issues cannot be immediately addressed, the Authority and the Provider will follow the Dispute Resolution Process detailed in Schedule 7.

- 1.7 The regular meetings between the Authority and the Provider shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract.
- 1.8 Any improvements or actions agreed between the Parties will form part of the continuous improvement activity recorded in the provider's Action Plan that will be used to inform the annual Self Assessment Report.
- 1.9 The Authority shall monitor and review the performance and quality of the Provider against set standards (see below) and within the overall contract management approach as detailed above. Additionally, providers will be subject to external inspection by Ofsted in England and Estyn in Wales. The Provider will be expected to make any additional Management Information available to these representatives and provide where necessary access to premises, including sub contracted locations, as appropriate.

## 2. **Jobcentre Plus Quality Framework**

- 2.1 The Jobcentre Plus Quality Framework provides the basis of the required approach to maintaining and improving quality in provision funded by the Authority. The Framework is supported by the Common Inspection Framework and Provider Guidance. It reflects the key principles outlined in the Governments' White Paper "Learning to Succeed". The purpose of the Quality Framework is twofold:
  - 2.1.1 Providers will use it as part of their continuous improvement to raise the standard of the service they provide; and,
  - 2.1.2 It assists the Authority inform the management of provision taking into account quality of delivery, contract performance, impact on Participants, equal opportunities, (non-discrimination) and the local labour market.
- 2.2 Key principles of the Quality Framework are:
  - 2.2.1 Continuous Self-Assessment and Action Planning;
  - 2.2.2 Monitoring and Review
  - 2.2.3 External inspection; and
  - 2.2.4 Sharing good practice.
- 2.3 The Provider will continuously self assess against the Common Inspection Framework, recording actions in the Provider Action Plan. The Action Plan will feed in to the annual Self Assessment Report. This in turn feeds back in to the Action Plan. The Authority will assess the rigour and effectiveness of the report and agree the Action Plan to improve the quality of the service delivered. Progress against that Action Plan will form part of the monitoring activities carried out by the Authority supported by a review process described above. The Authority monitoring staff shall be conversant with the principles of the Quality Framework and shall be prepared to offer appropriate support to Providers on its delivery. The Action Plan and Self Assessment will be a key part of the performance and contract review process.
- 2.4 The monitoring activities shall be determined by the Authority and complied with by the Provider and might include:
  - 2.4.1 Observation of the delivery of training;
  - 2.4.2 Examination of Participants' Individual Training Plans;
  - 2.4.3 Examination of how assessments and reviews are carried out;

- 2.4.4 Managing the training cycle;
- 2.4.5 Promoting continuous improvement; and
- 2.4.6 Monitoring impact of advice.

### 3. **Ofsted in England and Estyn in Wales**

3.1 The Common Inspection Framework sets out the principles applicable to the external inspections of post-16 non-higher education and training. The framework also includes the more specific evaluation requirements that apply to the inspection of individual providers of education and training.

3.2 The main purposes of inspections are to:

- 3.2.1 give an independent public account of the quality of education and training, the standards achieved and the efficiency with which resources are managed;
- 3.2.2 help bring about improvement by identifying strengths and weaknesses and highlighting good and poor practice; and
- 3.2.3 keep the Secretary of State, the Learning and Skills Council for England and the Authority informed about the quality of education and training.

3.3 Inspections shall focus primarily on the experiences and expectations of individual Participants through the evaluation, as applicable, of:

- 3.3.1 what is achieved - the standards reached and Participants' achievements, taking account of their prior attainment;
- 3.3.2 the quality of teaching, training and learning;
- 3.3.3 other aspects of provision that contribute to the standards achieved, such as the range, planning and content of courses or programmes, resources and the support for individual Participants;
- 3.3.4 the effectiveness with which provision is managed, its quality assured and improved, and how efficiently resources are used to ensure that the provision gives value for money;
- 3.3.5 the extent to which provision is educationally and socially inclusive, and promotes equality of access to education and training, including provision for customers with learning difficulties, and
- 3.3.6 observance of the non-discriminatory practices under the Law, including for the avoidance of doubt the Race Relations (Amendment) Act 2000.

As a Provider of services to Participants, the Provider shall provide all reasonable co-operation with representatives of Ofsted/Estyn.

### 4. **Health And Safety Responsibilities of the Authority Visiting Officers**

The Authority representatives visit Providers and their sub-contractors for a variety of reasons. In the course of their normal duties such representatives of the Authority shall adopt an 'eyes and ears' approach to monitoring health and safety. In doing this the Authority representatives shall not be conducting a health and safety inspection, nor shall they be in a position to offer advice on whether something is safe or not. Instead they shall approach this from the position of any lay person. If, however, an the Authority representative does notice something on which they require assurance

or clarification, they shall raise this with the Provider or the Provider's sub-contractor's representative at the location where they are visiting. In no event are the Authority representatives to be seen as offering professional advice on health and safety matters and as such, shall not be liable for any advice or comments or otherwise given to the Provider or their sub-contractors or any omission to give such advice, comments or otherwise.

