

INSERT PROTECTIVE MARKING WHERE APPROPRIATE

DATED: [as appropriate] 200[]

THE SECRETARY OF STATE FOR WORK AND PENSIONS

(The Authority)

- and -

[COMPANY NAME]

[OR]

[NAME OF PARTNERSHIP OF [- TRADING AS]]

MODEL CONTRACT FOR WELFARE TO WORK SERVICES

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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** (hereinafter referred to as the Department for Work and Pensions or 'DWP') whose address is [address of Authority's Representative or]

Caxton House,

Tothill Street

London

SW1H 9DA ('The Authority'); and

(2) **[COMPANY NAME]** (No. []) whose registered office address is at [address] (the 'Provider');]

(and hereinafter called the 'Parties').

RECITALS

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

PART 1 – PRELIMINARY

IT IS AGREED as follows:-

1 INTERPRETATION

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

PART 2 – DURATION

2 COMMENCEMENT AND CONTINUATION

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

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

- 2.2.1 extend the period of any one or more Programme by one or more periods; and/or
- 2.2.2 add additional Programmes to Schedule 2.
- 2.3 The references to Programme(s) in this Contract shall be construed at any point in time according to whether the Provider is providing one or more Programmes (as the case may be).

PART 3 – THE SERVICES

3 PROVIDER OBLIGATIONS

- 3.1 The Provider shall promptly and efficiently provide each Programme in accordance with:
 - 3.1.1 the Specification;
 - 3.1.2 Good Industry Practice;
 - 3.1.3 the Provider Guidance;
 - 3.1.4 all applicable Laws;
 - 3.1.5 the Method Statement;
 - 3.1.6 the DWP Code of Conduct (to be advised)
- 3.2 The Provider shall comply with Schedule 12 in relation to those programmes which it delivers in Wales under this Contract.
- 3.3 The Provider shall in the performance of this Contract:
 - 3.3.1 not unlawfully discriminate either directly or indirectly, or by way of victimisation or harassment, against any person 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 Provider 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 take all reasonable steps to secure observance of clause 3.3.1 by all Staff;
and any breach by the Provider of Clauses 3.3.1 and 3.3.2 above shall be a Serious Breach for the purposes of Clause 20 (Provider Default).
- 3.4 The Provider shall provide each Programme in accordance with the Equality and Diversity Requirements under Schedule 8. Any breach by the Provider of Paragraphs 3 to 7 (inclusive) of Schedule 8 shall be a Serious Breach for the purposes of Clause 20 (Provider Default).
- 3.5 The Provider is responsible for obtaining all surveys and information necessary for carrying out its obligations under this Contract. The Provider shall not rely and shall

be deemed not to have relied on information provided by the Authority on matters covered by this Contract and, save in the case of fraudulent misrepresentation, the Authority shall not be liable to the Provider (whether in contract, tort, statute or otherwise) in respect of any inaccuracy, error, omission, defect or inadequacy of any kind whatsoever arising from, or contained in, any such information provided by the Authority.

- 3.6 The Provider shall comply with the information, accounting and other provisions set out or referred to in the Schedules. In particular the Provider acknowledges that the keeping of such records is necessary for the Authority to verify the Provider's entitlement to payment under this Contract.
- 3.7 The Provider acknowledges that it is of paramount importance to ensure that funds paid under this Contract are used effectively to assist Participants into long term employment. The Provider understands that the effectiveness of the Provider's delivery of the Programme(s) will be measured against general and specific performance targets agreed in writing between the Authority and the Provider from time to time (such agreement not to be unreasonably withheld or delayed). In delivering the Programme(s) the Provider shall be under an obligation to meet such general and specific performance targets. If the Provider fails to meet all or any such targets, the Authority shall be entitled to serve notice on the Provider in accordance with Clause 20 (Provider Default).
- 3.8 The Provider acknowledges that the continuity of the Programme(s) for Participants is of paramount importance. The Provider undertakes during the term of this Contract to use all reasonable endeavours to facilitate such continuity for Participants so far as it is able to do so.
- 3.9 The Provider shall, and shall procure that its employees, agents and sub-contractors, comply with the "the Authority Accuracy of Information Standards" (as notified to the Provider by the Authority from time to time) concerning the provision of information, general and specific advice. Under no circumstances should the Provider recommend a particular course of action to Participants, and Participants must be presented with all the available options.

4 THE AUTHORITY'S OBLIGATIONS

- 4.1 The Authority shall perform its responsibilities in relation to each Programme delivered under this Contract as set out in the Schedules.
- 4.2 The Authority shall comply with the provisions set out in Schedule 5 (Accounting Requirements) provided that the Provider has supplied full and proper delivery of the Programme(s) in accordance with this Contract, supported by full and accurate information and documentation to the reasonable satisfaction of the Authority.
- 4.3 The Authority shall use all reasonable endeavours to provide to the Provider all such information as the Provider reasonably requires in order to provide properly the Programme(s) and comply with its obligations under the terms of this Contract.

5 CHANGE CONTROL

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

- 5.2 The Provider shall accommodate any changes to the needs and requirements of the Authority provided that it shall be entitled to payment for any agreed additional costs it incurs as a result of any such changes on the basis set out in this Clause 5.
- 5.3 Without prejudice to the generality of the Authority's right to vary this Contract, such variations include, but are not limited to the following:
- 5.3.1 cessation of any part of the Programme(s);
 - 5.3.2 additions to any part of the Programme(s);
 - 5.3.3 change of the Authority's business or policies imposed by Her Majesty's Government;
 - 5.3.4 change of a business asset;
 - 5.3.5 quality of Programme(s).
- 5.4 The Change Control Request shall:
- 5.4.1 set out the change to the Programme(s) required by the Authority in sufficient detail to enable the Provider to provide an estimate in accordance with Clause 5.5 below; and
 - 5.4.2 request the Provider to provide the Authority with an estimate ("**the Estimate**") of the effect on the charges of the variation based on the Pricing Schedule in Schedule 6.
- 5.5 The Provider shall provide the Authority with the Estimate within ten (10) Working Days of the receipt of the Change Control Request or such longer period as is reasonable in all the circumstances. The Estimate shall include a statement of opinion of the Provider on:
- 5.5.1 the impact of the proposed change on the provision of the Programme(s); and
 - 5.5.2 any amendment required to this Contract or the Schedules to accommodate the proposed change including without limitation, any changes to the labour requirements and the key performance indicators; and
 - 5.5.3 (having regard to the Provider's general duty of cost efficiency under this Contract) the overall part year and/or full year cost of, savings from, implementing the proposed variation; and
 - 5.5.4 any other information reasonably requested by the Authority or appearing to the Provider to be relevant.
- 5.6 As soon as practicable after the Provider provides the Authority with the Estimate, the Authority and the Provider shall meet to discuss and agree any issues arising from the Change Control Request or from the Estimate provided by the Provider.
- 5.7 If the Authority and the Provider cannot agree any part of the content of the Estimate within a reasonable time of the meeting under Clause 5.6 then the Change Control Request may be withdrawn by the Authority if it deems it appropriate to do so in the particular circumstance.
- 5.8 As soon as practicable after any part of the contents of the Estimate have been agreed in accordance with Clause 5.6 above the Authority shall:

- 5.8.1 confirm in writing that it wishes to proceed with the Change Control Request (or that part of it which has been agreed or determined as above); or
- 5.8.2 withdraw the Change Control Request (or the relevant part).
- 5.9 If the Authority confirms that it wishes to proceed with the Change Control Request, the Programme(s) shall be deemed to have been amended accordingly. The annual cost of, or savings from, implementing the variation (as agreed or determined) shall be added to or deducted from the payments, as appropriate.
- 5.10 If the Authority has not confirmed or withdrawn the Change Control Request with twenty (20) calendar days of the date of agreement in accordance with Clause 5.6 above then the Change Control Request (or the relevant part) shall be deemed to have been withdrawn.
- 5.11 The Authority shall not be liable for any costs incurred by the Provider in implementing the procedures pursuant to this Clause 5 save that the Authority shall be liable for the Provider's reasonable costs where the Authority withdraws the Change Control Request.

Minor Variations

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

6 CITY STRATEGY

- 6.1 The Provider 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 Provider further acknowledges that if the City Strategy Partnership and Multi-Area Agreement areas are implemented in the Contract Package Area that 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 Partnership and Multi-Area Agreement 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 Authority undertakes to consult with the Provider regarding the potential impact on New Deal programmes (including this Contract). 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 Partnership or Multi-Area Agreements, the Authority may, following completion of the above consultation exercise such of its rights under Clauses 24.3, 21.3 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 6.3.

7 VOLUMES

- 7.1 The Provider acknowledges and has submitted its tender and price on the understanding that no guarantee is given by the Authority in respect of the number or

volume of Participants participating in the Programme during the term of this Contract. Any levels or values of goods and/or services referred to in the Schedules are indicative only and shall not be binding on the Authority.

8 PROVIDER'S EMPLOYEES AND SUB-CONTRACTORS

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

PART 4 – CONTRACT MANAGEMENT

9 CONTRACT MANAGEMENT

- 9.1 The Provider shall appoint a named Provider Manager who shall co-operate with the Authority's Contract Manager to ensure that the Programme(s) is or are delivered as specified in this Contract, that the quality of service is at least maintained, that required standards and performance levels are at least met and that management and other information is provided to the Authority as specified in this Contract.
- 9.2 Each Party shall promptly notify the other of the name of the Provider Manager or Contract Manager (as appropriate) and of any subsequent replacement.
- 9.3 The Provider shall promptly comply with all reasonable requests or directions of the Authority in respect of this Contract.

9.4 The Provider shall address any enquiries or notify any difficulties about procedural or contractual matters to the Contract Manager (to be confirmed by the Provider in writing if requested), or such other person as the Authority may nominate in his/her place. The Authority will then provide such advice and/or assistance as it reasonably can to help the Provider to resolve the difficulty which has arisen. In the event that the Provider and the Authority cannot resolve any difficulties, the Parties shall comply with the formal dispute resolution procedures set out in the Dispute Resolution Procedure.

10 MONITORING OF PROVIDER PERFORMANCE

10.1 The Authority shall monitor the Provider's performance of the Programme(s) in accordance with the provisions of Schedule 4 (Managing Performance). The Authority will organise, regular monitoring and spot checks of the Provider's Sites at any time to ensure that the Provider is complying with its obligations under this Contract and the Provider shall co-operate fully, at its own cost, with the Authority.

