

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]]

Flexible New Deal - Phase 1

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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 '**Prime Contractor**');]

OR

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

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

RECITALS

The Prime Contractor has agreed to provide the Provision 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 Prime Contractor shall carry out the full service Provision with effect from the relevant Commencement Date(s) set out in Schedule 2 for a period of [5] [years] after the relevant Commencement Date, and elements of the Provision for an additional 2 years as set out in Schedule 2, subject to earlier termination of this Contract, or of the relevant Provision, 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 Provision.

2.2 The Authority may, with the agreement of the Prime Contractor:-

2.2.1 extend the period of any one or more Provision by one or more periods

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

PART 3 – THE SERVICES

3. PRIME CONTRACTOR OBLIGATIONS

3.1 The Prime Contractor shall promptly and efficiently provide each Provision in accordance with:

- 3.1.1 the Specification;
- 3.1.2 Good Industry Practice;
- 3.1.3 the Provider Guidance;
- 3.1.4 the DWP Code of Conduct
- 3.1.5 all applicable Laws;
- 3.1.6 the Tender

3.2 The Prime Contractor shall comply with Schedule 11 in relation to those Provisions which it delivers in Wales under this Contract.

3.3 The Prime Contractor shall not in the performance of this Contract:

3.3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, gender re-assignment, marital or civil partnership status, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

3.3.2 The Contractor shall take all reasonable steps to secure the observance of clause 3.3.1 by all Staff.

3.3.3 contravene Part IV of the Race Relations Act (Other Unlawful Acts); or

3.3.4 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of:

- (a) disability, age, sexual orientation, gender re-assignment, marital or civil partnership status, religion or belief; or
- (b) any criterion which is unlawful under the applicable Laws

and any breach by the Prime Contractor of Clauses 3.3.1 to 3.3.4 above shall be a Serious Breach for the purposes of Clause 18 (Prime Contractor Default).

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

3.5 The Prime Contractor is responsible for obtaining all information necessary for carrying out its obligations under this Contract. The Prime Contractor 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 Prime Contractor (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 Prime Contractor shall comply with the information, accounting and other provisions set out or referred to in the Schedules. In particular the Prime Contractor acknowledges that the keeping of such records is necessary for the Authority to verify the Prime Contractor's entitlement to payment under this Contract.
- 3.7 The Prime Contractor 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 Prime Contractor understands that the effectiveness of the Prime Contractor's delivery of the Provision(s) will be measured against general and specific performance targets agreed in writing between the Authority and the Prime Contractor from time to time (such agreement not to be unreasonably withheld or delayed). In delivering the Provision(s) the Prime Contractor shall be under an obligation to meet such general and specific performance targets. If the Prime Contractor fails to meet all or any such targets, the Authority shall be entitled to serve notice on the Prime Contractor in accordance with Clause 18 (Prime Contractor Default).
- 3.8 The Prime Contractor acknowledges that the continuity of the Provision(s) for Participants is of paramount importance. The Prime Contractor 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 Prime Contractor shall, and shall procure that its employees, agents and sub-contractors, comply with the "the Authority Accuracy of Information Standards" (as notified to the Prime Contractor by the Authority from time to time) concerning the provision of information, general and specific advice. Under no circumstances should the Prime Contractor 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 Provision 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 Prime Contractor has supplied full and proper delivery of the Provision(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 provide the Prime Contractor with a copy of the Flexible New Deal Provider Guidance prior to or upon signature of the Contract. Any changes by the Authority to the Provider Guidance during the term of the Contract shall be reasonable in all circumstances.

5. CHANGE CONTROL

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

- 5.2 The Prime Contractor 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 Provision(s);
 - 5.3.2 additions to any part of the Provision(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 Provision(s).
- 5.4 The Change Control Request shall:
- 5.4.1 set out the change to the Provision(s) required by the Authority in sufficient detail to enable the Prime Contractor to provide an estimate in accordance with Clause 5.5 below; and
 - 5.4.2 request the Prime Contractor 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 Prime Contractor 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 Prime Contractor on:
- 5.5.1 the impact of the proposed change on the provision of the Provision(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 Prime Contractor'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; and
 - 5.5.4 any other information reasonably requested by the Authority or appearing to the Prime Contractor to be relevant.
- 5.6 As soon as practicable after the Prime Contractor provides the Authority with the Estimate, the Authority and the Prime Contractor shall meet to discuss and agree any issues arising from the Change Control Request or from the Estimate provided by the Prime Contractor.
- 5.7 If the Authority and the Prime Contractor 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 Provision(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 Prime Contractor in implementing the procedures pursuant to this Clause 5 save that the Authority shall be liable for the Prime Contractor'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 Provision(s) from time to time and such variations shall be agreed in writing between the Authority and the Prime Contractor. The Prime Contractor 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 Prime Contractor.

6. CITY STRATEGY

- 6.1 The Prime Contractor acknowledges that the Programme(s) set out in this Contract are delivered on behalf of the Authority as elements of the Government's New Deal programme.
- 6.2 The Prime Contractor further 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 (the "**Cities Initiative**") is implemented this may have a significant effect on some elements of the delivery of the New Deal programme. It is possible that implementation of the City Strategy may occur during the term of this Contract and that as a consequence of such implementation the scope of this Contract may need to be changed by the Authority.
- 6.3 The scope of the City Strategy is still under discussion as at the date of this Contract. Accordingly, the Authority undertakes to consult with the Prime Contractor regarding the potential impact on New Deal programmes (including this Contract) at such time as the scope of the City Strategy is further developed and/or finalised. The format and timing for such consultation shall be at the sole discretion of the Authority.
- 6.4 In order to implement any changes required to be made to New Deal as a result of the City Strategy, the Authority may, following completion of the above consultation exercise such of its rights under Clauses 22.4, 19.2 and/or Clause 5 as it sees fit. The Authority reserves the right to exercise all other rights under this Contract without recourse to the consultation process set out at Clause **Error! Reference source not found.**

7. VOLUMES

The Prime Contractor 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 Provision during the term of this Contract. Any levels or values of services referred to in the Schedules are indicative only and shall not be binding on the Authority.

8. PRIME CONTRACTOR'S EMPLOYEES AND SUB-CONTRACTORS

- 8.1 The Prime Contractor shall include in its contracts with suppliers or sub-contractors engaged for the purposes of providing the Provision(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 Prime Contractor 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 Prime Contractor 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 Prime Contractor shall at all times take reasonable steps to ensure compliance with this Clause 8.2.
- 8.3 The Prime Contractor shall satisfy itself that its employees and / or sub-contractors (and / or their respective employees) are suitable in all respects to provide the Provision(s).
- 8.4 The Prime Contractor 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 Prime Contractor shall upon becoming aware forthwith notify the Authority of any claim brought against the Prime Contractor arising out of or relating to the Prime Contractor's delivery of the Provision(s) including any claim made against any sub-contractor of the Prime Contractor.