## 5. **Financial Appraisal and Monitoring (FAM)**

- 5.1.1 The primary purpose of FAM is to provide the Authority with an assurance that payments to providers are in accordance with the Authority requirements, that public funds are protected and that value for money has been obtained.
- 5.1.2 Planning of FAM visits to Providers shall take account of the materiality and the assessment of the risk attached to the delivery of the provision. The assessment of risk shall follow an evaluation of the key, relevant systems adopted by the provider, supported by the results of testing undertaken.
- 5.1.3 Providers shall have systems in place (depending on the programme type) to:
  - 5.1.4 detect and prevent duplicate claims;
  - 5.1.5 prepare and submit accurate, valid, supported, timely claims;
  - 5.1.6 ensure that all the required evidence is collected (and submitted, where appropriate) to support the claim;
  - 5.1.7 identify Participants who have left the Programme ("Leavers") early to prevent over claiming;
  - 5.1.8 carry out effective monitoring of sub-contractors; and
  - 5.1.9 respond to FAM reports with an appropriate action plan.

## 6. **Access**

- 6.1.1 In all instances, the Provider shall co-operate and provide such reasonable assistance as may be necessary to facilitate such monitoring. Failure to provide such reasonable assistance shall be deemed a "Serious Breach" for the purposes of Clause 18.

**SCHEDULE 5**  
**ACCOUNTING REQUIREMENTS**

This Schedule sets out the financial provisions that are applicable to the ESF2007-13 Programme.

**1. CHARGES**

The Authority shall pay the Provider in accordance with the Payment Schedule, as set out in Schedule 6, Annex 1, details of which are derived from the original Pricing Schedules submitted at the tender stage. These prices may change through the life of the contract if and when the tolerance clause is invoked.

**2. VALUE ADDED TAX**

The Payment Schedule, in Schedule 6, Annex 1 details prices excluding Value Added Tax (VAT).

**3. CHARGES ON PARTICIPANTS**

The Provider shall not levy any charge on Participants in respect of goods or services provided under this Contract except as expressly permitted in advance and in writing by the Authority.

**4. ADDITIONAL COSTS AND CHARGES**

4.1 Subject to paragraph 15, the charges stated in Schedule 6 are firm and any additional or unforeseen costs incurred by the Provider in the provision of the Programme shall be borne solely by the provider.

**5. TYPES OF PAYMENT**

**5.1 Programme Fees**

5.1.1 Programme Fees represent the prices payable by the Authority to the Provider for its provision of the Programme and or specific defined elements of the Programme. Subject to paragraph 10 below, the Programme Fee shall be paid by the Authority monthly, in arrears. All relevant Programme Fees are detailed in Schedule 6.

5.1.2 The Programme Fee consists of two separate elements: A Delivery Payment and a Job-Outcome Payment. The Programme Fee shall equal the sum of the Delivery Payment and the Job Outcome Payment.

**6. DELIVERY PAYMENT**

6.1 The Delivery payment shall be divided by 36 and paid monthly in arrears.

6.2 The Provider shall not be able to deliver more Programme Starts than set out in the contract without prior consent by the Authority

6.3 Where agreed tolerance limits are breached, the Delivery Payment may be adjusted in accordance with paragraph 18 of this Schedule 5 and Annex 1 of Schedule 6 to reflect new pricing arrangements agreed at the Post Tender Discussion stage.

## **7. THE JOB OUTCOME PAYMENT**

- 7.1 The Provider shall invoice the Authority monthly in arrears for the number of Job Outcomes achieved in the immediately preceding month until it has reached the Maximum Job Outcome Payment.
- 7.2 Subject to paragraph 9.2, if the Provider reaches the Maximum Job Outcome Payment prior to expiry of this Contract, the Provider shall not be entitled to invoice the Authority for any additional Job Outcomes without obtaining the prior written consent of the Authority.
- 7.3 The Authority shall have no liability whatsoever for any Job Outcomes achieved by the Provider in respect of which consent has not been obtained by the Provider pursuant to paragraph 7.2
- 7.4 Subject to obtaining the Authority's consent pursuant to paragraph 8.2, any Job Outcomes achieved by the Provider in excess of the Maximum Job Outcome Fee shall be charged at the same rate as set out in the Schedule 6.

## **8. VOLUMES**

- 8.1 As stated in Clause 6.2, the Authority gives no guarantees of volumes. Any volumes stated in this Contract, are indicative only and shall not be binding to the Authority.
- 8.2 If the Provider achieves the number of Job Outcomes so that the Maximum Job Outcome Payment had been reached, the Provider acknowledges and agrees that the Authority has no obligation to and the Provider does not expect the Authority to make any monies available in return for the achievement by the Provider of any further Job outcomes.