10.2 The Authority may also appoint an external assessor to participate in the monitoring of the Provider's performance of the Programme(s) and the Provider will co-operate with the assessor and take all reasonable and necessary steps to implement recommendations made. Any changes to any Programme made as a result of a recommendation of any such persons shall be made in writing and in accordance with Clause 41.

10.3 The Provider shall ensure that the Authority (and its authorised representatives) have access upon reasonable notice to all relevant property, including the Provider Sites, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in this Clause 10 including putting in place arrangements to permit legal access to information as may be required (for example under the Data Protection Act 1998).

10.4 With effect from the date of this Contract the Authority and the Provider shall meet at the times and with such frequency as specified in Schedule 4 (Managing Performance). Such meetings shall be convened by the Authority upon the Authority giving reasonable notice to the Provider.

PART 5 – INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

11 INTELLECTUAL PROPERTY RIGHTS

11.1 The Provider acknowledges that:

11.1.1 all Intellectual Property Rights owned at the date of this Contract by the Authority shall remain so owned;

11.1.2 any Intellectual Property Rights arising from the modification, adaptation or enhancement to any Materials in which the Authority Intellectual Property Rights subsist, shall belong to the Authority notwithstanding the identity of its creator and shall thereafter fall within the definition "the Authority Intellectual Property Rights";

11.1.3 The Authority hereby grants to the Provider a non-exclusive, non-transferable royalty-free licence to use the Authority Intellectual Property Rights in the UK only to the extent that and for so long as such use is strictly necessary for the delivery of the Programme(s) by the Provider in accordance with this Contract;

- 11.1.4 the Provider shall comply in all respects with the terms of any third party licence relating to the Authority Intellectual Property Rights;
- 11.1.5 The Authority shall be responsible for paying all third party licence fees and/or support fees for the Authority Intellectual Property Rights for the period of the Contract.
- 11.2 The Authority acknowledges that:
- 11.2.1 all Intellectual Property Rights owned at the date of this Contract by the Provider shall remain so owned;
- 11.2.2 the Provider hereby grants to the Authority a non-exclusive, non-transferable, royalty-free licence to use the Provider Intellectual Property Rights in the UK with the right to grant sub-licences only to the extent that and for so long as such use is strictly necessary for the delivery of the Programme(s) in accordance with this Contract;
- 11.2.3 the Provider shall be responsible for paying all third party licence fees and/or support fees for the Provider Intellectual Property Rights for the period of this Contract.
- 11.3 The Provider agrees that the Authority shall be legally and beneficially entitled to any and all Generated Intellectual Property Rights which shall include any Materials forming Participant Records. The Provider hereby assigns all such Generated Intellectual Property Rights to the Authority with full title guarantee. To the extent that it is not possible in law to assign any Generated Intellectual Property Rights created on or after the Commencement Date, the Provider shall assign to the Authority such Generated Intellectual Property Rights immediately on their creation. Subject to such assignment the Authority grants to the Provider a non-exclusive, non-transferable royalty-free licence to use those Generated Intellectual Property Rights in the UK only to the extent that and for so long as such use is strictly necessary for the delivery of the Programme in accordance with this Contract.
- 11.4 The Provider hereby irrevocably waives any and all moral rights under the Copyright, Designs and Patents Act 1988 in respect of any copyright works created as part of the Generated Intellectual Property Rights by the Provider or any personnel employed or engaged by it at any time before, on or after the Commencement Date. The Provider shall procure that all personnel employed or engaged by it in the creation of such works shall waive any and all moral rights under the Copyright, Designs and Patents Act 1988 in respect of such works without charge to the Authority.
- 11.5 The Provider warrants that it will obtain from each and every owner of Third Party Intellectual Property Rights in Materials it provides under this Contract a perpetual non-exclusive, irrevocable royalty-free licence with the right to grant sub-licences for the Authority to use, copy and modify all such Third Party Intellectual Property Rights.
- 11.6 The Provider shall upon the request of the Authority and at the Authority's expense, do all such things and execute (or procure the execution of) all such documents necessary to perfect and complete the Authority's title to any Intellectual Property Rights to which it is entitled under this Clause 11.

12 INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 12.1 The Provider shall indemnify the Authority against all claims, demands, actions, costs, (including legal costs and disbursements on a solicitor and client basis), and

- losses arising from or incurred by reason of any infringement or alleged infringement in the UK of any Intellectual Property Right in connection with provision of the Programme(s) by the Provider.
- 12.2 The Provider shall promptly notify the Authority if any claim or demand is made or action brought against the Provider for infringement or alleged infringement of any Third Party Intellectual Property Rights which may affect the provision of the Programme(s).
- 12.3 The Authority shall promptly notify the Provider if any claim or demand is made or action brought against the Authority to which Clause 12.1 may apply. The Provider shall at the Authority's option and at the Provider's expense conduct any dispute arising therefrom and all negotiations in connection therewith in accordance with all instructions provided by the Authority, and shall provide detailed reports to the Authority concerning the status of any dispute(s) within fourteen (14) calendar days of any such request by the Authority. The limitations on liability in Clause 22 shall not apply to the indemnities under Clauses 12.1 and 12.3.
- 12.4 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority to which Clause 12.1 may apply or any claim or demand made or action brought against the Provider to which Clause 12.2 may apply. The Provider shall reimburse the Authority for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 12.5 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 12.1 may apply or any claim or demand made or action brought against the Provider to which Clause 12.2 may apply.
- 12.6 If a claim or demand is made or action brought to which Clause 12.1 may apply or in the reasonable opinion of the Provider is likely to be made or brought, the Provider may at the Authority's option and at the Provider's own expense either:
- 12.6.1 modify any or all of the Programme(s) without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the Programme(s), so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Authority, such acceptance not to be unreasonably withheld; or
- 12.6.2 procure a licence from a third party to continue to deliver the Programme(s) on terms which are acceptable to the Authority.
- 12.7 The foregoing provisions of this Clause 12 shall not apply insofar as any such claim or demand or action is in respect of:
- 12.7.1 any modification carried out by or on behalf of the Authority to any item supplied by the Provider under this Contract if such modification is not authorised by the Provider in writing; or
- 12.7.2 any use by or on behalf of the Authority of the Programme(s) in a manner not reasonably to be inferred from the Specification or requirements of the Authority.
-

12.8 If a modification or substitution in accordance with Clause 12.6.1 above is not possible so as to avoid the infringement or the Provider has been unable to procure a licence in accordance with Clause 12.6.2, the Provider shall be liable for the value of the replacement Programme(s) or part thereof together with additional costs incurred in implementing and maintaining such replacements.

13 AUTHORITY DATA

13.1 The Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

13.2 The Provider shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Provider of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

13.3 To the extent that Authority Data is held and/or processed by the Provider, the Provider shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (The Programme).

13.4 The Provider shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

13.5 The Provider shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Provider shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than [period to be advised] monthly intervals.

13.6 The Provider shall ensure that any system on which the Provider holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

13.7 If the Data is corrupted, lost or sufficiently degraded as a result of the Provider's default so as to be unusable, the Authority may:

13.7.1 require the Provider (at the Provider's expense) to restore or procure the restoration of the Authority Data or Personal Data and the Provider shall do so as soon as practicable but not later than 24 hours; and/or

13.7.2 itself restore or procure the restoration of the Authority Data or Personal Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.

13.8 If at any time the Provider suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take.

14 PROTECTION OF PERSONAL DATA

14.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the Authority is the Data Controller and that the Provider is the Data Processor.

14.2 The Provider shall:

14.2.1 process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general

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nature as set out in this Agreement or as otherwise notified by the Authority to the Provider during the Term);

- 14.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 14.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 14.2.4 take reasonable steps to ensure the reliability of any Provider Personnel who have access to the Personal Data;
- 14.2.5 obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
- 14.2.6 ensure that all Provider Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 14;
- 14.2.7 ensure that none of Provider Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 14.2.8 notify the Authority (within [five] Working Days) if it receives:
 - a) a request from a Data Subject to have access to that person's Personal Data; or
 - b) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 14.2.9 provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - a) providing the Authority with full details of the complaint or request;
 - b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - c) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - d) providing the Authority with any information requested by the Authority;
- 14.2.10 permit the Authority or the Authority Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 27 Audit Access, the Provider's Data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Provider is in full compliance with its obligations under this Agreement

- 14.2.11 provide a written description of the technical and organisational methods employed by the Provider for processing Personal Data (within the timescales required by the Authority); and
- 14.2.12 not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with
- a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - b) any reasonable instructions notified to it by the Authority.
- 14.3 The Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

PART 6 – CONFIDENTIALITY AND FREEDOM OF INFORMATION

For use where the Authority is contracting with a body which is NOT subject to the FoIA.

15 FREEDOM OF INFORMATION

- 15.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 15.2 The Provider shall and shall procure that its Sub-contractors shall:
- 15.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;
 - 15.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within [five] Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - 15.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 15.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- 15.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 15.5 The Provider acknowledges that (notwithstanding the provisions of Clause 15) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:
- 15.5.1 in certain circumstances without consulting the Provider; or
- 15.5.2 following consultation with the Provider and having taken their views into account;
- 15.5.3 provided always that where 15.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 15.6 The Provider shall ensure that all Information is retained for disclosure [in accordance with clause 28 (Records)] and shall permit the Authority to inspect such records as requested from time to time.
- 15.7 The Provider acknowledges that the Commercially Sensitive Information listed in schedule 10 (Confidentiality Requirements) is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause 15.5.

16. CONFIDENTIALITY

- 16.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
- 16.1.1 treat the other party's Confidential Information as confidential[and safeguard it accordingly]; and
- 16.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 16.2 Clause 16.1 shall not apply to the extent that:
- 16.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 15 (Freedom of Information);
- 16.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 16.2.3 such information was obtained from a third party without obligation of confidentiality;
- 16.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- 16.2.5 it is independently developed without access to the other party's Confidential Information.