PART 4 – CONTRACT MANAGEMENT

9. CONTRACT MANAGEMENT

- 9.1 The Prime Contractor shall appoint a named Prime Contractor Manager who shall co-operate with the Authority's Contract Manager to ensure that the Provision(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 Prime Contractor Manager or Contract Manager (as appropriate) and of any subsequent replacement.
- 9.3 The Prime Contractor shall promptly comply with all reasonable requests or directions of the Authority in respect of this Contract.
- 9.4 The Prime Contractor shall address any enquiries or notify any difficulties about procedural or contractual matters to the Contract Manager (to be confirmed by the Prime Contractor 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 Prime Contractor to resolve the difficulty which has arisen. In the event that the Prime Contractor 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 PRIME CONTRACTOR PERFORMANCE

- 10.1 The Authority shall monitor the Prime Contractor's performance of the Provision(s) in accordance with the provisions of Schedule 4 (Managing Performance). The Authority

will organise, regular monitoring and spot checks of the Prime Contractor's Sites at which the Prime Contractor delivers the Provision or any part of the provision, to ensure that the Prime Contractor is complying with its obligations under this Contract and the Prime Contractor 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 Prime Contractor's performance of the Provision(s) and the Prime Contractor will co-operate with the assessor and take all reasonable and necessary steps to implement recommendations made. Any changes to any Provision 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 Prime Contractor shall ensure that the Authority (and its authorised representatives) have access upon reasonable notice to all relevant property, including the 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 lawful access to information as may be required (for example but not by way of limitation under the Data protection Act 1998).
- 10.4 With effect from the date of this Contract the Authority and the Prime Contractor 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 Prime Contractor.

PART 5 – INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Prime Contractor 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 Prime Contractor 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 Provision(s) by the Prime Contractor in accordance with this Contract;

11.1.4 the Prime Contractor 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 Prime Contractor shall remain so owned;

11.2.2 the Prime Contractor hereby grants to the Authority a non-exclusive, non-transferable, royalty-free licence to use the Prime Contractor 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 Provision(s) in accordance with this Contract;

- 11.2.3 the Prime Contractor shall be responsible for paying all third party licence fees and/or support fees for the Prime Contractor Intellectual Property Rights for the period of this Contract.
- 11.3 The Prime Contractor 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 Prime Contractor 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 Prime Contractor shall assign to the Authority such Generated Intellectual Property Rights immediately on their creation. Subject to such assignment the Authority grants to the Prime Contractor 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 Provision in accordance with this Contract.
- 11.4 The Prime Contractor 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 Prime Contractor or any personnel employed or engaged by it at any time before, on or after the Commencement Date. The Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Provision(s) by the Prime Contractor.
- 12.2 The Prime Contractor shall promptly notify the Authority if any claim or demand is made or action brought against the Prime Contractor for infringement or alleged infringement of any Third Party Intellectual Property Rights which may affect the provision of the Provision(s).
- 12.3 The Authority shall promptly notify the Prime Contractor in writing of any claim or demand brought against the Authority to which Clause 12.1 may apply. The Prime Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any such claim for breach of Intellectual Property Rights and the Prime Contractor:

- 12.3.1 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;
 - 12.3.2 Shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 12.3.3 Shall take due and proper account of the interests of the Authority;
 - 12.3.4 Shall not settle or compromise any claim without the Authority's prior written consent (which will not be unreasonably withheld or delayed)".
- 12.4 The Authority shall at the request of the Prime Contractor afford to the Prime Contractor 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 Prime Contractor to which Clause 12.2 may apply. The Prime Contractor 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 Prime Contractor 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 Prime Contractor is likely to be made or brought, the Prime Contractor may at the Authority's option and at the Prime Contractor's own expense either:
- 12.6.1 modify any or all of the Provision(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 Provision(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 Provision(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 Prime Contractor under this Contract if such modification is not authorised by the Prime Contractor in writing; or
 - 12.7.2 any use by or on behalf of the Authority of the Provision(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 Prime Contractor has been unable to procure a licence in accordance with Clause 12.6.2, the Prime Contractor shall be liable for the value of the replacement Provision(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 Prime Contractor in performing the Services, and such Personal Data shall form part of Jobcentre Plus's Data.

13.2 The Prime Contractor shall at all times:

13.2.1 only use the Personal Data which it holds in connection with the provision of the Provision 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 Prime Contractor to carry out the Provision 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 Provisions 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 Prime Contractor in the provision of the Provision;

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 Prime Contractor including in a situation where the Authority is served with a subject access request under the DPA and the Authority informs the Prime Contractor in writing that this is the case.

13.3 In addition to the obligation at Clause 13.2 if the Prime Contractor 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 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 Prime Contractor and/or any sub-contractors and in this regard, the Prime Contractor shall procure that any sub-contractor complies with this obligation. Within thirty (30) calendar days of such request the Prime Contractor 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 Prime Contractor 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 Prime Contractor are not sufficient to ensure compliance with such obligations, the Prime Contractor shall take all steps which are reasonably required to ensure that such compliance is required.

- 13.5 The Prime Contractor 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 Prime Contractor.

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 Prime Contractor 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 Prime Contractor 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 Prime Contractor shall ensure that staff or its professional advisors or consultants are aware of the Prime Contractor's confidentiality obligations under this Contract.
- 14.5 The Prime Contractor 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 14.10 to 14.20 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 Prime Contractor:-
 - (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 Prime Contractor fails to treat Confidential 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 Prime Contractor should under this Clause 14 and clause 18.1 so that the Authority is in breach of its duties under either the FOIA or the Environmental Information Regulations, the Authority may terminate this Contract by notice in writing with immediate effect.

Freedom of Information

- 14.10 The Prime Contractor 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 Prime Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.
- 14.11 The Prime Contractor shall and shall procure that its sub-contractors shall:
- 14.11.1 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;
 - 14.11.2 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 specify) of the other Party requesting that Information; and
 - 14.11.3 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.
- 14.12 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or other Information:
- 14.12.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
 - 14.12.2 is to be disclosed in response to a Request for Information, and
- in no event shall the Prime Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 14.13
- 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 Prime Contractor in relation to any Request for information relating to this Contract.
- 14.15
- 14.16
- 14.17 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or other Information:
- 14.17.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
 - 14.17.2 is to be disclosed in response to a Request for Information, and
- in no event shall the Prime Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 14.18 The Prime Contractor acknowledges that the Authority 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:-

- 14.18.1 without consulting with the Prime Contractor; or
 - 14.18.2 following consultation with the Prime Contractor and having taken its views into account.
- 14.19 The Prime Contractor 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.
- 14.20 The Prime Contractor 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 14.18.