## **9. CLAIMS FOR PAYMENT/INVOICES**

- 9.1 For Job Outcome Payments the Authority shall make payment to the Provider monthly in arrears within thirty (30) calendar days of receipt of a correctly completed invoice accompanied by the supporting evidence information as specified in the Provider Guidance.
- 9.2 The Provider shall submit claims for payment in the format specified by the Authority, as amended from time to time. All claims shall be submitted within ten (10) Working Days of the end of the appropriate claim period.
- 9.3 Where a participant starts work whilst on the Programme or 6 weeks after leaving, a Job-Outcome payment may be claimed.
- 9.4 The amount to be claimed in respect of the appropriate element of the Programme Fee shall be that as specified in Schedule 6 (Payment Schedule) Annex 1.
- 9.5 The percentage and amount of VAT should, if chargeable, be shown on claims in accordance with Customs and Excise regulations. Providers shall also be required to claim VAT, if chargeable on Delivery payments.
- 9.6 If the Provider fails to submit a claim within the period referred to, or fails to submit the claim in the prescribed form or accompanied by the appropriate supporting evidence, the Authority shall not be in breach of this Contract if it fails to make payment within thirty (30) calendar days of receipt of the claim provided that the Authority shall not unnecessarily delay payment of the relevant claim.
- 9.7 Details of the Provider's bank account must be notified to the Authority on the standard form supplied by the Authority for this purpose. The Authority shall send notifications of payments to the Provider's address stated on the standard form

Subject to paragraph 9.3 and paragraph 7, the Provider shall be entitled to claim the Job outcome Fee up to the Maximum Job Outcome Payment upon a Participant commencing employment in that Job outcome until expiry of the Tracking period applicable to Job outcomes.

- 9.8 If the Provider fails to submit a claim within the Tracking Period for a Job Outcome or fails to submit the claim for a Job Outcome in the prescribed form or accompanied by the appropriate supporting evidence, the Authority shall not be in breach of this contract if it fails to make payment within thirty (30) calendar days of receipt of the claim provided that the Authority shall not unnecessarily delay payment of the relevant claim.

## 10. **DISPUTED CLAIMS**

- 10.1 Notwithstanding paragraph 11.5 of this Schedule, payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Provider shall not signify approval of such invoice/claim. The Authority reserves the right to verify invoices/claims after the date of payment and subsequently to recover any sums which have been overpaid.

- 10.2 If any part of a claim rendered by the Provider is disputed or subject to question by The Authority either before or after payment then the Authority may call for the Provider to provide such further documentary and oral evidence as it may reasonably require in accordance with the timescales set out in the Provider Guidance to verify its liability to pay the amount which is disputed or subject to question and the Provider shall promptly provide such evidence in a form satisfactory to The Authority.

- 10.3 If any part of a claim rendered by the Provider is disputed or subject to question by the Authority, the Authority shall not withhold payment of the remainder.

- 10.4 If any invoice rendered by the Provider is paid but any part of it is disputed or subject to question by the Authority and such part is subsequently agreed or determined not to have been properly payable then the Provider shall forthwith repay such part to the Authority.

- 10.5 The Authority shall be entitled to deduct from sums due to the Provider by way of set off any amounts owed to it or which are in dispute or subject to question either in respect of the invoice for which payment is being made or any previous invoice.

## 11. **RECOVERY OF SUMS**

- 11.1 Either Party to this Contract can recover any monies paid by them to the other Party, which are found not to be due by deducting sums from any subsequent payment due to the other. Where there remain payments outstanding to the Authority, the Authority shall invoice the Contractor detailing payment due. The right of deduction extends to any agreement between any part of Her Majesty's Government and the Provider. Where either party intends to make such a deduction, they shall inform the other party before making any deductions.

## 12. **GROSSING UP**

- 12.1 The Authority shall check a reasonably representative (statistically valid) sample of claims for payment made by the Provider. If it discovers proof of any error or over-claim by the Provider the Authority shall be entitled to "gross up" the results of the sample checked by assuming that the same type and percentage of errors and over-claims have been made in respect of the Provider's claim form from which the sample was taken.

- 12.2 Upon prior notice by the Authority to the Provider of any error or over-claim and any reduction to be made to the amounts due under the claim form, and unless the

Provider is able to provide evidence to the satisfaction of the Authority that the error or over-claim has not been made to the extent calculated by “grossing up” the results of the representative sample within thirty (30) calendar days of being notified by the Authority, or such other period as the Parties may agree, the amount due under the claim form shall be reduced accordingly.

**13. PROVIDER'S RECORDS**

13.1 The Provider and any sub-contractors appointed by it shall retain comprehensive records in accordance with Clause 26 to verify the services provided. Such records shall include (without limitation) the non-payment outcome data information specified in paragraph 17, Annex 3 of the Specification for England and any such other information as the Authority may reasonably require from time to time.