- 16.3 The Provider may only disclose the Authority's Confidential Information to the Provider Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Provider Personnel are aware of and shall comply with these obligations as to confidentiality.
- 16.4 The Provider shall not, and shall procure that the Provider Personnel do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Agreement.
- 16.5 [At the written request of the Authority, the Provider shall procure that those members of the Provider Personnel identified in the Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.]
- 16.6 Nothing in this Agreement shall prevent the Authority from disclosing the Provider's Confidential Information:
- 16.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies 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 Crown Body or any Contracting Authority;
 - 16.6.2 to any consultant, Provider or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
 - 16.6.3 or the purpose of the examination and certification of the Authority's accounts;
or
 - 16.6.4 for 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.
- 16.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Provider to whom the Provider's Confidential Information is disclosed pursuant to clause 16.6 is made aware of the Authority's obligations of confidentiality.
- 16.8 Nothing in this clause 16 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

PART 7 – WARRANTIES AND LIABILITY

17 WARRANTIES

- 17.1 The Provider warrants and represents that:
- 17.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Provider;
 - 17.1.2 in entering the Contract it has not committed any Fraud;

- 17.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- 17.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 17.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 17.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- 17.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 17.1.8 in performing its obligations under this Agreement, all Software used by or on behalf of the Provider will:
- a) be currently supported versions of that Software; and
 - b) perform in all material respects in accordance with its specification,
- 17.1.9 in the three 3 years prior to the date of the Contract:
- a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established]; and
- 17.1.10 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
- 17.2 For the avoidance of doubt the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Provider.
- 17.3 the Provider will not do anything (and shall ensure that none of its employees or other personnel do anything) which constitutes an offence under the Computer Misuse Act 1990, and that it has appropriate security measures in place to prevent/detect unlawful use of its IT systems;
- 17.4 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

- 17.5 that so far as the Provider is aware the information contained in the Provider's Method Statement document is true and accurate.
- 17.6 any goods supplied by the Provider pursuant to the delivery of any part of the Programme(s) shall be of satisfactory quality and fit for their purpose and shall be free from defects in design, material and workmanship and that any software supplied by it and/or used by it to provide the Programme(s) will be Euro compliant.
- 17.7 the Provider has full capacity and authority and all necessary licences to perform this Contract and that this Contract is executed by a duly authorised representative of the Provider.
- 17.8 the provision of the Programme(s) and the Authority's and each Participant's use thereof, shall not infringe any Third Party Intellectual Property rights.

18 INDEMNITY AND LIABILITY

- 18.1 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.
- 18.2 The Provider shall indemnify the Authority against all costs and losses (including legal costs and disbursements on a solicitor and client basis) arising from death or personal injury to any Participant or any other person caused by the negligent act or omission or wilful Default of the Provider (including any sub-contractors), except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.
- 18.3 The Provider shall indemnify the Authority against all costs and losses (including costs and disbursements on a solicitor and client basis) in respect of loss or damage to the Authority's Premises or to property whether belonging to the Authority or a Participant or otherwise given or made by any court of competent jurisdiction or mutually agreed as part of any settlement arising out of or in the course of or caused by the negligent act or omission or wilful Default of the Provider, (including any sub-contractors), except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.
- 18.4 All property of the Provider whilst on the Authority premises shall be there at the risk of the Provider and the Authority shall accept no liability for any loss or damage howsoever occurring to it, except to the extent (if any) that it was caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.
- 18.5 Responsibility for the control, management and supervision of all Participants shall rest entirely with the Provider subject to the Participant complying with all reasonable instructions and directions which the Provider may issue to the Participant from time to time. The Authority shall not be liable for any personal injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Participant, except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.

- 18.6 Except as set out in Clauses 18.1 to Clause 18.3 and Clause 42.8 (European Social Fund and other funding) in no event will the liability per single occurrence or series of directly connected occurrences of each Party for its Defaults in any year of this Contract, whether in contract, tort (including breach of statutory duty and negligence) or otherwise exceed greater than [sum to be advised].
- 18.7 Except as set out in Clauses 18.1 to 18.3 in no event shall either Party be liable to the other for:
- 18.7.1 loss of profits, business revenue or goodwill (whether direct or indirect); and
- 18.7.2 consequential or indirect loss.
- Provided that this Clause shall not be taken as limiting the right of the Authority to claim from the Provider for additional or unnecessary operational or administrative costs, expenses, expenditure or charges in each case as a result of any Default by the Provider.
- 18.8 The Parties expressly agree that should any limitation or provision contained in this Clause 18 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.

19 INSURANCE

- 19.1 The Provider shall ensure that it and its sub-contractors have at all times in force adequate and suitable insurance to cover all claims referred to in Clause 18 (Indemnity and Liability).
- 19.2 The Provider and its sub-contractors shall hold employer's liability insurance in accordance with any requirement under any law from time to time in force. Where the Provider (or its sub-contractors) is a person or body exempted from the obligations of the Employers Liability (Compulsory Insurance) Act 1969, the Provider shall not be required to carry insurance for which it is exempted by the said Act if alternative arrangements for meeting such liabilities are made to the satisfaction of the Authority.
- 19.3 The Provider, when requested, shall produce to the Authority certificates of insurance showing the actual coverage in force at the time of the request and shall give the Authority written notice before any such insurance is altered or cancelled. For the avoidance of doubt, the Provider shall not be entitled to receive any payment in respect of the cost of such insurances other than the payment of the fees set out in Schedule 6.

PART 8 – REMEDIES

20 PROVIDER DEFAULT

- 20.1 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.
- 20.2 For the purposes of this Clause 20 the following terms shall have the meanings set out below:

- 20.2.1 “Minor Breach” shall mean a delay or non-performance by the Provider of its obligations hereunder which does not materially, adversely and substantially affect the performance or delivery of the Programme;
- 20.2.1 “Serious Breach” shall mean
- a) any breach or a series of Minor Breaches by the Provider of its obligations hereunder which adversely, materially and substantially affects the performance or delivery of the Programme(s) (or adversely affects the health and safety of staff or Participants); or
 - b) a Minor Breach of a specific obligation in respect of which the Authority has served two consecutive Notices under Clause 20.4.1 concerning the same or similar circumstances from where the Provider has failed to remedy that breach under Clause 20.4.2.
- 20.3 Any one instance of failure by the Provider to meet any general or specific performance targets set pursuant to Clause 3.7 shall constitute Minor Breach whilst repeated or continual failure to meet such performance targets shall constitute Serious Breach.
- 20.4 In the event of a Minor Breach the Authority will adopt the following procedure:
- 20.4.1 the Authority shall serve notice on the Provider via the Provider Manager specifying that it is a formal warning notice and giving reasonable details of the breach sufficient for the Provider to identify the breach;
 - 20.4.2 within five (5) Working Days of receipt of notification under Clause 20.4.1 above, the Provider Manager shall meet with the Contract Manager to discuss why the breach has occurred and how it will be remedied. The Provider shall have a reasonable period (such period to be agreed, and in the absence of agreement to be no longer than twenty eight (28) calendar days) following such meeting to remedy the breach. Notwithstanding any other remedy under this Contract the Authority shall be entitled to require the Provider to promptly re-perform or replace the relevant part of the Programme without additional charge to the Authority.
- 20.5 In the event of a Serious Breach, the Parties shall adopt the following procedure:
- 20.5.1 the Authority shall serve written notice on the Provider via the Provider Manager giving reasonable details of the breach sufficient for the Provider to identify the breach and requiring the Provider Manager to meet with the Contract Manager forthwith;
 - 20.5.2 upon receiving notification under Clause 20.5.1 above, the Provider Manager shall meet with the Contract Manager forthwith to determine and agree in good faith and acting reasonably whether a contingency plan is available to deal with the Serious Breach. In the event that a contingency plan is activated, the Provider shall reimburse the Authority in respect of any costs incurred by the Authority in activating the same (as set out in the contingency plan) provided that the Authority shall do all things to mitigate such costs including by using the resources of the Provider as appropriate. In the event that a contingency plan is not available the Provider shall within five (5) Working Days (i) provide to the Authority a plan that, to the Authority's reasonable satisfaction, will when implemented resolve the breach; or (ii) remedy the breach itself;

- 20.5.3 In the event that (i) the Provider fails to meet any required action in a contingency plan or (ii) in the event that a contingency plan is not available and the Provider does not present a satisfactory alternative plan Clause 20.6 shall apply and/or at any time thereafter the Authority shall be entitled, at its discretion, to serve twenty eight (28) calendar days notice on the Provider of its intention to terminate the relevant Programme in respect of which the aforesaid breach has occurred or to terminate the Contract as a whole.
- 20.6 The Authority shall notify the Provider in writing of the following:
- 20.6.1 the action it needs to take that is reasonably necessary to provide the Programme(s);
- 20.6.2 the reason for such action;
- 20.6.3 the date it wishes to commence such action;
- 20.6.4 the time period which the Authority believes will be necessary for such action provided that the Authority shall limit the scope of such action and its duration to the minimum it reasonably considers necessary taking into account all the circumstances. Upon service of such notice The Authority shall take such action as notified under Clause 18.6.1 above, (the "Required Action") and the Provider shall give all reasonable assistance to the Authority while it is taking such Required Action.
- 20.7 For so long as and to the extent that the Required Action is taken which prevents the Provider from providing any part of one or more Programmes:
- 20.7.1 the Provider shall be relieved of its obligation to provide such part of the Programme carried out by the Authority under Clause 20.6 or otherwise prevented by the Required Action (subject to providing all reasonable assistance to the Authority under Clause 20.6 above); and
- 20.7.2 in respect of the period in which the Authority is taking the Required Action, the Authority shall be entitled to deduct from any sums due to the Provider under this Contract, an amount equal to the Authority' reasonable costs in taking the Required Action (including where relevant the costs of any sub-contractors), provided that the Authority shall do all things to mitigate such costs including by using the resources of the Provider (in each case as appropriate) .
- 20.8 The Authority shall at its discretion be entitled to continue the Required Action until the failure has been remedied and the Provider has demonstrated to the Authority' reasonable satisfaction that it can deliver the Programme without a material probability of repeating the failure.

21 TERMINATION

- 21.1 The Authority may at any time by giving notice in writing terminate this Contract as from the date of service of such notice if:
- 21.1.1 there is a change of control of the Provider, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988;
- 21.1.2 the Provider, being an individual or where the Provider is a firm any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or

administration order made against it or shall make any composition or arrangement with or for the benefit of its creditors, or shall make any conveyance or assignment for the benefit of its creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or in Scotland it shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of its estate, or a trust deed shall be granted by it for behalf of his creditors, or any similar event occurs under the law of any other jurisdiction; or

21.1.3 the Provider 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.

21.2 The Authority may only exercise its rights under Clause 21.1.1 within 6 months after the change of control occurs and shall not be permitted to do so where it has agreed in advance to any particular change in control. The Provider shall notify the Authority immediately when any change of control occurs.