[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 Prime Contractor 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 Prime Contractor 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 Prime Contractor shall ensure that staff or its professional advisors or consultants are aware of the Prime Contractor's confidentiality obligations under this Contract.
- 14.6 The Prime Contractor 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 Prime Contractor:-
 - (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 Prime Contractor fails to comply with this Clause 14, the Authority reserves the right to terminate the 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 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 (2nd 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 Prime Contractor warrants and represents to the Authority that:
- 15.1.1 any goods supplied by the Prime Contractor pursuant to the delivery of any part of the Provision(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 Provision will be Euro Compliant;

- 15.1.2 the Prime Contractor 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 Prime Contractor;
- 15.1.3 the provision of the Provision(s), and the Authority's and each Participant's use thereof, shall not infringe any Third Party Intellectual Property Rights;
- 15.1.4 the Prime Contractor 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 Prime Contractor is aware the information contained in the Prime Contractor's Tender 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 Prime Contractor 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 Prime Contractor (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 Prime Contractor 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 Prime Contractor, (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 Prime Contractor whilst on the Authority premises shall be there at the risk of the Prime Contractor 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 Prime Contractor subject to the Participant complying with all reasonable instructions and directions which the Prime Contractor may issue to the Participant from time to time.
- 16.6 Except as set out in Clauses 16.1 to Clause 16.3 and Clause 40.6 (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 the greater of 100% of the amount payable by the Authority in respect of all Provision(s) to be delivered during that year or £ x million.

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 the right of the Authority to claim from the Prime Contractor for additional or unnecessary operational or administrative costs, expenses, expenditure or charges in each case as a result of any Default by the Prime Contractor or the right of the Prime Contractor to claim a reasonable termination charge under clause 19.6.6

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 Prime Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Prime Contractor arising out of the Prime Contractor's performance of its obligations under the Contract. It shall be the responsibility of the Prime Contractor to determine the amount of insurance cover that will be adequate to enable the Prime Contractor to satisfy all liabilities under the Contract, however such insurance shall cover all categories of claims which may be made on the Authority or losses incurred by the Authority in respect of breach of this Contract by the Prime Contractor and the amount of cover shall not be less than £x million. The provision of insurance or the amount of cover shall not relieve the Prime Contractor of any liabilities under the Contract."

17.2 The Prime Contractor shall hold employer's liability insurance in accordance with any requirement under and law from time to time in force. Where the Prime Contractor (or its sub-contractors) is a person or body exempted from the obligations of the Employers Liability (Compulsory Insurance) Act 1969, the Prime Contractor 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 Prime Contractor, 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 Prime Contractor 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. **PRIME CONTRACTOR DEFAULT**

18.1 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 Prime Contractor of its obligations hereunder which does not materially, adversely and substantially affect the performance or delivery of the Provision;
- 18.2.2 “Serious Breach” shall mean
- (a) any breach or a series of Minor Breaches by the Prime Contractor of its obligations hereunder which adversely, materially and substantially affects the performance or delivery of the Provision(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 Prime Contractor has failed to remedy that breach under Clause 18.4.2.
- 18.3 Any one instance of failure by the Prime Contractor 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 Prime Contractor via the Prime Contractor Manager specifying that it is a formal warning notice and giving reasonable details of the breach sufficient for the Prime Contractor to identify the breach;
- 18.4.2 within five (5) Working Days of receipt of notification under Clause 18.4.1 above, the Prime Contractor Manager shall meet with the Contract Manager to discuss why the breach has occurred and how it will be remedied. The Prime Contractor 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 Prime Contractor to promptly re-perform or replace the relevant part of the Provision 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 Prime Contractor via the Prime Contractor Manager giving reasonable details of the breach sufficient for the Prime Contractor to identify the breach and requiring the Prime Contractor Manager to meet with the Contract Manager forthwith;
- 18.5.2 upon receiving notification under Clause 18.5.1 above, the Prime Contractor 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 Prime Contractor 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 Prime Contractor as appropriate. In the event that a contingency plan is not available the Prime Contractor 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 Prime Contractor fails to meet any required action in a contingency plan or (ii) in the event that a contingency plan is not available and the Prime Contractor 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 Prime Contractor of its intention to terminate the relevant Provision in respect of which the aforesaid breach has occurred or to terminate the Contract as a whole.

18.6 The Authority shall notify the Prime Contractor in writing of the following:

18.6.1 the action it needs to take that is reasonably necessary to provide the Provision(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 Prime Contractor 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 Prime Contractor from providing any part of one or more Provisions:

18.7.1 the Prime Contractor shall be relieved of its obligation to provide such part of the Provision 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 Prime Contractor 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 Prime Contractor (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 Prime Contractor has demonstrated to the Authority' reasonable satisfaction that it can deliver the Provision 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 Prime Contractor, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988;

19.1.2 the Prime Contractor, being an individual or where the Prime Contractor 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 Provision(s) and/or the performance of the Prime Contractor'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 Prime Contractor 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 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.

- 19.4 Termination of the Contract 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, 21, 34, 35, 43 and 48. 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 Prime Contractor may by notice in writing to the Authority terminate this Contract or, at its option, the Provision 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 Prime Contractor of such breach.
- 19.6 On the expiry or termination of this Contract or any one or more Provision(s) :
- 19.6.1 the Prime Contractor shall repay forthwith to the Authority all moneys paid up to and including such date of termination other than moneys in respect of any Provision or part thereof properly performed in accordance with this Contract;
- 19.6.2 It is agreed by the parties that repayment by the Provider, where the Provider terminates early, shall be based on a calculation that takes into account what the Provider's entitlement would have been had payments by the Authority been made in equal instalments over the 5 year period of the contract;
- 19.6.3 the Prime Contractor shall promptly return to the Authority all Issued Property in its possession supplied in relation to the Contract or any one or more Provisions or Provisions being terminated, as directed by the Authority;
- 19.6.4 the Prime Contractor 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 Prime Contractor 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 Prime Contractor, in compliance with a request by the Authority under this Clause 19.6.4 transfers Participant Records then upon receipt by the Authority (or a relevant third party if applicable) of the Participant Records the Prime Contractor 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;
- 19.6.5 The Provider shall take all reasonable and necessary steps to reduce the costs and/or liabilities that may occur at the end of the contract. Where the Authority disputes that the Provider has taken all reasonable and necessary steps to reduce such costs and/or liabilities the matter shall be referred to the Dispute Resolution Procedure for determination
- 19.6.6 if requested by the Authority the Prime Contractor 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 Prime Contractor of any Third Party Intellectual Property Rights that are necessary for the continued performance of the Provision(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 Prime Contractor shall first notify the Authority. If the Authority informs the Prime Contractor that the transfer/granting of a licence should proceed the Authority shall (unless this Contract has been terminated due to the Prime Contractor'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 Prime Contractor has incurred without obtaining the Authority' prior approval; and

19.6.7 the Prime Contractor 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.