**14. INTERRUPTION OF SERVICE**

14.1 If there is at any time an interruption in the delivery of the Programme, not as a direct consequence of the Authority actions, the Authority shall not be liable for payment of any charges, costs or payments under this Contract in respect of the duration of such interruption.

**15. LIABILITY ON EARLY TERMINATION / COURSE CANCELLATION**

15.1 If this Contract is terminated in accordance with its terms at any time before its expiry, the Authority shall not be liable under this Contract to make payments in respect of any period after termination, unless the Authority exercises its option under Clause 20.2.1.

15.2 If this Contract is terminated by the Authority on grounds of a breach or by insolvency of the Provider, or is terminated by the Provider for whatever reason, the Authority shall undertake a final reconciliation of amounts owed from, or owing to, the Provider. Following this reconciliation the Authority shall either recover any overpayments made to the Provider, shall pay any additional amounts payable under this contract due in respect of the service actually provided before the date of termination or agree that no further payments are to be made by either Party.

15.3 This paragraph 15 is without prejudice to any other rights that may accrue to either Party in consequence of any breach of this Contract by the other Party.

**16. FINAL CLAIM**

16.1 A final claim in respect of Job-Outcome payments must be submitted within a period equivalent to the Tracking Period plus thirty (30) calendar days following the expiry or termination of the Contract.

16.2 The Authority shall recover any overpayments made to the Provider.

16.3 Provided all previous claims have been paid, the Authority shall have no further liability to make payment of any kind to the Provider once the final claims have been paid.

**17. THIRD PARTY REVENUE**

17.1 The Provider may not obtain any third party revenue, income or credit based on the service, goods and / or Copyright Works delivered under this Contract without the express prior written authority of the Authority.

**18. TOLERANCE LEVELS**

18.1 This paragraph 18 and its application Tolerance clauses and their application shall be without prejudice to, and shall not affect, any other right or remedy of either Party under the Contract or in common law and in particular (but without limitation) shall not affect the operation and rights afforded to the Authority pursuant to Part 8 of the Contract (Remedies).

18.2.1 The Contract Manager will monitor the number of Programme Starts for each Measurement Period and where this number is less than or in excess of the Programme Start Target the Contract Manager will discuss with the Provider the reasons for the variance.

18.2.2 Where the number of Programme Starts in any one Measurement Period is less than the Programme Start Target the Provider shall prepare a plan setting out the measures (an Action Plan) which the Provider shall carry out to ensure that the Programme Start Target is met, to ensure that Programme Starts do not fall below the Lower tolerance Threshold and the time scales within which such an Action Plan shall be implemented. The Action Plan shall be submitted to the Contract Manager for his approval which shall not be unreasonably withheld or delayed. The Contract Manager shall be entitled to suggest reasonable amendments to the Action Plan which the Provider shall incorporate. The Provider shall implement the approved Action Plan.

18.3 At the end of each Measurement Period the Authority may take the following action, subject to the Contract Manager's discretion described in paragraph 18.5 below:

18.3.1 Where the Provider achieves Programme Starts in excess of the Upper Tolerance Threshold during the Measurement Period, pay to the Provider the Upper Delivery Payment subject to paragraphs 18.6 and 18.7.

18.3.2 Where the Provider achieves Programme Starts below the Lower Tolerance Threshold during the Measurement Period, pay to the Provider the Lower Delivery Payment subject to paragraphs 18.6 and 18.7.

18.4 The Contract Manager will notify the Provider of any action to be taken by the Authority pursuant to paragraph 18.3.

18.5 The application of this paragraph 18, both in respect of the Upper and Lower Tolerance Thresholds shall be at the absolute discretion of the Contract Manager. However in applying his discretion the Contract Manager shall act reasonably and fairly. Without diminishing his discretion, the Contract Manager shall have regard, inter alia, to the following factors:

18.5.1 in respect of moving to Lower Delivery Payments :

18.5.1.1 Factors which resulted in the Provider failing to achieve the Lower Tolerance Threshold which were outside the Provider's control or influence

18.5.1.2 The extent to which the Provider took such mitigating action as was reasonably available to him

18.5.1.3 The extent to which the Provider has devised and implemented an action or remedial plan to ensure the Lower Tolerance Threshold is exceeded in the future

18.5.2 in respect of moving to Upper Delivery Payments:

18.5.2.1 The extent to which ESF funding is available and may lawfully be applied in the Applicable Region

18.5.3 in respect of both the Upper and Lower Delivery payments, the representations, comments and views of the Provider.

18.6 In respect of both the Upper and Lower Delivery Payments, the Provider will be paid in accordance with the revised Delivery Payments, as detailed in Annex 1 to Schedule 6 of the Contract until otherwise agreed at the absolute discretion of the Contract manager.

18.7 Where either the Upper or Lower Delivery Payments are invoked the Contract Manager may agree with the Provider a revised set of Upper and/or Lower Tolerance Thresholds accordingly.