21.3 Notwithstanding the provisions of Clause 2, the Contract or any one or more of the Programmes, or any one or more of the Provisions may be terminated at any time by the Authority by giving the Provider at least [period to be advised] notice in writing without the need to give any reason for the termination or other such period as may be agreed between the Parties. 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 21.6. For the avoidance of doubt, where a Party terminates any one or more Programme or Provision rather than the whole Contract,

the Contract shall continue in full force and effect in respect of the remaining Programmes and Provisions.

- 21.4 Termination of the Contract or of any one or more of the Programmes or Provisions shall not affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract including, in particular, Clauses 11, 12 14, 15, 16, 17, 18, 19, 21, 22, 36, 37, 45, 50. 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.
- 21.5 The Provider may by notice in writing to the Authority terminate this Contract or, at its option, the Programme to which the breach relates, if the Authority commits a breach of its payments obligations under this Contract (except to the extent that there is a dispute as to the relevant payment) and fails to remedy such breach within sixty (60) calendar days of written notification by the Provider of such breach.
- 21.6 On the expiry or termination of this Contract or any one or more Programmes or Provisions:
- 21.6.1 the Provider shall repay forthwith to the Authority all moneys paid up to and including such date of termination other than moneys in respect of any Programme or part thereof properly performed in accordance with this Contract;
- 21.6.2 the Provider shall promptly return to the Authority all Issued Property in its possession supplied in relation to the Contract or any one or more Programmes or Provisions being terminated, as directed by the Authority;
- 21.6.3 the Provider shall, if requested, transfer to the Authority (or to such other person as the Authority may direct) all Participant's Records or specific Participants Records as identified by the Authority. Where ownership of the Participant's Records is not vested in the Authority the Provider shall transfer, or procure the transfer of all rights, title and interest in and to the Participant Records to the Authority (or to the third party the Authority has directed as above) at no cost to the Authority (or the third party as the case may be). For the avoidance of doubt if the Provider, in compliance with a request by the Authority under this Clause 21.6.3 transfers Participant Records then upon receipt by the Authority (or a relevant third party if applicable) of the Participant Records the Provider shall be relieved of its obligations under Clause 28 in respect of the transferred records. Unless transferred under this Clause the Participant Records must be retained in accordance with Clause 28;
- 21.6.4 if requested by the Authority the Provider shall use all reasonable endeavours to ensure the transfer of any licences, or the granting of an appropriate licence or sub-licence, to the Authority or a replacement provider of any Third Party Intellectual Property Rights that are necessary for the continued performance of the Programme(s) following termination or expiry of this Contract. Where the owner of Third Party Intellectual Property Rights requires payment in consideration for transferring or granting such licences or sub-licences, as the case may be (a "**Transfer Fee**") the Provider shall first notify the Authority. If the Authority informs the Provider that the transfer/granting of a licence should proceed the Authority shall (unless this Contract has been terminated due to

the Provider's breach) be responsible for paying the Transfer Fee. For the avoidance of doubt the Authority shall have no liability for any Transfer Fee that the Provider has incurred without obtaining the Authority' prior approval; and

- 21.6.5 the Provider shall cease all use of all the Authority Intellectual Property Rights, Generated Intellectual Property Rights, and any Trade Mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same.
- 21.7 On termination of this Contract by the Authority as a result of any Default of the Provider the Authority may recover from the Provider a sum plus Value Added Tax, if applicable, representing the losses suffered by the Authority as a result of early termination, including the costs of re-procurement (as applicable) of the Programme and a sum representing the excess of the cost to the Authority of obtaining an equivalent Programme from a third party over the remainder of the term of the Contract determined by reference to and as a result of the re-tendering exercise conforming to the EU Public Procurement and other public sector procurement regulations and standards.

PART 9 – CONSEQUENCES OF EXPIRY OR TERMINATION

22 TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION AND ARRANGEMENTS LEADING UP TO IT

- 22.1 The Provider acknowledges that on termination or expiry of this Contract or of any one or more of the Programmes or Provisions for any reason, the continuity of the Programme or remaining Programmes is of paramount importance. Accordingly the Provider acknowledges that the Authority may, amongst other reasonable actions, suspend referral of Participants to a Programme(s) if, following service of notice to terminate this Contract or anyone or more of the Programmes by the Authority, the referral of further Participants to the relevant Programme(s) would be unfair to Participants because their participation in the Programme would, due to the length of the Programme, not have completed before the expiry of the notice to terminate.
- 22.2 Both before and for a reasonable time after termination or expiry of this Contract the Provider shall promptly provide assistance at no extra cost to the Authority. The Provider shall do its utmost to minimise disruption caused to Participants and assist with the implementation of any contingency plan proposed by the Authority to deal with the effects of such termination or expiry in so far as it is practicable to do so. At the option of the Authority the Provider may be required:
- 22.2.1 to continue to deliver or procure the delivery of the Programme(s) until Participants have completed their participation on the Programme(s) in accordance with Schedule 2 and where relevant the Authority shall continue to pay the fees in accordance with the provisions of Schedule 5 and Schedule 6; or
- 22.2.2 to transfer the Provider's obligations in respect of Participants whose participation on the Programme(s) has not been or will not be completed in accordance with Schedule 2 to an alternative provider designated by the Authority.

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

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

22.4.1 the Provider undertakes to:-

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

22.4.2 the Provider agrees to provide such information and data as is reasonably required by the Authority for the purpose of any re-tender or transition process, such information and data to be provided to such timetable or deadlines as the Authority reasonably requires; and

- 22.4.3 the Provider shall ensure that all information and data provided to the Authority in connection with any re-tender or transition process is accurate and complete in all material respects, to the best of the Provider's knowledge (having made due enquiry). This requirement shall apply to all the information that may be requested by the Authority and supplied by the Provider in connection with the re-tender or transition process.
- 22.5 The Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Authority to ensure an orderly transfer of responsibility for provision of the Programme or remaining Programmes.
- 22.6 The Provider is referred to the ESF reporting obligations under Clause 42.5 which may arise on expiry or termination of this Contract.

23 EMPLOYEE PROVISIONS ON EXPIRY OR TERMINATION

- 23.1 Without prejudice to the provisions of Clause 21, prior to, and for a reasonable period after, the expiry or termination of this Contract, the Provider shall upon request by the Authority and to the extent permitted by law, supply to the Authority all information reasonably required by the Authority as to the identity, date of commencement of employment, date of birth, job title, accrued holiday entitlement and terms and conditions of employment of any Relevant Employees and as to any disputes or potential disputes arising in connection with the employment of the Relevant Employees of which the Provider or the relevant sub-contractor is aware, and the Provider shall warrant that such information is true, complete and accurate in all material respects.
- 23.2 The Provider shall permit the Authority to disclose the information disclosed in accordance with Clause 23.1 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 23.1 and their trade union or employee representatives as the Authority may reasonably request.
- 23.3 During the period of six (6) months preceding the expiry of this Contract, or at any time after the Authority or the Provider has given notice to terminate this Contract for whatever reason, the Provider shall not (and shall procure that any sub-contractor shall not):-
- 23.3.1 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
- 23.3.2 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.
- 23.4 The Provider shall indemnify and keep indemnified the Authority for itself and as trustee for the Incoming Service Provider (or any other person to whom information is disclosed pursuant to Clause 23.2) from and against all liabilities, costs and losses

arising in connection with the provision of information under Clause 23.1 or any breach by the Provider of its obligations under Clause 23.3.

23.5 The Provider shall be responsible for all emoluments and outgoings in respect of the Relevant Employees (including, without limitation, all wages, holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and otherwise) arising prior to the Relevant Date and shall indemnify and keep indemnified the Authority for itself or as trustee for the Incoming Service Provider against all liabilities, costs and losses arising in connection with emoluments or outgoings arising prior to the Relevant Date or a failure by the Provider to discharge them. To the extent that the employment of such Relevant Employees does transfer to the Authority or the Incoming Service Provider, the Authority shall (or the Authority shall procure that the Incoming Service Provider shall) be responsible for all such emoluments and outgoings arising on or after the Relevant Date. the Authority shall (or shall procure that the Incoming Service Provider shall) indemnify and keep indemnified the Provider against all liabilities, costs and losses arising in connection with emoluments or outgoings arising on or after the Relevant Date or a failure by the Authority or the Incoming Service Provider to discharge them.

23.6 Where the Provider shall cease (for whatever reason) and whether directly or indirectly to provide the Services or any part of the Services, and the Services (or part) are thereafter provided by the Authority or an Incoming Service Provider, then should the transfer of the Services (or part) to the Authority or Incoming Service Provider constitute a Relevant Transfer:-

23.6.1 the Provider shall indemnify the Authority, for itself or as trustee for the Incoming Service Provider, from and against:-

- a) all liabilities, costs and losses arising in connection with any claim against the Authority or the Incoming Service Provider by any Relevant Employee arising from any act, fault or omission of the Provider or its sub-contractor or their staff as the case may be prior to the Relevant Date including any claim for breach of contract, redundancy, unfair dismissal, sex, race or disability discrimination, or any other claim within the jurisdiction of an employment tribunal or arising at common law, in tort or otherwise (in all cases whether arising under British or European law); and
- b) all liabilities, costs and losses incurred by the Authority or Incoming Service Provider arising in connection with or from any claim or proceedings by any trade union, elected employee representative or staff association in respect of any Relevant Employee and which arises from or is connected with any failure by the Provider or its sub-contractor to comply with their legal obligations in relation thereto under Regulation 10 and 15 of the TUPE Regulations or the Directive.

23.6.2 where the Relevant Transfer is to the Authority, the Authority shall indemnify the Provider in respect of:

- a) all liabilities, costs and losses arising in connection with any claim against the Provider by any Relevant Employee arising from any act, fault or omission of the Authority on or after the Relevant Date including any claim for breach of contract, redundancy, unfair dismissal, sex, race or disability discrimination, or any other claim within the jurisdiction of an employment tribunal or arising at common

law, in tort or otherwise (in all cases whether arising under British or European law); and

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

23.6.3 where the Relevant Transfer is to an Incoming Service Provider then the Authority shall procure that the Incoming Service Provider shall indemnify the Provider in respect of the liabilities, costs and losses referred to in Clauses 23.6.2a and 23.6.2b (with references to the Authority being replaced with references to the Incoming Service Provider).