19.6.8 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 Provision(s), unless such termination or variation is based on the Authority considering that the Prime Contractor's performance is unsatisfactory, the Authority shall pay to the Prime Contractor a reasonable termination charge to compensate the Prime Contractor for unavoidable losses, which the Prime Contractor 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 Prime Contractor as a consequence of this Contract, which cannot be avoided, reduced, abated or mitigated. The Prime Contractor 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 Provision(s). Any sum due to the Authority under the Contract in respect of any liability of the Prime Contractor 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 Prime Contractor 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 Prime Contractor under this Clause 19.6.6) reasonably, proportionately and actually incurred by the Prime Contractor 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 Prime Contractor seeks recompense under this Clause 19.6.6 does not apply to a variation constituting a cessation of part of the Provision(s), where Clause 5.5 applies instead). If the Authority disputes the Prime Contractor'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 Prime Contractor within 30 days of the receipt by the Authority of a VAT invoice from the Prime Contractor 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 Provision(s) pursuant to Clause 5 except for a termination or variation based on the Authority considering that the Prime Contractor'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 Prime Contractor acknowledges that on termination or expiry of this Contract or of any one or more of the Provisions or Provisions for any reason, the continuity of the Provision or remaining Provisions is of paramount importance. Accordingly the Prime Contractor acknowledges that the Authority may, amongst other reasonable actions, suspend referral of Participants to a Provision(s) if, following service of notice to terminate this Contract or anyone or more of the Provisions by the Authority, the referral of further Participants to the relevant Provision(s) would be unfair to Participants because their participation in the Provision would, due to the length of the Provision, 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 Prime Contractor shall promptly provide assistance at no extra cost to the Authority. The Prime Contractor 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 Prime Contractor may be required:

20.2.1 to continue to deliver or procure the delivery of the Provision(s) until Participants have completed their participation on the Provision(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 Prime Contractor's obligations in respect of Participants whose participation on the Provision(s) has not been or will not be completed in accordance with Schedule 2 to an alternative Prime Contractor designated by the Authority.

20.3 The Prime Contractor 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 Provision (or its equivalent) or remaining Provisions (or their equivalent) upon the expiry or other termination of this Contract or of any one or more of the Provisions. The Prime Contractor 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 Prime Contractor undertakes to:-

(a) act fairly and in good faith at all times in connection with any re-tender process for provision of the Provisions (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 Provisions (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 Prime Contractor, the Authority and any Incoming Service Prime Contractor, leading up to and covering the

expiry or termination of this Contract and the transition process for the transfer of the provision of the Provisions (or their equivalent);

- (d) co-operate and liaise with any Incoming Service Prime Contractor appointed by the Authority to provide the Provisions (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 Prime Contractor which relate to:
 - (i) the performance, monitoring, management and reporting of the Provisions;
 - (ii) the terms and conditions of employment and the employment records of those of the Prime Contractor's employees who may be affected by the TUPE Regulations upon any transfer of responsibility for the provision of the Provisions (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 Provisions (or their equivalent).

20.4.2 the Prime Contractor 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 Prime Contractor 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 Prime Contractor'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 Prime Contractor in connection with the re-tender or transition process.

20.5 The Prime Contractor 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 Provision or remaining Provisions.

20.6 The Prime Contractor is referred to the ESF reporting obligations under Clause 40.3 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, for any period during the contract and prior to, and for a reasonable period after, the expiry or termination of this Contract, the Prime Contractor shall upon request by the Authority within the time specified by it and to the extent permitted by law, supply to the Authority (and the Incoming Service Provider should the information be requested by them,) all information reasonably required by the Authority (or the Incoming Service Provider) under Regulation 11 Transfer of Undertakings (Protection of Employment) Regulations 2006 including but not limited 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 Prime Contractor or the relevant sub-contractor is aware, and the Prime Contractor shall warrant that such information is true, complete and accurate in all material respects.

21.2 The Prime Contractor 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 Prime Contractor has given notice to terminate this Contract for whatever reason, the Prime Contractor 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 Prime Contractor shall indemnify and keep indemnified the Authority for itself and as trustee for the Incoming Service Prime Contractor (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 Prime Contractor of its obligations under Clause 21.3.

21.5 The Prime Contractor 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 Prime Contractor against all liabilities, costs and losses arising in connection with emoluments or outgoings arising prior to the Relevant Date or a failure by the Prime Contractor to discharge them. To the extent that the employment of such Relevant Employees does transfer to the Authority or the Incoming Service Prime Contractor, the Authority shall (or the Authority shall procure that the Incoming Service Prime Contractor 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 Prime Contractor shall) indemnify and keep indemnified the Prime Contractor 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 Prime Contractor to discharge them.

21.6 Where the Prime Contractor 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 Prime Contractor, then should the transfer of the Services (or part) to the Authority or Incoming Service Prime Contractor constitute a Relevant Transfer:-

- 21.6.1 the Prime Contractor shall indemnify the Authority, for itself or as trustee for the Incoming Service Prime Contractor, from and against:-
- (a) all liabilities, costs and losses arising in connection with any claim against the Authority or the Incoming Service Prime Contractor by any Relevant Employee arising from any act, fault or omission of the Prime Contractor 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, disability or any other form of 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 Prime Contractor 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 Prime Contractor or its sub-contractor to comply with their legal obligations in relation thereto under Regulations 10 and 15 of the TUPE Regulations or the Directive.
- 21.6.2 where the Relevant Transfer is to the Authority, the Authority shall indemnify the Prime Contractor in respect of:
- (a) all liabilities, costs and losses arising in connection with any claim against the Prime Contractor 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, disability or any other form of 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 Prime Contractor then the Authority shall procure that the Incoming Service Prime Contractor shall indemnify the Prime Contractor 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 Prime Contractor).

PART 10 – GENERAL PROVISIONS

22. ASSIGNMENT AND SUB-CONTRACTING

- 22.1 Elements of any Provision 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 Prime Contractor 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 Prime Contractor under this Contract; and
- 22.1.2 the Prime Contractor shall include and maintain provisions in 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 Prime Contractor any issues raised by the sub-contractor; and
 - (b) the Prime Contractor 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 Prime Contractor'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 Prime Contractor under this Clause 22.1 or otherwise, and no approval or consent by the Authority in relation thereto, shall relieve the Prime Contractor of any liability or obligation under this Contract. The Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor, 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 Prime Contractor 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 Prime Contractor which relates to the performance of the Provision(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 Provision(s) the Prime Contractor 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 Prime Contractor shall at all times provide the Provision 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 Prime Contractor'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 Provision(s) by the Prime Contractor or its sub-contractors.