**SCHEDULE 6**  
**PAYMENT SCHEDULE**

This Schedule sets out the funding arrangements, which are applicable to the provision of the Programme.

**1. PROGRAMME FEES**

- 1.1 Programme fees shall comprise of the independent elements, as detailed in Annex 1 to this schedule, and payment of one element shall not constitute acceptance of any or all of the other elements.

**2. DELIVERY PAYMENT**

- 2.1 The Delivery Payment shall be paid in 36 equal monthly instalments in arrears from the Commencement Date of [ ] June 2008 as shown in the annex(s) to this Schedule.

**3. JOB OUTCOME PAYMENT**

- 3.1 The Annex (s) to this schedule details the amount of funding for the job outcome fee, together with the number of job outcomes offered.

**4. PROVIDERS RECORDS**

- 4.1 The Provider and any sub-contractors appointed by it shall retain comprehensive records in accordance with clause 26 to verify the services provided. Such records shall include (without limitation), copy invoices with all supporting information and any such other information as the Authority may reasonably require from time to time.

**5. TRAVEL, CHILDCARE & ADDITIONAL SUPPORT**

Travel, Childcare and Additional Support costs are included as part of the overall Total Indicative Contract Value and the Provider shall not be entitled to seek any reimbursement in respect of such costs.

**SCHEDULE 6 - ANNEX 1**

**PAYMENT SCHEDULE**

Provider Name: XXXX

District: XXXX

Contract Name

Contract Reference Number

Programme Duration: XX Months

Total Indicative Contract Value £ \_\_\_\_\_

Of the Total Indicative Contract value: £ \_\_\_\_\_

(£ \_\_\_\_\_)

£ \_\_\_\_\_

is the Delivery Payment  
**Subject to Tolerance levels**

(Paid in 36 equal monthly instalments)

is the Total amount available for Job Outcomes

**The Delivery payment is based on the Total Indicative Programme Starts profiled monthly over the life of the contract.**

Total Indicative Programme Starts Agreed XXXX

Total Job Outcomes Agreed XXXX

Job Outcome Payment (Unit price)  
(Fixed for the Contract Duration) XXXX

## **Delivery Payment Tolerances**

Where Total Indicative Programme Starts, increase or decrease over the life of the contract revised Delivery Payments may be paid according to the following table.

DELIVERY PAYMENT TOLERANCES	Year 1	Year 2	Year 3	Total
<p>The Upper Tolerance Threshold</p> <p>The point at which, due to a higher number of programme starts, the Delivery Payment element of the costs will increase.</p>				
<p>Upper Delivery Payment</p> <p>The revised Delivery Payment value due to the increase in programme starts (£)</p>				
<p>The maximum number of Programme starts for which the revised Upper Delivery payment is valid.</p>				
<p>The Lower Tolerance Threshold</p> <p>The point at which, due to a reduced number of Programme Starts, the Delivery Payment element of the costs will decrease.</p>				
<p>Lower Delivery Payment</p> <p>The revised Delivery Payment value due to a decrease in programme starts (£)</p>				
<p>The minimum number of Programme starts for which the revised Lower Delivery payment is valid.</p>				

## SCHEDULE 7

### DISPUTE RESOLUTION PROCEDURE

This schedule sets out the process to be followed by the Parties which is applicable in the event of a dispute other than a payment dispute. Within the Authority the point of contact will be the Head of the Operational Procurement Unit.

#### STAGE 1 – INFORMATION EXCHANGE

1. In the event of any dispute arising between the Parties in connection with this Contract the Party who is bringing the complaint will write to the other Party setting out the full details of the dispute including the background to it and any proposals for resolving the dispute (the "**Letter of Dispute**"). The Letter of Dispute should provide all the necessary details and any supporting documentation to enable the other Party to fully consider the dispute.
2. The Party who receives the Letter of Dispute should acknowledge the Letter of Dispute within seven (7) calendar days of its receipt (the "**Letter of Acknowledgment**").
3. If further information as to the matters detailed in the Letter of Dispute is required so as to deal with it then full particulars of the further information which is required should be given by letter within seven (7) calendar days of the Letter of Acknowledgement (the "**Further Information**"). If Further Information is required, such Further Information should be provided within fourteen (14) calendar days from the date of the Letter of Acknowledgement. The time for responding to the Letter of Dispute does not commence until the Further Information has been provided or an explanation as to why it cannot be provided.
4. Within fourteen (14) calendar days of the "**Letter of Acknowledgment**" or within fourteen (14) calendar days from the provision of the Further Information the other Party shall provide a full response to the Letter of Dispute (the "**Letter of Response**"). The Letter of Response shall, if appropriate, provide terms on which the dispute can be resolved.
5. If the Letter of Response cannot deal with all of the issues raised within the Letter of Dispute within fourteen (14) calendar days the responding Party shall provide a date within which the full Response will be provided. Such full response must be given within twenty eight (28) calendar days of the latest of the Letter of Acknowledgment or the provision of any Further Information.
6. When the Letter of Response has been sent stage 1 is concluded. If the dispute has not been resolved by the end of stage 1 the Parties shall move to stage 2.