PART 10 – GENERAL PROVISIONS

24 ASSIGNMENT AND SUB-CONTRACTING

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

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

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

- a) the Principal sub-contractor cannot terminate the sub-contract without first informing the Authority and giving the Authority at least thirty (30) calendar days to discuss with the Provider any issues raised by the sub-contractor; and
- b) the Provider shall have the right to be able to assign the sub-contract to a third party such assignment to be subject to the Principal sub-contractor's consent which shall not be unreasonably withheld; and
- c) the Principal sub-contractor cannot assign the sub-contract to a third party without the Provider's consent.

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

24.1.4 no sub-contracting by the Provider under this Clause 24.1 or otherwise, and no approval or consent by the Authority in relation thereto, shall relieve the Provider of any liability or obligation under this Contract. The Provider shall not be entitled to any additional fees solely by reason of the appointment of any sub-contractor; and

- 24.1.5 any material breach by the Provider of a term of a Principal Sub-Contract shall constitute a Serious Breach of this Contract and will accordingly be dealt with by the Authority under the provisions of Clause 20.
- 24.2 For the avoidance of doubt, the Provider cannot substitute or permit the substitution of a Principal Sub-Contractor without the Authority's consent and as a condition of giving such consent the Authority can require the incoming sub-contractor to execute a sub-contract on the same basis.
- 24.3 Without prejudice to Clause 24.1 above the benefit and or burden of this Contract may not be sub-contracted, assigned or novated or otherwise disposed of in whole or in part by the Provider without the prior written consent of the Authority. Such consent may be given subject to any conditions which the Authority considers reasonably necessary, but shall not be unreasonably withheld or delayed.
- 24.4 The Provider agrees that all or any part of the benefit and/or burden of this Contract may be assigned, transferred or sub-contracted in whole or in part by the Authority without the consent of the Provider.
- 24.5 The Authority shall be entitled to disclose to any transferee any Confidential Information from the Provider which relates to the performance of the Programme(s). Any such disclosure shall be subject to similar obligations of confidentiality as set out in Clause 16 and such disclosure shall not be a breach of Clause 16 by the Authority.

25 REPUTATION AND PUBLIC SERVICE CONSIDERATIONS

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

26 VISITS AND PUBLICITY

- 26.1 Each Party shall give the other advance notice of proposed visits to the Provider's premises or any premises of its sub-contractor's (including Members of the Parliament, representatives of unemployment centres, members of the press and media) to observe the delivery of the Programme(s) by the Provider or its sub-contractors.
- 26.2 The Provider shall undertake the marketing and communications activities as set out in Schedule 2 (The Programme). The Provider's marketing and communications activities shall support the Authority's objectives in contracting for the Programme(s).
- 26.3 If so requested by the Authority the notepaper and other written material of the Provider and their sub-contractors relating to the delivery of the Programme(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to such banner or logo as the Authority shall use to identify the Programme(s) or services ("Trade Mark") from time to time. All publicity and marketing material produced by the Provider (or its sub-contractors) in relation this Contract and or the Programme(s) shall be submitted to the Contract Manager or

person nominated in his/her place) for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.

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

27 AUDIT ACCESS

- 27.1 The Provider shall at all times:

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

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

27.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records maintained under this Clause 27 are held and to examine the records for the purposes of carrying out an examination into the economy, efficiency and quality of the Programme(s) and effectiveness with which the Provider has used the Authority's resources in the performance of this Contract.

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

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

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

- 27.5 The Provider shall provide the rights set out in Clause 27.1 and Clause 27.2 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.

- 27.6 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Provider or any third party in relation to the Programme(s), the Authority reserves for itself, any statutory auditors of the Authority and their respective authorised agents or any Crown Body the right of immediate access to all records referred to in Clause 27.1 and Clause 27.2 and the Provider

agrees to render all necessary assistance to the conduct of such investigation at all times during the currency of this Contract or at any time thereafter. For the avoidance of doubt, the Provider shall only be repaid its reasonable expenses incurred in giving assistance pursuant to this Clause 27.6 in the event that the result of such investigation reveals no fraudulent activity or other impropriety by the Provider, its servants, agents or sub-contractors.

28 RECORDS

- 28.1 The Contractor and any sub-contractors appointed by it shall maintain the records referred to in Clause 27 (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 last financial year in which the last payment is made by the Authority under the terms of the 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, either at the outset of the contract or at any point during the life of the contract, the Contractor and any sub-contractors appointed by it shall be bound by the corresponding additional requirements detailed within Provider Guidance, including maintain records until at least [31 December 2022 (date currently required by ESF regulations)].
- 28.2 During the period(s) referred to above, the Provider and any sub-contractors shall make the records and documents available for auditing purposes in accordance with Clause 27 (Audit Access) upon reasonable request by the Authority.
- 28.3 In accordance with Clause 24.1.1 the Provider shall ensure that any contracts with sub-contractors include obligations reflecting the requirements of the Authority under this Clause 28.
- 28.4 The Provider shall indemnify and keep indemnified the Authority against all claims, demands, actions, costs (including legal costs and disbursements) and losses howsoever incurred resulting from any breach by the Provider of the provisions of Clauses 27 and 28.

29 ISSUED PROPERTY

- 29.1 Issued Property shall remain the property of the Authority (or such third party owner, as appropriate). The Issued Property shall be used for the delivery of the relevant Programme in accordance with this Contract and for no other purpose whatsoever, except with the prior written approval of the Authority.
- 29.2 The Provider shall keep an up-to-date inventory of all Issued Property. The inventory shall be available for inspection during normal working hours upon request from time to time by the Contract Manager or other nominated person.
- 29.3 The Provider shall be responsible for the safe custody of Issued Property and its prompt return upon expiry or termination of the relevant Programme for which the Issued Property was issued to the Provider or upon expiry or termination of this Contract (as the Authority deems appropriate).
- 29.4 As soon as reasonably practicable, the Authority shall repair or replace and re-issue Issued Property agreed to be defective or requiring replacement.
- 29.5 The Provider shall be responsible for any deterioration in the Issued Property save for any deterioration resulting from its normal and proper use for the purposes of this

Contract provided that such deterioration resulting from normal and proper use is not contributed to by any want of due maintenance and repair.

- 29.6 Neither the Provider, nor any sub-contractor, nor any other person, shall have a lien on any Issued Property for any sum due to the Provider, sub-contractor or other person, and the Provider shall take all reasonable steps to ensure that the title of the Authority and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with any Issued Property.

30 CHANGES IN LAW

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

31 DISCLOSURE OF INFORMATION

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

32 PREVENTION OF CORRUPTION

- 32.1 The Provider shall not (and it is a condition of this Contract that in entering into this Contract it did not) offer or give, or agree to give, to any member, employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.
- 32.2 The attention of the Provider is drawn to the Prevention of Corruption Acts 1889 to 1916. Any offence committed by the Provider, its employees, sub-contractors or by anyone acting on its behalf under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract with the Crown shall entitle the Authority to terminate the Contract and recover from the Provider the amount of any loss resulting from such termination and/or to recover from the Provider the amount or value of any gift, consideration or commission.

33 HEALTH AND SAFETY

- 33.1 The Provider shall take all necessary steps to ensure the health, safety and welfare of all Participants to the same extent and in the same manner as an employer is required to do in relation to employees by or under the relevant legislation for the time being in force in that part of the UK where the Provider is providing the Programme(s).
- 33.2 The Provider shall inform the Authority immediately, in the case of a death, and as soon as is reasonably practicable in any case of serious injury or serious illness occurring to a Participant that arises as a result of the provision of the Programme(s).

- 33.3 The Provider shall promptly inform the Authority of any health and safety hazards which may arise or exist in connection with the performance of this Contract.
- 33.4 The Provider shall inform the Authority immediately of any changes to the circumstances reflected in the health and safety information submitted by the Provider to The Authority.
- 33.5 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.
- 33.6 The Provider shall ensure that where relevant its sub-contractors comply with all obligations on the Provider under this Clause 33.

34 SET OFF AND WITHHOLDING

- 34.1 If any sum of money shall be due or is believed by the Authority to be due from the Provider, the same may be deducted or withheld (as the case may be) from any sum then due or which at any time thereafter may be due to the Provider under this Contract or any other contract with the Authority or with any department, office or agency of the Crown. The Authority shall notify the Provider by issue of a written notice before making any deductions or withholding.

35 DWP CUSTOMER SERVICE STANDARDS

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

36 FRAUD

- 36.1 The Authority places the utmost importance on the need to prevent fraud and irregularity in the delivery of this Provision. Providers and sub-contractors are required to:
- 36.1.1 Have an established system that enables Provider and sub-contractor staff to report inappropriate behaviour by colleagues in respect of Provision performance claims;
 - 36.1.2 Ensure that Provider or sub-contractors performance management systems do not encourage individual staff to make false claims regarding Provision performance achievement;
 - 36.1.3 Ensure a segregation of duties within the Provider or sub-contractors operation between those employees directly involved in delivering Provision performance and those reporting Provision performance achievements to the Authority;
 - 36.1.4 Ensure that Providers and sub-contractors establish an audit system to provide periodic checks, as a minimum at [period to be advised] monthly intervals, to ensure effective and accurate recording and reporting of Provision performance.
- 36.2 The Provider 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 Provider's directors, employees or sub-contractors. The Provider shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall

notify the Authority immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.

- 36.3 The Provider shall co-operate fully with the Authority and assist it in the identification of Participants who may be unlawfully claiming state benefits. The Authority may from time to time brief the Provider as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Participants. On receipt of the information, further evidence may be collected by the Authority or other department, office or agency of Her Majesty's Government with a view to prosecution.
- 36.4 Any act of fraud committed by the Provider or its sub-contractors (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 Provider. If the Authority finds that the Provider has deliberately submitted false claims for Provision payments with the knowledge of its senior officers the Authority will be entitled to terminate this Contract, or any other contract the Authority has with the Provider, with immediate effect.
- 36.5 In the event of an act of fraud or irregularity committed by the Provider or its sub-contractors, whether or not the Authority decides to terminate the Contract as provided in Clause 36.4, the Authority requires that all Provision payments made by the Authority in respect of the invalid claims will be repaid in full to the Authority by the Provider. The Authority will be entitled to use the provisions set out in Clause 34 to recover any sums due under this Clause 36.5.
- 36.6 The provisions set out above in Clause 36.5 are in addition to the Authorities rights of termination as set out in Clause 21 of this Contract.

37 STATUS OF PROVIDER

- 37.1 In carrying out its obligations under this Contract the Provider agrees that it shall be acting as principal and not as the agent of the Authority. The Provider shall not say or do anything that may lead any other person to believe that the Provider is acting as the agent of the Authority.
- 37.2 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.