24.2 The Prime Contractor shall undertake the marketing and communications activities as set out in Schedule 2 (The Provision). The Prime Contractor's marketing and communications activities shall support the Authority's objectives in contracting for the Provision(s).

24.3 If so requested by the Authority the notepaper and other written material of the Prime Contractor and their sub-contractors relating to the delivery of the Provision(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 Provision(s) or services ("Trade Mark") from time to time. All publicity and marketing material produced by the Prime Contractor (or its sub-contractors) in relation this Contract and or the Provision(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 Prime Contractor shall not make any public statement with regard to the Provision or this Contract without the prior approval of the Authority. For the avoidance of doubt, this is not intended to prevent the Prime Contractor from making internal announcements to staff and sub-contractors about the Provision or Contract; nor is it intended to prevent the Prime Contractor 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 Prime Contractor shall at all times:

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

25.1.2 when requested by the Authority, provide a summary of any of the costs of performing each Provision 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

Provision(s) and effectiveness with which the Prime Contractor has used the Authority's resources in the performance of this Contract.

- 25.2 The Prime Contractor 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 Prime Contractor 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 Prime Contractor (or its sub-contractors) in order to obtain appropriate oral explanations of documents and the Prime Contractor 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 Prime Contractor to provide the Provision(s) and to be given free access to the Prime Contractor's staff (and / or its sub-contractors' staff) and to Participants during the hours when the Prime Contractor is providing the Provision(s) with a view to verifying that the Prime Contractor is providing the Provision(s) in accordance with this Contract.
- 25.5 The Prime Contractor 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 Prime Contractor or any third party in relation to the Provision(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 Prime Contractor 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 Prime Contractor 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 Prime Contractor, its servants, agents or sub-contractors.

26. **RECORDS**

- 26.1 The Prime Contractor 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 Prime Contractor and any sub-contractors appointed by it shall maintain records until at least 31 December 2014.
- 26.2 During the period(s) referred to above, the Prime Contractor 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 Prime Contractor shall ensure that any contracts with sub-contractors include obligations reflecting the requirements of the Authority under this Clause 26.

26.4 The Prime Contractor 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 Prime Contractor 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 Provision in accordance with this Contract and for no other purpose whatsoever, except with the prior written approval of the Authority.

27.2 The Prime Contractor 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 Prime Contractor shall be responsible for the safe custody of Issued Property and its prompt return upon expiry or termination of the relevant Provision for which the Issued Property was issued to the Prime Contractor 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 Prime Contractor 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 Prime Contractor, nor any sub-contractor, nor any other person, shall have a lien on any Issued Property for any sum due to the Prime Contractor, sub-contractor or other person, and the Prime Contractor 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 Prime Contractor shall (at no additional cost to the Authority) throughout the term of this Contract make all necessary changes to the Provision(s) to take account of and remain compliant with all applicable changes in Law.

29. **DISCLOSURE OF INFORMATION**

The Prime Contractor agrees, in relation to each Provision 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 Provision), 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 Prime Contractor 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 Prime Contractor is drawn to the Prevention of Corruption Acts 1889 to 1916. Any offence committed by the Prime Contractor, 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 Prime Contractor the amount of any loss resulting from such termination and/or to recover from the Prime Contractor the amount or value of any gift, consideration or commission.

31. **HEALTH AND SAFETY**

- 31.1 The Prime Contractor 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 Prime Contractor is providing the Provision(s).
- 31.2 The Prime Contractor 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 Provision(s).
- 31.3 The Prime Contractor 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 Prime Contractor shall inform the Authority immediately of any changes to the circumstances reflected in the health and safety information submitted by the Prime Contractor 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 Prime Contractor shall ensure that where relevant its sub-contractors comply with all obligations on the Prime Contractor 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 Prime Contractor, 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Provision(s).

34. **FRAUD**

- 34.1 The Prime Contractor shall use its best endeavours to safeguard the Authority's funding of the Provision(s) against fraud generally and, in particular, fraud on the part of the Prime Contractor's directors, employees or sub-contractors. The Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor (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 Prime Contractor, by serving written notice on the Prime Contractor.

35. **STATUS OF PRIME CONTRACTOR**

- 35.1 In carrying out its obligations under this Contract the Prime Contractor agrees that it shall be acting as principal and not as the agent of the Authority. The Prime Contractor shall not say or do anything that may lead any other person to believe that the Prime Contractor 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 6 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 Prime Contractor 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 Prime Contractor 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 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 The Prime Contractor 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 Prime Contractor 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 Prime Contractor shall provide a copy of its formal publicity policy clearly setting out the publicity arrangements used by the Prime Contractor and its sub-contractors (if any). Whether or not a copy of the foregoing policy is requested by the Authority, the Prime Contractor shall retain copies of its policy (as revised from time to time) as part of the Prime Contractor's record keeping obligations under Clause 26.

40.3 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:

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

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

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

40.4 The Prime Contractor 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 Prime Contractor agrees that time shall be of the essence in relation its obligation under Clause 40.3 above.

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

40.6 The Prime Contractor 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 Prime Contractor of this Clause 40. The Prime Contractor'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 Prime Contractor 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 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown or any Minister or emanation of the Crown.

42. **NOTICES / COMMUNICATIONS**

42.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

42.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause A6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given [2] Working Days after the day on which the letter was posted, or [4] hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

42.3 For the purposes of clause 42.2, the address of each Party shall be:

(a) For the Authority:
[]
[Address:]
[]
For the attention of:
Tel:
Fax:
Email:

(b) For the Prime Contractor:
[]
[Address:]
[]
For the attention of:
Tel:
Fax:
Email:

42.4 Either Party may change its address for service by serving a notice in accordance with this clause.

43. DISPUTE RESOLUTION PROCEDURE

In the event of any dispute arising between the Authority and the Prime Contractor in relation to the Provision which cannot be resolved directly by the parties, employing the most pragmatic but mutually convenient means, 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 Prime Contractor 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 Prime Contractor at nil charge to the Authority.

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

46. **THE AUTHORITY'S PREMISES**

- 46.1 If any of the Authority's Premises are made available to the Prime Contractor 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 Prime Contractor solely for the purpose of performing its obligations under this Contract. The Prime Contractor 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 Provision, the Authority Premises being used for the provision of that Provision, at the request of the Authority, and in either case shall hand over all keys and security passes to the Authority.
- 46.2 The Prime Contractor 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 Prime Contractors.
- 46.3 The Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor shall take all reasonable steps to prevent that person being admitted.