#### STAGE 2 - MEETING

7. Following on from the Letter of Response either Party can request that a meeting takes place between the Contract Managers (Deputy Head of Commercial Employment Provision, together with the Head of the Operational Unit) and the Provider Manager. The Contract Managers and the Provider Manager shall within seven (7) calendar days of such a written request meet in a good faith effort to resolve the dispute (the "**First Meeting**").
8. If the dispute cannot be resolved in the First Meeting the dispute shall be referred to the Managing Director of the Provider and the Head of Commercial Employment Provision to seek to resolve the dispute (the "**Final Meeting**"). If appropriate the Parties can invite key personnel to this meeting.

9. If the dispute cannot be resolved within twenty one (21) calendar days of the Final Meeting the dispute shall be referred to a Mediator in accordance with stage 3 below.

### **STAGE 3 - MEDIATION**

10. The Parties shall seek to agree on the appointment of a Mediator to act in relation to the dispute or an organisation who shall be approached to nominate a mediator. If the Parties cannot agree on the appointment of a Mediator the matter shall be referred to CEDR to appoint a Mediator.
11. If agreeable to the Mediator, the Parties shall within seven (7) calendar days of the appointment of any such Mediator meet with him/her to agree a programme for the exchange of any relevant information, the structure to be adopted for the mediation and agree upon a date for the mediation to be held (the "Agreed Procedure"). If the Mediator is not agreeable to a meeting or the Parties deem it unnecessary for the Mediator to be involved they will reach agreement on the agreed procedure between themselves. The Parties will then act in accordance with the Agreed Procedure and seek to resolve the dispute through mediation.
12. If the Parties fail to reach agreement within twentyeight (28) calendar days of the mediation then any dispute or difference between them may be referred to the Courts.

### **STAGE 4 - LITIGATION**

13. All disputes not resolved pursuant to the procedures set out above may be referred by either Party to the Courts.

### **GENERAL**

14. For the avoidance of doubt this Schedule 7 shall in no way prejudice any rights or remedies of either Party under this Contract including without limitation the right of termination. However this Schedule 7 will survive termination of the contract and will govern any post termination dispute.
15. Each Party shall bear its own costs in relation to any procedure adopted pursuant to this Schedule 7.
16. Unless this Contract has already been repudiated or terminated the Provider shall, notwithstanding this Schedule 7, continue to carry out its obligations in accordance with this Contract.

## SCHEDULE 8

### EQUALITY AND DIVERSITY REQUIREMENTS

#### 1. **General**

- 1.1 The Provider acknowledges that in the operation of its employment programmes the Authority must at all times be seen to be actively promoting equality of opportunity for and good relations between all persons irrespective of their race, gender, disability, age, sexual orientation, religion or belief.
- 1.2 In the performance of the Contract, the Provider shall and shall use reasonable endeavours to procure that its subcontractors assist and cooperate with the Authority where possible in satisfying this duty, by fully complying with the requirements of this Schedule 8.

#### 2. **Compliance**

- 2.1 The Provider acknowledges the provisions of Clauses 3.3 and 3.4 of this Contract.

#### 3. **Harassment Policy**

- 3.1 In the performance of the Contract and for the duration of this Contract, the Provider:
  - 3.1.1 shall comply with the Agreed Harassment Policy.
  - 3.1.2 shall procure that each of its direct subcontractors employed in the performance of the contract, adopt and implement an harassment policy in respect of its employees engaged in the performance of the Contract which is at least as extensive in scope as the Agreed Harassment Policy.

For the purposes of this Agreement the expression "Agreed Harassment Policy" means the Harassment policy to be submitted to Momenta under the Accreditation process in Schedule 9 of this contract.

.

#### 4. **Equality Policy**

- 4.1 In the performance of the Contract and for the duration of this Contract, the Provider:
  - 4.1.1 shall comply with the Agreed Equality Policy.
  - 4.1.2 shall procure that each of its direct subcontractors employed in the performance of the contract, adopt and implement an equality and diversity policy in respect of its employees engaged in the performance of the Contract which is at least as extensive in scope as the Agreed Equality Policy.

For the purposes of this Agreement the expression "Agreed Equality Policy" means the equality policy to be submitted to Momenta under the Accreditation process in Schedule 9 of this contract.

#### 5. **Diversity Training**

For the duration of this Contract the Provider shall comply with the Agreed Training Plan in relation to all of its employees engaged in the performance of the Contract. For the purposes of this Contract the expression "Agreed Training Plan" means the diversity training plan to be submitted to Momenta under the Accreditation process in Schedule 9 of this contract.