38 FORCE MAJEURE

- 38.1 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.
- 38.2 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:
- 38.2.1 notify the other Party as soon as possible of the matter giving rise to Force Majeure; and
- 38.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure; and

- 38.2.3 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.
- 38.3 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.
- 38.4 If any event of Force Majeure continues for a period of 2 months or more, the Party unaffected by the event may terminate this Contract immediately by notice in writing to the other.
- 38.5 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.

39 AMENDMENT AND VARIATION

- 39.1 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
- 39.1.1 be signed by the Provider Manager and an authorised representative of the Authority on behalf of each of the Parties; and
- 39.1.2 address all consequential amendments required to be made to the Contract as a result of such variation.
- 39.2 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.
- 39.3 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.
- 39.4 In all respects other than as provided in such record of variation, this Contract will continue in full force and effect.

40 SEVERABILITY

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

41 WAIVER

- 41.1 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.
- 41.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.
- 41.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 44.

42 EUROPEAN SOCIAL FUND AND OTHER FUNDING

- 42.1 DWP is a Co-Financing Organisation (CFO) in England only. This means that DWP applies to Government Offices (GOs) and London Development Agency, using its own match funding, to support ESF measure level bids.
- 42.2 The Provider shall observe the European Commission's and the Secretary of State for Work and Pensions' publicity requirements and regulations regarding ESF projects, as amended from time to time. The Provider shall ensure that sufficient publicity is given to all ESF supported activity so that Participants and the general public are made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF and to provision used as a match for ESF purposes. Upon request by the Authority, the Provider shall provide a copy of its formal publicity policy clearly setting out the publicity arrangements used by the Provider and its sub-contractors (if any). Whether or not a copy of the foregoing policy is requested by the Authority, the Provider shall retain copies of its policy (as revised from time to time) as part of the Provider's record keeping obligations under Clause 28.
- 42.5 Where the Authority funds this Contract using ESF funds the Provider shall within four (4) weeks of expiry or termination of this Contract provide evaluation information to the Authority which:
- 42.5.1 summarises the project, focusing on how it has helped to achieve the project objectives set out in the specification; and
 - 42.5.2 is concise, being no more than one A4 page in length; and
 - 42.5.3 indicates whether the objectives have been fully achieved or only partly achieved and sets out any other relevant issues in this context.
- 42.6 The Provider acknowledges the obligation the Authority has to evaluate all ESF projects by ESF measure and to submit, within strict timescales, a final claim to Government Office including an assessment of performance in each of the measures. Accordingly, the Provider agrees that time shall be of the essence in relation its obligation under Clause 42.5 above.
- 42.7 The Provider understands and shall comply with the regular ESF MI reporting obligations set out at Paragraph 3 of Schedule 3. The Provider acknowledges that the Authority depends on timely provision of this information in order to claim and receive ESF funds from the Government Office.
- 42.8 The Provider shall indemnify and keep indemnified the Authority in respect of any and all costs, claims and losses howsoever incurred resulting from any breach by the Provider of this Clause 42. The Provider's liability under this indemnity is not limited under Clauses 18.7 or 18.7.

43 ENTIRE CONTRACT

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

43.2 A person who is not a Party to the contract shall have no right to enforce any of the provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect the right of remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 199 and does not apply to the Crown or any Minister or emanation of the Crown.

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

44 NOTICES / COMMUNICATIONS

44.1 Except as otherwise expressly provided within this 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.

44.2 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 A5.3. 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.

44.3 For the purposes of clause 44.2, the address of each Party shall be:

a) For the Authority:

Address: [as appropriate]
For the attention of: [as appropriate]
Tel: [as appropriate]
Fax: [as appropriate]
Email: [as appropriate]

b) For the Contractor:

Address: [as appropriate]
For the attention of: [as appropriate]
Tel: [as appropriate]
Fax: [as appropriate]
Email: [as appropriate]

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

45 DISPUTE RESOLUTION PROCEDURE

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

46 COSTS

46.1 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.

47 EURO

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

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

48 SECURITY REQUIREMENTS

48.1 The Provider shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Plan and the Provider shall ensure that the Security Plan produced by the Provider fully complies with the Security Policy.

48.2 The Authority shall notify the Provider of any changes or proposed changes to the Security Policy.

48.3 If the Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

48.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 48.3 the Provider shall continue to perform the Services in accordance with its existing obligations.

49 MALICIOUS SOFTWARE

49.1 The Provider shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available [from an industry accepted anti-virus software vendor] to check for and delete Malicious Software from the ICT Environment.

49.2 Notwithstanding Clause 49.1, if Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

49.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 49.2 shall be borne by the parties as follows:

49.1.1 by the Provider where the Malicious Software originates from the Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Provider); and

49.1.2 by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

50 THE AUTHORITY'S PREMISES

[Include only if any part of the services of the provider will be performed on the Authority property, even if the majority of the services will be performed in their own premises.]

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

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

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

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

51 ENVIRONMENTAL REQUIREMENTS

51.1 The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority'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.

52 LAW AND JURISDICTION

52.1 The formation, interpretation and operation of this Contract and any disputes arising under or in any way connected with the subject matter of this Contract (whether of a contractual or tortious nature or otherwise) shall be subject to English law and (subject to Clause 45) the exclusive jurisdiction of the English Courts.

SCHEDULE 1 – INTERPRETATIONS

- "Additional Services"** means any additional services to be provided to the Authority in accordance with Clause 5;
- "Authority Data"** means
- a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - i) supplied to the Provider by or on behalf of the Authority; or
 - ii) which the Provider is required to generate, process, store or transmit pursuant to this Agreement; or
 - b) any Personal Data for which the Authority is the Data Controller.
- "Commencement Date"** means the date from which the Provider is to provide each of the Programmes 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 Provider 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, Programme(s), goods and services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information
- "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 Provider must provide the Programme(s) to Participants, the boundaries of which are set out in the Annexes of Schedule 2 (Programme Specification) although Participants may come from outside this area;

INSERT PROTECTIVE MARKING WHERE APPROPRIATE

"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 5(2) of the Public Contracts (Works, Services and Supply) Regulations 2000
"Crown"	means Queen Elizabeth II and any successor;
"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 the exercise of that degree of competence which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of business as the Provider and under the same or similar circumstances
"Generated Intellectual Property Rights"	means any and all Intellectual Property Rights generated, developed, created or produced by or on behalf of the Provider for or in connection with the delivery of the Programme(s) or any part thereof. For the avoidance of doubt, Generated Intellectual Property Rights shall include but not be limited to any

	Intellectual Property Rights arising as a result of any enhancement, modification or adaptation to Materials in which Provider Intellectual Property Rights subsist (which were or are carried out by or on behalf of the Provider for or in connection with the delivery of the Programme(s);
"Incoming Service Provider"	means any Provider appointed (or to be appointed) by the Authority to provide the Programmes (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 including rights in any get-up or trade dress, rights under licences, consents, orders, statutes or otherwise in respect of any of the foregoing, and any other similar rights whether registerable or not, in any country (including but not limited to the UK);
"Issued Property"	means all items of property belonging to, lent to, leased by or rented by the Authority and issued to the Provider for the purposes of the provision of the Programme(s) including any item purchased by the Provider and subsequently paid for as an identified item by the Authority;
"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 Authority in Materials which the Provider requires to use in connection with this Contract for the purpose of delivering the Programme(s);
"Law"	means: <ul style="list-style-type: none">a) any and all statutes or proclamations or any delegated or subordinate legislation;b) any enforceable community right within the meaning of Section 2(1) of the European Communities Act 1972;c) any applicable mandatory guidance, direction, determination, standards or approvals having the force of law; andd) any applicable and binding judgment of a relevant court of law <p>in each case in force from time to time in England and Wales (or Scotland if applicable)</p>
"Management Information"	means the information required from the Provider in connection with each Programme 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 Programme(s) and for the avoidance of doubt, Participant Records (in whatever form) shall be Materials;
"Method Statement"	means the Provider's statement as to how it will deliver each of the Programmes to be delivered under this Contract, as set out in Schedule 2;
"Participants"	means the persons on the Programme(s) run by the Provider and directly receiving the services specified in this Contract;
"Participant's Records"	means the records prepared and maintained by the Provider (in whatever form or storage media) concerning an individual Participant;
"Personal Data"	shall have the meaning given to it under the DPA;
"Principal Sub-Contractor"	means any sub-contractor appointed by the Provider under Clause 24 which through its employees or agents directly provides Programme services to Participants;
"Processing"	shall have the meaning given to it under the DPA;
"Programme"	means a programme for the delivery of goods and services the details of which are more fully described in Schedule 2 (The Programme) to this Contract and the relevant Annex to that Schedule. For the avoidance of doubt, the Provider may be delivering one or more Programmes under the terms of this Contract;
"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 Provider from time to time;
"Provider Intellectual Property Rights"	means any and all Intellectual Property Rights in Materials which as at the date of this Contract were already in existence and which were owned by the Provider or licensed to the Provider by a third party;
"Provider Manager"	means the person appointed by the Provider as described in Clause 9.1;
"Provision"	means a defined element or elements of a Programme;
"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 Provider to the Authority or an

	Incoming Service Provider
"Relevant Employee"	means those employees of the Provider or of any sub-contractors who are wholly or substantially engaged in the provision of the Programmes (in whole or in part) that reverts to the Authority or transfers to an Incoming Service Provider (as the case may be) as at the Relevant Date
"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.
"Security Plan"	Means the Provider's security plan prepared pursuant to paragraph 3 of Schedule 11 (Security Requirements and Plan)
"Security Policy"	Means the Authority's Security Policy annexed to Schedule 11 (Security Requirements and Plan) as updated from time to time.
"Sensitive Personal Data"	shall have the meaning given to it under the DPA;
"Site"	means any premises from where the Programme(s) is provided or from which the Provider manages, organises or otherwise directs the provision or the use of the Programme(s), including for the avoidance of doubt any such premises used by the Provider's agents or sub-contractors from time to time;
"Specification"	means the Authority's specification for the Programme referred to in Schedule 2;
"Staff"	means all persons employed by the Provider to perform its obligations under the Contract together with the Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.
"Staff Vetting Procedure"	means the Authority's procedures for the vetting of personnel and as advised to the Provider by the Authority.
"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 Provider from time to time) during which the Provider is required (as detailed in Schedule 5) to track the destination to which the Participant leaves the Programme. This period starts on the date the relevant Participant leaves the Programme, or in relation to the final claim provisions of Schedule 5 Paragraph 20.2, the date on which the Contract expires or terminates;
"Trade Mark"	means any trading name, brand name, style, logo or mark which is directly related to or is created in respect of the Programme(s) whether created by the Authority or the Provider and whether registered or not;

"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 Provider has been notified the Authority will be closed.