47. **ENVIRONMENTAL REQUIREMENTS**

The Prime Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Department's environmental principles, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances, minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

48. **LAW AND JURISDICTION**

The Contract shall be governed by and interpreted in accordance with English or Welsh law depending upon the place of delivery of the Provision and the Parties submit to the jurisdiction of the courts of England and Wales. Each Party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

SCHEDULE 1

DEFINITIONS AND INTERPRETATIONS

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| "Additional Services" | means any additional services to be provided to the Authority in accordance with Clause 5; |
| "Commencement Date" | means the date from which the Prime Contractor is to provide each of the Provisions as specified in the relevant annexes to Schedule 2; |
| "Commercially Sensitive Information" | means the subset of Confidential Information listed in Schedule 10 comprised of information: (a) which is provided by the Prime Contractor to the Authority in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret |
| "Confidential Information" | 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, Provision(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 |
| "Contract" | means this Contract including the clauses and schedules and any document referred to herein, including, for the avoidance of doubt, the Provider Guidance; |
| "Contract Area" | means the geographical area in which the Prime Contractor must provide the Provision(s) to Participants, the boundaries of which are set out in the Annexes of Schedule 2 (Provision Specification) although Participants may come from outside this area; |
| "Contract Manager" | means the person or persons appointed by the Authority who will act in its interests; |
| "Contracting Authority" | means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Authority. |
| "Crown" | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, |

commissions or agencies from time to time carrying out functions on its behalf.

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| "Data Controller" | shall have the meaning given to it under the DPA; |
| "DPA" | means the Data Protection Act 1998 (as amended); |
| "Default" | 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; |
| "Directive" | means the Acquired Rights Directive 77/187 (as amended, re-enacted or extended from time to time) |
| "Dispute Resolution Procedure" | means the procedure detailed in Schedule 7 for resolving disputes that may arise between the Parties in connection with this Contract; |
| "Environmental Information Regulations" | means the Environmental Information Regulations 2004 |
| "Euro Compliant" | 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; |
| "FOIA" | 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 |
| "Good Industry Practice" | means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances |
| "Generated Intellectual Property Rights" | means any and all Intellectual Property Rights generated, developed, created or produced by or on behalf of the Prime Contractor for or in connection with the delivery of the Provision(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 Prime Contractor Intellectual Property Rights subsist (which were or are carried out by or on behalf of the Prime Contractor for or in connection with the delivery of the Provision(s));

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| "Incoming Service Prime Contractor" | means any contractor appointed (or to be appointed) by the Authority to provide the Provisions (or their equivalent) on expiry or termination of this Contract |
| "Information" | has the meaning given under section 84 of the Freedom of Information Act 2000 |
| "Intellectual Property Rights" | 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, 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); |
| "Issued Property" | means all items of property belonging to, lent to, leased by or rented by the Authority and issued to the Prime Contractor for the purposes of the provision of the Provision(s) including any item purchased by the Prime Contractor and subsequently paid for as an identified item by the Authority; |
| "Job Outcome" | means a job comprising at least 16 hours work per week and expected to last at least 13 weeks at the time it is started; |
| "The Authority Intellectual Property Rights" | means any and all Intellectual Property Rights owned by the the Authority in Materials which the Prime Contractor requires to use in connection with this Contract for the purpose of delivering the Provision(s); |
| "Law" | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply. |
| "Management Information" | means the information required from the Prime Contractor in connection with each Provision as set out in Schedule 3; |
| "Materials" | 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 Provision(s) and for the avoidance of doubt, Participant Records (in whatever form) shall be Materials;

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| “Tender” | | means the Prime Contractor’s statement as to how it will deliver each of the Provisions to be delivered under this Contract, as set out in Schedule 2; |
| “Participants” | | means the persons on the Provision(s) run by the Prime Contractor and directly receiving the services specified in this Contract; |
| “Participant’s Records” | | means the records prepared and maintained by the Prime Contractor (in whatever form or storage media) concerning an individual Participant; |
| "Personal Data" | | shall have the meaning given to it under the DPA; |
| "Sub-Contractor" | | means any sub-contractor appointed by the Prime Contractor under Clause 22 which through its employees or agents directly provides Provision services to Participants; |
| "Data Processor" | | shall have the meaning given to it under the DPA; |
| “Provision” | | means a Provision for the delivery of goods and services the details of which are more fully described in Schedule 2 (The Provision) to this Contract and the relevant Annex to that Schedule. For the avoidance of doubt, the Prime Contractor may be delivering one or more Provisions under the terms of this Contract; |
| "Flexible New Deal Provider Guidance" | | 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 Prime Contractor from time to time; |
| "Prime Intellectual Rights" | Contractor Property | 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 Prime Contractor or licensed to the Prime Contractor by a third party; |
| "Prime Manager" | Contractor | means the person appointed by the Prime Contractor as described in Clause 9.1; |
| “Provision” | | means a defined element or elements of a Provision; |
| “Qualification” | | means a qualification as defined in Schedule 2, where appropriate; |
| “Region” | | means Jobcentre Plus Region [Name]; |
| "Relevant Date" | | means in respect of any Relevant Employees the date of a Relevant Transfer from the Prime Contractor to |

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| | the Authority or an Incoming Service Prime Contractor |
| "Relevant Employee" | means those employees of the Prime Contractor or of any sub-contractors who are wholly or substantially engaged in the provision of the Provisions (in whole or in part) that reverts to the Authority or transfers to an Incoming Service Prime Contractor (as the case may be) as at the Relevant Date |
| "Relevant Transfer" | means a relevant transfer for the purposes of the TUPE Regulations or the Directive |
| "Requests for Information" | shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations |
| "Sensitive Personal Data" | shall have the meaning given to it under the DPA; |
| "Site" | means any premises from where the Provision(s) is provided or from which the Prime Contractor manages, organises or otherwise directs the provision or the use of the Provision(s), including for the avoidance of doubt any such premises used by the Prime Contractor's agents or sub-contractors from time to time; |
| "Short Job Outcome" | means a job that: <ul style="list-style-type: none"> • involves a minimum of 16 hours work per week • involves continuous employment lasting 13 weeks (no breaks in employment); • started prior to completing allotted time with the Supplier or within six weeks of completing the allotted time. |
| "Specification" | means the Authority's specification for the Provision referred to in Schedule 2; |
| "Sustained Job Outcome" | Means a job that: <p>involves a minimum of 16 hours per week, where the customer is in employment for at least 26 weeks out of 30.</p> <p>Breaks in employment must total no more than four weeks and the job must be started prior to completing the allotted time with the Supplier or within six weeks of completing the allotted time.</p> |
| "Third Party Intellectual Property Rights" | means any Intellectual Property Rights owned by third parties; |