The Provider shall procure that each of its direct subcontractors employed in the performance of the contract, adopt a similar diversity training plan in respect of subcontractor employees engaged in the performance of the Contract.

## 6. **Supplier Diversity**

In the performance of the Contract the Provider shall at all times comply with the Agreed Supplier Diversity Plan. For the purposes of this Contract the expression "Agreed Supplier Diversity Plan" means the supplier diversity plan to be submitted to Momenta under the Accreditation process in Schedule 9 of this contract.

The Provider shall procure that each of its direct subcontractors employed in the performance of the contract, adopt a similar supplier diversity plan in respect of subcontractor employees engaged in the performance of the Contract.

## 7. **Monitoring and Reporting**

7.1 Subject to paragraph 7.3 of this Schedule 8 the Provider shall use reasonable endeavours to provide the Authority on the date of this Contract and subsequently every 12 months from the date of this Contract with the following information:

7.1.1 the proportion of its employees and to the extent reasonably possible, the employees of its subcontractors who are:

- (a) female; and/or
- (b) disabled.

7.1.2 the proportion of its employees and to the extent reasonably possible, the employees of its subcontractors who in terms of ethnicity are:

*white*

- (a) white British;
- (b) white Irish;
- (c) of any other white background;

*mixed*

- (d) white and black Carribean;
- (e) white and black African;
- (f) white and Asian
- (g) of any other mixed background;

*Asian or Asian British*

- (h) Indian;

- (i) Pakistani;
- (j) Bangladeshi;
- (k) of any other Asian background;

*Black or Black British*

- (l) Carribean;
- (m) African;
- (n) of any other black background;

*Chinese or other ethnic group*

- (o) Chinese;
- (p) of any other ethnic group.

For the avoidance of doubt, the sixteen percentage figures submitted under categories (a) to (p) of this Paragraph 7.1.2 (in each case in respect of the Provider's employees and each subcontractor's employee) should total 100%.

7.1.3 the proportion of its subcontractors that are:

- (a) small to medium sized enterprises, (meaning enterprises having less than 250 employees);
- (b) ethnic minority enterprises (in each case meaning an enterprise 51% or more of which is owned by members of one or more ethnic minority groups, or, if there are few owners, where at least 50% of the owners are members of one or more ethnic minority groups. For this purpose, ethnic minority groups means ethnic groups other than white British as referred to at paragraph 7.1.2 above);
- (c) black minority enterprises (in each case meaning an enterprise 51% or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least 50% of the owners are members of the Black British ethnic group. For this purpose, the Black or Black British ethnic group has the meaning referred to at paragraph 7.1.2 above).

For the avoidance of doubt, any given subcontractor may fall into one, two or all of the categories listed under this Paragraph 7.1.3, depending on its composition.

7.2 The Provider is referred to its additional reporting and compliance obligations under Schedule 9 (Accredited Provider Information), which include the requirement to report on Equality Issues as part of the overall Accredited Provider process operated on behalf of the Authority.

7.3 The Provider shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to the Authority pursuant to paragraph 7.1 of this Schedule 8.

## SCHEDULE 9

### ACCREDITED PROVIDER INFORMATION

#### PROVIDER ACCREDITATION INFORMATION

1. This Schedule highlights documentation which is deemed appropriate to be part of the Contract.
2. The Authority will only award contracts over £50,000 to organisations that have been through the accreditation process delivered by Momenta <sup>TM</sup> (or any other future contracted supplier) on behalf of the Authority. If remedial actions are identified for the Provider following the accreditation process, then these must be cleared within the timescales indicated by the Authority and/or Momenta <sup>TM</sup>. Failure to complete remedial action within the stated timescales shall constitute a "Serious Breach" under Clause 18 (Provider Default) and shall be dealt with under the corresponding provisions of Clause 18.
3. This Schedule (Provider Accreditation) shall be deemed to include the documents and information provided by the Provider in support of the initial and subsequent accreditation processes (including any and all subsequent clarification thereof). If any information supplied as part of an accreditation process is found to be incorrect, and such error could have materially affected the accreditation process, then accreditation shall be withdrawn.
4. Momenta <sup>TM</sup> will complete an annual review of all accredited providers. Providers must confirm during the course of such reviews whether information held in support of the last accreditation is correct, updating any relevant information as necessary. Providers must also supply any further information required by Momenta <sup>TM</sup> as part of the annual review, within the timescales indicated by Momenta <sup>TM</sup>. Failure to supply or update information will result in the withdrawal of accreditation.
5. If accreditation status is withdrawn by Momenta <sup>TM</sup> at any time this will constitute a "Serious Breach" to be dealt with under Clause 18.
6. Providers must notify Momenta <sup>TM</sup> immediately of any relevant changes to the information held by Momenta <sup>TM</sup>. Failure to do so may lead to withdrawal of accreditation status.
7. Information supplied as part of the accreditation process may be shared with other Government Departments or Public Authorities, including the Learning and Skills Councils (LSC).
8. The names of all accredited organisations, including contact details and type of provision being delivered will be published on the Accreditation Website.
9. For the avoidance of doubt the provisions of the paragraphs above shall apply on the same basis to any future supplier of the accreditation services or any modified version of the Provider Accreditation Service and Commercial Intelligence database notified to the Provider by the Authority from time to time.