- 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.
- 2 Headings included in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 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:-
 - 3.1 the Clauses of this Contract;
 - 3.2 the Schedules to this Contract (and in relation to the Schedules, the Specification is to be given precedence over the Method Statement in establishing the nature and quality of the services to be provided by the Provider under this Contract);
 - 3.3 the Annexes in this Contract.
- 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.
- 5 References in this Contract, unless the context otherwise requires, to (a) "costs" includes costs, charges, outgoings and expenses of every description and (b) "losses" includes loss, harm, damages and liabilities of every description.

SCHEDULE 2 - THE PROGRAMME

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

ANNEX 1: [DN: INSERT NAME OF PROGRAMME/SERVICE]

1 Commencement

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

2 Contents

2.1 The contents of the following documents shall be deemed to be incorporated into this Schedule:-

2.1.1 E.g. the Specification as provided in the Invitation to Tender pack (Ref. No. []) issued and dated [_to be advised];

2.1.2 E.g. the Method Statement (Ref. No. []) issued and dated [_to be advised];

2.1.3 E.g. list here full details (including dates) of the specification, proposal document and relevant Post Tender Discussion correspondence;

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

[This Appendix may be used either as an appendix to each Programme Annex or to show all agreed performance target for Schedule 2].

PERFORMANCE TARGETS

General

- 1.1 In accordance with Clause 3.7 of this Contract the following performance targets have been agreed between the Parties. In delivering the Programme(s) the Provider acknowledges that it shall be under an obligation to meet the following performance targets and furthermore that failure to meet all or any defined such targets, shall entitle the Authority to serve notice on the Provider in accordance with Clause 20 of this Contract.
- 1.2 Also, and for ease of reference, provided at Annex [as appropriate] to Schedule 6 is an anticipated profile of Outcome Targets which the Provider may, on achievement of the necessary defined outcomes, claim.

Agreed Performance Targets

- 2.1 The following performance targets relate specifically to the Programme described in Annex [as appropriate] to Schedule 2.

SCHEDULE 3 – INFORMATION REQUIREMENTS

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

GENERAL

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

SCHEDULE 4 – MANAGING PERFORMANCE

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

1 REVIEWING CONTRACT PERFORMANCE

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

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

2 DWP QUALITY FRAMEWORK

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

- 2.4.3 Examination of how assessments and reviews are carried out;
- 2.4.4 Managing the training cycle;
- 2.4.5 Promoting continuous improvement; and
- 2.4.6 Monitoring impact of advice.

3 OFSTED IN ENGLAND AND ESTYN IN WALES

- 3.1 The Common Inspection Framework sets out the principles applicable to the external inspections of post-16 non-higher education and training. The framework also includes the more specific evaluation requirements that apply to the inspection of individual providers of education and training.
- 3.2 The main purposes of inspections are to:
 - 3.2.1 give an independent public account of the quality of education and training, the standards achieved and the efficiency with which resources are managed;
 - 3.2.2 help bring about improvement by identifying strengths and weaknesses and highlighting good and poor practice; and
 - 3.2.3 keep the Secretary of State, the Learning and Skills Council for England and the Authority informed about the quality of education and training.
- 3.3 Inspections shall focus primarily on the experiences and expectations of individual Participants through the evaluation, as applicable, of:
 - 3.3.1 what is achieved - the standards reached and Participants' achievements, taking account of their prior attainment;
 - 3.3.2 the quality of teaching, training and learning;
 - 3.3.3 other aspects of provision that contribute to the standards achieved, such as the range, planning and content of courses or programmes, resources and the support for individual Participants;
 - 3.3.4 the effectiveness with which provision is managed, its quality assured and improved, and how efficiently resources are used to ensure that the provision gives value for money;
 - 3.3.5 the extent to which provision is educationally and socially inclusive, and promotes equality of access to education and training, including provision for customers with learning difficulties, and
 - 3.3.6 observance of the non-discriminatory practices under the Law, including for the avoidance of doubt the Race Relations (Amendment) Act 2000.

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

4 HEALTH AND SAFETY RESPONSIBILITIES OF THE AUTHORITY VISITING OFFICERS

- 4.1 The Authority representatives visit Providers and their sub-contractors for a variety of reasons. In the course of their normal duties such representatives of the Authority shall adopt an 'eyes and ears' approach to monitoring health and safety. In doing this the Authority representatives shall not be conducting a health and safety inspection, nor shall they be in a position to offer advice on whether something is safe or not.

Instead they shall approach this from the position of any lay person. If, however, an the Authority representative does notice something on which they require assurance or clarification, they shall raise this with the Provider or the Provider's sub-contractor's representative at the location where they are visiting. In no event are the Authority representatives to be seen as offering professional advice on health and safety matters and as such, shall not be liable for any advice or comments or otherwise given to the Provider or their sub-contractors or any omission to give such advice, comments or otherwise.

5 FINANCIAL APPRAISAL AND MONITORING (FAM)

- 5.1 The primary purpose of FAM is to provide the Authority with an assurance that payments to providers are in accordance with the Authority requirements, that public funds are protected and that value for money has been obtained.
- 5.2 Planning of FAM visits to Providers shall take account of the materiality and the assessment of the risk attached to the delivery of the provision. The assessment of risk shall follow an evaluation of the key, relevant systems adopted by the provider, supported by the results of testing undertaken.
- 5.3 Providers shall have systems in place (depending on the programme type) to:
 - 5.3.1 detect and prevent duplicate claims;
 - 5.3.2 prepare and submit accurate, valid, supported, timely claims;
 - 5.3.3 monitor, record and manage lateness and all absences;
 - 5.3.4 support claims for on-programme-payments through an effective attendance recording procedure;
 - 5.3.5 ensure that all the required evidence is collected (and submitted, where appropriate) to support the claim;
 - 5.3.6 identify Participants who have left the Programme ("Leavers") early to prevent over claiming;
 - 5.3.7 carry out effective monitoring of sub-contractors; and
 - 5.3.8 respond to FAM reports with an appropriate action plan.

6 ACCESS

- 6.1 In all instances, the Provider shall co-operate and provide such reasonable assistance as may be necessary to facilitate such monitoring. Failure to provide such reasonable assistance shall be deemed a "Serious Breach" for the purposes of Clause 20.

SCHEDULE 5 – ACCOUNTING REQUIREMENTS

This specimen Schedule sets out financial provisions that are applicable to the generality of Programmes and DWP will amend to meet the needs of specific programmes.

1 CHARGES

1.1 The Authority shall pay the Provider in accordance with the Payment Schedule, in Schedule 6.

2 VALUE ADDED TAX

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

3 CHARGES ON PARTICIPANTS

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

4 ADDITIONAL COSTS

4.1 Subject to paragraph 18 of this Schedule, the price for the provision of the Programme is firm and any additional or unforeseen costs incurred by the Provider in providing the services shall be borne solely by the Provider.

5 TYPES OF PAYMENT

5.1 PROVISION FEES

5.1.1 Provision Fees represents the prices payable by the Authority to the Provider for its provision of the Programme and or specific defined elements of the Programme. Subject to paragraph 10 below the Provision Fee shall be paid by the Authority monthly in arrears. All relevant Provision Fees are detailed in Schedule 6. It is expected that most Provision Fees shall come from the Rates Look Up Table (RLUT), as set, amended and issued by the Authority from time to time. However, some Programmes and or Provision within a Programme may not be included in RLUT, and in these cases Fees shall be determined locally by the Authority.

5.1.2 The Provision Fee (PF) consists of up to two separate elements: An On Programme Element (OPE) and an Outcome Element (OE). The ratio between the OPE and the OE may vary to the extent that either the OE or the OPE may be nil, however in all cases, the Provision Fee shall equal the sum of the OPE and the OE.

6 ON PROGRAMME ELEMENT (OPE)

6.1 The OPE shall be divided by the maximum amount of weeks associated with the Programme and/or the Provision to produce On-Programme Payments ("OPPs"). OPPs shall be payable on the basis of full or part weeks completed by a Participant on the Programme (i.e. a full or part calendar week (i.e. Mon - Sun) the Participant is

on the Programme), evidenced by the signature of the Participant to validate attendance in the relevant week.

7 OUTCOME ELEMENT (OE)

7.1 Where the OE is greater than nil (see paragraph 5.1.2 above), the OE shall be divided, as defined in Schedule 6, into Outcome Payments which shall be payable on achievement of Outcomes as set out in Schedule 2. There may be none, one or several available Outcomes, all of which are funded from the OE of the Programme Fee.

7.2 Where an Outcome is achieved whilst the Participant is on a Programme and/or within the Tracking Period, the Provider shall be eligible to claim the associated Outcome Payment.

8 ROLLED UP WEEKS

8.1 Where a Participant leaves a Programme before the end of the maximum amount of weeks allowed for that Programme and gains a Sustainable Job (as defined in the Specification), the Provider can claim the remaining OPPs (not previously claimed or paid) as Rolled Up Weeks.

9 ADDITIONAL PAYMENTS

9.1 Unless the Authority funds this Contract using ESF Funds (as referred to at Clause 42) additional payments, such as for travel, childcare and additional needs are not included in the Programme Fee and are separately detailed in paragraph 4 of Schedule 6.

10 METHODS OF PAYMENT

10.1 The Authority reserves the right to set and/or alter, at its absolute discretion, the method of payment. All payments made by the Authority to the Provider are conditional upon the Providers provision of the Programme(s) in accordance with the terms of this Contract. Further payments (whether in respect of OPE or OE) are made on the assumption that the Providers entitlement to such payments can be verified on request by the production of the records required under this Contract (including under Schedule 2). The Authority shall be entitled to assume, in the absence of such records, or of any evidence which the Authority may reasonably decide to accept in substitution, that such provision of the Programme(s) ("Unsupported Provision") has not taken place. The Authority shall be entitled to recover any and all sums paid in respect of such Unsupported Provision from the Provider.

11 ON-PROGRAMME PAYMENTS

11.1 Providers shall be required by the Authority at its sole discretion to either (a) submit completed Forms SL2 or (b) submit equivalent MI online using a system to be identified by Jobcentre by the [to be advised] day of each calendar month (in either case, the "OPP deadline"). Subject to the Provider having complied with the provisions of this Contract the Authority will pay the relevant OPP within thirty (30) calendar days of the OPP deadline.