- "Tracking Period"** means the six week period (or such other period as the Authority shall agree with the Prime Contractor from time to time) during which the Prime Contractor is required (as detailed in Schedule 5) to track the destination to which the Participant leaves the Provision. This period starts on the date the relevant Participant leaves the Provision, or in relation to the final claim provisions of Schedule 5 Paragraph 20.2, the date on which the Contract expires or terminates;
- "Trade Mark"** means any trading name, brand name, style, logo or mark which is directly related to or is created in respect of the Provision(s) whether created by the Authority or the Prime Contractor and whether registered or not;
- "TUPE Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 1981, as amended;
- "Voluntary and Community Sector"** means registered charities, voluntary and community organisations as well as non-charitable, non-profit organisations and associations, self-help groups and community groups;
- "Working Day"** 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 Prime Contractor 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 Tender in establishing the nature and quality of the services to be provided by the Prime Contractor 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 PROVISION

1. This Schedule sets out the requirements which are applicable to the provision of the Provisions.
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 PROVISION/SERVICE]

Commencement

1. The Prime Contractor shall carry out this Provision (Ref. No. [insert]) with effect from [enter date] ("Commencement Date") until "[enter date three years later]" subject to extension or early termination of this Provision 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 Tender (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 PROVISION/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 Provision/Provisions ^(delete if not appropriate) the Prime Contractor 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 Prime Contractor 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 Prime Contractor may, on achievement of the necessary defined outcomes, claim.

Agreed Performance Targets

2. The following performance targets relate specifically to the Provision described in Annex [*insert*] to Schedule 2.
- 2.1 [*DN: This Appendix may be used either as an appendix to each Provision 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 Provision.

GENERAL

1. During the term of this Contract, the Prime Contractor shall provide the Authority with information it requests from time to time to monitor and evaluate the success of the Provision and the Prime Contractor's management and delivery of it. The Prime Contractor 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 Provision, or defined elements of it together with when the Participants started ;
 - 1.2 number of Participants who leave the Provision, 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.
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 Prime Contractor including ad-hoc requests for information from time to time.
3. Where the Authority funds the delivery of this Contract using ESF funds the Prime Contractor shall regularly and accurately complete the ESF Management Information website as set out in the Authority Prime Contractor Guide at Chapter 12 Appendix 9 (or any such replacement guidance issued from time to time).
4. By the last Friday in January of each year of this Contract, the Prime Contractor shall provide the Authority with a report detailing the amount paid by the Prime Contractor 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 Prime Contractor 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 Provision.

1. **Reviewing Contract Performance**

- 1.1 The Prime Contractor 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 Provision).
- 1.2 The Prime Contractor shall work with the Authority to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract. The Prime Contractor 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 Prime Contractor 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 Prime Contractor will be expected to continuously improve the quality of the provision including that delivered by sub-contractors. Where quality falls below acceptable levels the Prime Contractor 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 Prime Contractor 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 Prime Contractor. 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 Prime Contractor Performance Reviews and supporting monitoring activity.
- 1.5 Prime Contractor reviews may be undertaken formally or informally depending on risk and any identified issues. Risk ratings will be communicated to the Prime Contractor. The Prime Contractor 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 Prime Contractor Performance Reviews is to encourage an open and regular dialogue between the Parties with the purpose of ensuring that the Provision, 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 Prime Contractor will follow the Dispute Resolution Process detailed in Schedule 7.

- 1.7 The regular meetings between the Authority and the Prime Contractor 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 Prime Contractor'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 Prime Contractor against set standards (see below) and within the overall contract management approach as detailed above. Additionally, Prime Contractors will be subject to external inspection by Ofsted in England and Estyn in Wales. The Prime Contractor 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 Prime Contractors 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 Prime Contractor will continuously self assess against the Common Inspection Framework, recording actions in the Prime Contractor 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 Prime Contractors 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 Prime Contractor 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 Prime Contractors 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 Provisions, 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 Prime Contractor of services to Participants, the Prime Contractor 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 Prime Contractors 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 Authority representative does notice something on which they require

assurance or clarification, they shall raise this with the Prime Contractor or the Prime Contractor'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 Prime Contractor 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 Prime Contractors 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 Prime Contractors 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 Prime Contractor, supported by the results of testing undertaken.
- 5.1.3 Prime Contractors shall have systems in place (depending on the Provision type) to:
 - 5.1.4 detect and prevent duplicate claims;
 - 5.1.5 prepare and submit accurate, valid, supported, timely claims;
 - 5.1.6 monitor, record and manage lateness and all absences;
 - 5.1.7 support claims for on-Provision-payments through an effective attendance recording procedure;
 - 5.1.8 ensure that all the required evidence is collected (and submitted, where appropriate) to support the claim;
 - 5.1.9 identify Participants who have left the Provision ("Leavers") early to prevent over claiming;
 - 5.1.10 carry out effective monitoring of sub-contractors; and
 - 5.1.11 respond to FAM reports with an appropriate action plan.

6. **Access**

- 6.1.1 In all instances, the Prime Contractor 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 Provision and will follow at a later date.

SCHEDULE 6
PAYMENT SCHEDULE

This Schedule sets out the requirements which are applicable to the provision of the Provision(s) and will follow at a later date

SCHEDULE 6 - ANNEX 3

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 Acknowledgment (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 Acknowledgment. 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 Prime Contractor Manager. The Contract Managers and the Prime Contractor 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 Prime Contractor 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 Provision 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 twenty eight (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 Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor:
 - 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.

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4. **Equality Policy**

- 4.1 In the performance of the Contract and for the duration of this Contract, the Prime Contractor:
 - 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 **Error! Reference source not found.** of this Schedule 8 the Prime Contractor 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 **Error! Reference source not found.** (in each case in respect of the Prime Contractor'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 **Error! Reference source not found.** 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 **Error! Reference source not found.** above).

For the avoidance of doubt, any given subcontractor may fall into one, two or all of the categories listed under this Paragraph **Error! Reference source not found.**, depending on its composition.

7.2 The Prime Contractor 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 Prime Contractor 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 **Error! Reference source not found.** of this Schedule 8.