## **SCHEDULE 10**

### **COMMERCIALLY SENSITIVE INFORMATION**

The information in this Schedule may have to be disclosed in response to a request under the FOIA as set out at Clause 14 of this Contract.

## SCHEDULE 11

### WELSH LANGUAGE SCHEME

This Schedule sets out the Provider's obligations which are applicable to the provision of the Programmes in Wales.

#### 10. GENERAL

- 10.1 The Provider acknowledges that in relation to the operation of its employment programmes which are delivered in Wales, the Authority must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.
- 10.2 In the performance of the Contract, the Provider shall ensure that it cooperates with The Authority wherever possible in satisfying this duty, by fully complying with the requirements of this Schedule 11.

#### 11. THE JOBCENTRE PLUS WELSH LANGUAGE SCHEME

- 11.1 The Jobcentre Plus Welsh Language Scheme is Annex E to the Department of Work and Pensions' Welsh Language Scheme and can be found at:

[http://www.dwp.gov.uk/publications/dwp/2004/wls/Annex\\_E.asp](http://www.dwp.gov.uk/publications/dwp/2004/wls/Annex_E.asp)

The Provider shall, in the delivery of the Programmes, ensure that it complies with the Jobcentre Plus Welsh Language Scheme and such instructions as The Authority may issue from time to time in respect of promoting the equality of the English and Welsh languages.

#### 12. DELIVERY OF PROGRAMMES THROUGH THE MEDIUM OF WELSH

- 12.1 The Provider undertakes that those who have dealings with them are able to do so in English or Welsh.
- 12.2 The Provider will ensure that:
- 12.2.1 Those who want, or are required, to correspond with the Provider will be able to do so in English or Welsh;
  - 12.2.2 Those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
  - 12.2.3 Any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
  - 12.2.4 Staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;
  - 12.2.5 Any answer phones in the Provider's offices in Wales will have a pre-recorded bilingual message;
  - 12.2.6 All people who partake in the Programmes are able to contribute through the medium of English or Welsh;

12.2.7 All material published and printed in Wales shall be available in English and Welsh. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;

12.2.8 All forms and explanatory material be available in both English and Welsh; and

12.2.9 Any complaints or grievance procedure should be provided in both English and Welsh.

13. **MONITORING**

13.1 The Contract Manager may from time to time monitor the Provider, in accordance with Clause 10 and Schedule 4 of this Agreement, to ensure that they are complying with the requirements of this Schedule 11.

## SCHEDULE 12

### SUSTAINABILITY

This Schedule sets out the Sustainability requirements which are applicable to the provision of the Programme.

#### 1. GENERAL

- 1.1 The Provider acknowledges that in relation to the operation of its employment programmes, the Authority must at all times be seen to be actively promoting Sustainability.
- 1.2 In the performance of the Contract, the Provider shall and shall use reasonable endeavours to procure that its subcontractors assist and cooperate with the Authority where possible in satisfying this duty, by fully complying with the requirements of this Schedule 12.

#### 2. COMPLIANCE

- 2.1 The provider shall produce a policy statement and sustainable development plan in accordance with DWP guidance and clauses 2.2 and 2.3, within 6 (six) months of the project start date.
- 2.2 In the performance of the contract the Provider shall prepare a policy statement giving:
  - 2.2.1 full assurance of waste disposal by a registered waste collector in accordance with current government regulations.
  - 2.2.2 full assurance of the observation of WEEE regulations with regards to disposal of electrical equipment
- 2.3 In the performance of the Contract, the Provider shall prepare a sustainable development plan, in accordance with DWP guidance which as a minimum includes:
  - 2.3.1 details of how they will minimise waste produced and the promotion of recycling within their business
  - 2.3.2 details of how they will minimise energy consumption
  - 2.3.3 details of consideration of how they will minimise transport use and promoting the use of public transport
  - 2.3.4 details of a baseline assessment of their current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available.)
  - 2.3.5 annual estimates of the progress of their actions in accordance with DWP? guidance
  - 2.3.6 details of how staff awareness of sustainability will be increased in line with the sustainable development plan

**WITNESS TO THE PARTIES**

**Signed by** .....

Name .....

Position in Organisation .....

for and on behalf of ..... (the **“Provider”**)

in the presence of .....

Name .....

Date .....

**Signed by** .....

Name .....

Date .....

Position in Organisation .....

for and on behalf of The Secretary of State for Work and Pensions (**“The Authority”**)

in the presence of .....

Name .....

Date .....