SCHEDULE 9

ACCREDITED PRIME CONTRACTOR INFORMATION

PRIME CONTRACTOR 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 TM (or any other future contracted supplier) on behalf of the Authority. If remedial actions are identified for the Prime Contractor following the accreditation process, then these must be cleared within the timescales indicated by the Authority and/or Momenta TM. Failure to complete remedial action within the stated timescales shall constitute a "Serious Breach" under Clause 18 (Prime Contractor Default) and shall be dealt with under the corresponding provisions of Clause 18.
3. This 0 (Prime Contractor Accreditation) shall be deemed to include the documents and information provided by the Prime Contractor 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 TM will complete an annual review of all accredited Prime Contractors. Prime Contractors 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. Prime Contractors must also supply any further information required by Momenta TM as part of the annual review, within the timescales indicated by Momenta TM. Failure to supply or update information will result in the withdrawal of accreditation.
5. If accreditation status is withdrawn by Momenta TM at any time this will constitute a "Serious Breach" to be dealt with under Clause 18.
6. Prime Contractors must notify Momenta TM immediately of any relevant changes to the information held by Momenta TM. 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 Prime Contractor Accreditation Service and Commercial Intelligence database notified to the Prime Contractor by the Authority from time to time.

SCHEDULE 10

COMMERCIALLY SENSITIVE INFORMATION

The information in this Schedule 10 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 Prime Contractor's obligations which are applicable to the provision of the Provisions in Wales.

1. GENERAL

- 1.1 The Prime Contractor acknowledges that in relation to the operation of its employment Provisions 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.
- 1.2 In the performance of the Contract, the Prime Contractor shall ensure that it cooperates with The Authority wherever possible in satisfying this duty, by fully complying with the requirements of this Schedule 11.

2. THE JOBCENTRE PLUS WELSH LANGUAGE SCHEME

- 2.1 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

The Prime Contractor shall, in the delivery of the Provisions, 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.

3. DELIVERY OF PROVISIONS THROUGH THE MEDIUM OF WELSH

- 3.1 The Prime Contractor undertakes that those who have dealings with them are able to do so in English or Welsh.
- 3.2 The Prime Contractor will ensure that:
- 3.2.1 Those who want, or are required, to correspond with the Prime Contractor will be able to do so in English or Welsh;
 - 3.2.2 Those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
 - 3.2.3 Any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
 - 3.2.4 Staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;
 - 3.2.5 Any answer phones in the Prime Contractor's offices in Wales will have a pre-recorded bilingual message;
 - 3.2.6 All people who partake in the Provisions are able to contribute through the medium of English or Welsh;

3.2.7 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;

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

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

4. **MONITORING**

4.1 The Contract Manager may from time to time monitor the Prime Contractor, 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

Environmental Requirements

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

1. General
 - 1.1 The contractor acknowledges that DWP is obliged to meet the Sustainable Operations on the Government Estate (SOGE) targets in accordance with clause 3.2.
 - 1.2 In the performance of the Contract, the Contractor shall, and shall use all reasonable endeavours to procure that its subcontractors, assist and cooperate with the authority in satisfying this duty, by fully complying with the requirements of Schedule 7.
2. Compliance
 - 2.1 When delivering the Services on the DWP estate, the Contractor shall, and shall use all reasonable endeavours to procure that its subcontractors, work with DWP to assist in making progress towards the SOGE targets.
 - 2.2 When delivering the Services outside the DWP estate the Contractor shall, and shall procure that its subcontractors, use all reasonable endeavours to comply with the principles set out in the SOGE targets.
 - 2.3 The Contractor shall produce a policy statement and sustainable development plan in accordance with appropriate DWP guidance and clauses 2.4 and 2.5, within 6 (six) months of the project start date.
 - 2.4 In the performance of the contract the Contractor shall prepare a policy statement giving:
 - 2.4.1 Full assurance of waste disposal by a registered waste collector in accordance with current government regulations.
 - 2.4.2 Full assurance of the observation of WEEE regulations with regards to disposal of electrical equipment
 - 2.5 In the performance of the Services, the Contractor shall prepare a sustainable development plan, in accordance with appropriate DWP guidance which as a minimum includes:
 - 2.5.1 details of how they will minimise waste produced and the promotion of recycling within their business
 - 2.5.2 details of how they will minimise energy consumption
 - 2.5.3 details of consideration of how they will minimise transport use and promoting the use of public transport
 - 2.5.4 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.)
 - 2.5.5 annual estimates of the progress of their actions in accordance with DWP guidance
 - 2.5.6 details of how staff awareness of sustainability will be increased in line with the sustainable development plan
3. Sustainable Operations on the Government Estate
 - 3.1 Background

In June 2006, the Prime Minister launched new targets for sustainable operations on the Government estate (SOGE).

The outcome-focused targets were agreed by central government Departments, and will apply to all central Government Departments, executive agencies and to Non-Departmental Government Bodies (NDPBs) on a case-by-case basis. These targets came into effect in the reporting year April 2006 – March 2007.

3.2 SOGE TARGETS

| |
|--|
| <p>CARBON EMISSIONS FROM OFFICES</p> <ul style="list-style-type: none"> • Reverse the current upward trend in carbon emissions by April 2007. • Reduce carbon emissions by 12.5% by 2010/2011, relative to 1999/2000 levels. • Reduce carbon emissions by 30% by 2020, relative to 1999/2000 levels. |
| <p>CARBON EMISSIONS FROM ROAD VEHICLES</p> <ul style="list-style-type: none"> • Reduce carbon emissions from road vehicles used for Government administrative operations by 15% by 2010/2011 relative to 2005/2006 levels. • Achieve carbon emissions of 130g/km CO² or lower for new road vehicles used for Government administrative operations by 2010/11 |
| <p>CARBON NEUTRAL</p> <ul style="list-style-type: none"> • Central Governments office estate to be carbon neutral by 2012. |
| <p>ENERGY EFFICIENCY</p> <ul style="list-style-type: none"> • Department's to increase their energy efficiency per m² by 15% by 2010, relative to 1999/2000 levels. • Department's to increase their energy efficiency per m² by 30% by 2020, relative to 1999/2000 levels. |
| <p>WASTE ARISING</p> <ul style="list-style-type: none"> • Departments to reduce their waste arisings by 5% by 2010, relative to 2004/2005 levels. • Departments to reduce their waste arisings by 25% by 2020, relative to 2004/2005 levels. |
| <p>RECYCLING</p> <ul style="list-style-type: none"> • Departments to increase their recycling figures to 40% of their waste arisings by 2010. • Departments to increase their recycling figures to 75% of their waste arisings by 2020. |

BIODIVERSITY

- Departments to meet or exceed the aim of having 95% of Sites of Special Scientific Interest (SSSI's) in sole ownership or control in target condition by 2010.

WATER CONSUMPTION

- Reduce water consumption by 25% on the office and non office estate by 2020, relative to 2004/2005 levels.
- Reduce water consumption to an average of 3m3 per person/per year for all new office builds or major office refurbishments.

WITNESS TO THE PARTIES

Signed by

Name

Position in Organisation

for and on behalf of (the "**Prime Contractor**")

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