11.2 The maximum amount the Provider can receive for any Participant is the Provision Fee as stated in the appropriate Annex 1 to Schedule 6.

12 VOLUMES

12.1 The Authority gives no guarantees of volumes. Any volumes mentioned in this Contract, are indicative only and shall not be binding to the Authority.

13 CLAIMS FOR PAYMENT/INVOICES

13.1 For Outcome, Additional Payments and any other payments, the Authority shall make payment to the Provider monthly in arrears within thirty (30) calendar days of receipt of a correctly completed invoice accompanied by the supporting invoicing information as specified in the Provider Guidance.

13.2 The Provider shall submit claims for payment in the format specified by the Authority, as amended from time to time. Except for claims for OPP under paragraph 11 all claims shall be submitted within ten (10) Working Days of the end of the appropriate claim period.

13.3 Where a Participant starts work within the Tracking Period, an Outcome payment may be claimed. The claim for payment shall be submitted within two claim periods following the claim period in which the Participant starts work.

13.4 The amount to be claimed in respect of the appropriate element of the Programme Fee shall be that as specified in Schedule 6 (Payment Schedule).

13.5 The percentage and amount of VAT should, if chargeable, be shown on claims in accordance with Customs and Excise regulations.

13.6 If the Provider fails to submit a claim within the period referred to, or fails to submit the claim in the prescribed form or accompanied by the appropriate supporting information, the Authority shall not be in breach of this Contract if it fails to make payment within thirty (30) calendar days of receipt of the claim provided that the Authority shall not unnecessarily delay payment of the relevant claim.

13.7 Details of the Provider's bank account must be notified to the Authority on the standard form supplied by The Authority for this purpose. The Authority shall send notifications of payments to the Provider's address stated on the standard form.

14 DISPUTED CLAIMS

14.1 Notwithstanding paragraph 14.5 of this Schedule, payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Provider shall not signify approval of such invoice/claim. The Authority reserves the right to verify invoices/claims after the date of payment and subsequently to recover any sums which have been overpaid.

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

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

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

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

15 RECOVERY OF SUMS

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

16 GROSSING UP

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

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

17 PROVIDER'S RECORDS

17.1 The Provider and any sub-contractors appointed by it shall retain comprehensive records in accordance with Clause 28 to verify the services provided. Such records shall include (without limitation) the information specified in Schedule 2, copy invoices with all supporting information and any such other information as the Authority may reasonably require from time to time.

18 INTERRUPTION OF SERVICE

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

19 LIABILITY ON EARLY TERMINATION / COURSE CANCELLATION

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

19.2 If this Contract is terminated by the Authority on grounds of a breach or by insolvency of the Provider, or is terminated by the Provider for whatever reason, the Authority shall undertake a final reconciliation of amounts owed from, or owing to, the Provider. Following this reconciliation the Authority shall either recover any overpayments made to the Provider, shall pay any additional amounts payable under this contract

due in respect of the service actually provided before the date of termination or agree that no further payments are to be made by either Party.

- 19.3 This paragraph 19 is without prejudice to any other rights that may accrue to either Party in consequence of any breach of this Contract by the other Party.

20 FINAL CLAIM

- 20.1 Save as set out in paragraph 20.2 below, on expiry of this Contract, or on early termination, the Provider must make a final claim to the Authority. This must cover all outstanding payments following reconciliation which are due from the Authority under this Contract. It is the responsibility of the Provider to ensure that this final claim covers all outstanding payments up to the expiry date of the Contract. The final claim must be submitted no later than thirty (30) calendar days after the expiry or termination of the Contract.
- 20.2 A final claim in respect of Outcome Payments for outcomes achieved during Tracking Periods or for claims in respect of Rolled Up Weeks in accordance with paragraph 8 to this Schedule, must be submitted within a period equivalent to the Tracking Period plus thirty (30) calendar days following the expiry or termination of the Contract.
- 20.3 The Provider is referred to the ESF reporting obligations under Clause 42.5 which may arise on expiry or termination. Without prejudice to any further remedies available to it under Clause 42 or other provisions of this Contract, the Authority may withhold payment of the Provider's final claims under Paragraphs 20.1 and 20.2 if the Provider is in breach of its obligations arising under Clause 42.5.
- 20.4 The Authority shall recover any overpayments made to the Provider.
- 20.5 Provided all previous claims have been paid, the Authority shall have no further liability to make payment of any kind to the Provider once the final claims have been paid.

21 THIRD PARTY REVENUE

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

SCHEDULE 6 – PAYMENT SCHEDULE

This Schedule sets out the requirements which are applicable to the generality of Programmes and DWP will amend to meet the needs of specific programmes.

1 PROVISION FEE

- 1.1 Each Programme may combine various distinct discrete and named elements or services (Provisions) which each have a Provision Fee associated to it. Each Programme may attract only one Provision Fee or various Provision Fees. All Provisions Fees forming part of this Contract are detailed with the copies of Annex 1 to this Schedule (e.g. Annex 1A, Annex 1B, Annex 1C etc).
- 1.2 The Provision Fee takes into account the fact that the Participant's participation in the Programme and or the Provisions within it is expected to last the maximum duration (i.e. the number of On Programme Weeks) detailed. In the event that the Participant's participation is less than the number of On Programme Weeks due to an unauthorised absence as set out in the "Absence Policy" given in Chapter 2 of the New Deal Provider Guidance or due to expiry or termination of this Contract then the Provider may have been overpaid in which case the Authority may effect recovery of such overpayment at the rates set out in this Schedule 6.

2 PAYMENT FOR THE SERVICE

- 2.1 Provision Fees for the Programme shall comprise of the independent elements, as detailed in the copies of Annex 1 to this Schedule, and payment of one element shall not constitute acceptance of any or all of the other elements.
- 2.2 Additional Payments may be payable to the Provider to cover costs for travel, childcare and additional support, as defined in paragraph 4 of this Schedule.

3 ON PROGRAMME PAYMENT ELEMENT

- 3.1 The copies of Annex 1 to this Schedule show the format of financial information for each separate Provision. Annex 2 indicates the outcome targets and anticipated spend for each separate Provision.

4 ADDITIONAL PAYMENTS

- 4.1 If this Contract is not funded by ESF Funding (see Clause 42) then the Authority shall, where appropriate, pay the Provider additional payments for the following;
- 4.1.1 **Travel** – Travel costs shall be set by the Authority following reasonable negotiations with the Provider, on the basis of a weekly rate. This shall directly link with the agreed monthly On-Programme Payments and shall be identified separately. Travel costs will be paid on the assumption of the Participants attendance and the Authority reserves the right to recover payments in the event of non-attendance. The weekly sum shall be paid irrespective of actual costs incurred by the Provider per individual. the Authority reserves the right to change the agreed sum should evidence show over/underspends;
- 4.1.2 **Childcare** – Where there is an entitlement the Authority may authorise payment of childcare costs. Authorised costs are payable at rates set out at Annex 3 to this Schedule. The Provider shall claim these payments back from the Authority monthly in arrears; and

4.1.3 **Additional support** - Money has been set aside to make payments to Providers for those Participants who meet the Disability Discrimination Act 1995 definition, whose participation may incur exceptional costs over and above those usually expected, to pay for special equipment and other support. This fund is also available for non-disabled people who need extra help to attend provision. For example, the funding may be used to help Participants who do not have English as a first language by providing an interpreter. Other examples where the fund may be used are for purchasing uniforms or paying for medical examinations. Excess travel and overnight accommodation requirements whilst participating on provision can also be met from the fund. Either the Provider or the Authority may identify these. Claims will be made as necessary and in accordance with the Authority guidelines. This does not replace the obligation on the Provider to meet the requirements of the Disability Discrimination Act 1995.

5 PAYMENTS FOR TRANSFERRED PARTICIPANTS

5.1 Where Participants are transferred from/to another provider, whether at the Authority's request, on expiry or termination of this Contract or a particular Programme then, the new provider shall be entitled to payment of the remaining proportion of the On Programme Element (OPE) (calculated on a pro-rata basis) and both providers shall be entitled to full payment of the Outcome Element (OE) as set out in this Schedule 6.

ANNEX 1; ON PROGRAMME PAYMENTS

Contract
~~Refer to~~ Annex 1 shows the format of financial information for the following Provision. Where within the Contract there are different Programmes or Provisions within a Programme which attract different Provision Fees, this Annex will be repeated, amended as necessary for each such Provision. For the avoidance of doubt, this Annex will be replaced by a revised updated version issued by the Authority from time to time to address revised formula funding rates.

Effective Date: This Annex shall take effect from [date]
 Programme Reference: [Title and number]
 Provision:
 Maximum Stay: weeks ("On Programme Weeks")
 Average Stay: Weeks
 Provision Fee: National/London A Rate ^(delete/amend as appropriate)
 Of the Provision Fee: is the On Programme Element (OPE)
 is the Outcome Element (OE)
 OPE will be paid as: a one-off On Programme Payment/non-profiled On Programme Payments ^(delete as appropriate)
 OPPs will be: per On Programme Week
 Of the OE an Outcome Payment of ^(see Annex 3) is payable per Job Outcome ~~per~~ per Qualification.
 Additional Costs: is payable for agreed Travel Costs per Participant per Programme Week
 Payments for Childcare and/or Additional Support shall be claimed monthly as appropriate
 Expected Volume of Starts: _ per Year (volumes here are indicative only and shall not be binding to the Authority)

ANNEX 2; OUTCOME PAYMENTS

Contract
~~This Annex~~ This Annex 2 the shows the value on achievement of the agreed performance targets for which Outcome Payment(s) are claimable for the following Provision. Where within the Contract there are different Programmes or Provisions within a Programme which attract different Provision Fees, this Annex will be repeated, amended as necessary for each such Provision. For the avoidance of doubt, this Annex will be replaced by a revised updated version issued by the Authority from time to time to address revised formula funding rates.

Effective Date: This Annex shall take effect from [date]

Programme Reference: [Title and number]

Provision:

Provision Fee: National/London A Rate
 {delete/amend as appropriate}

Of the Provision Fee: is the On Programme Element (OPE)
 is the Outcome Element (OE)

Of the OE an Outcome Payment of: is payable per Job Outcome per Qualification.

Expected Volume of Starts: per Year (volumes here are indicative only and shall not be binding to the Authority)

[DN: This Annex is optional - You may wish to agree with Providers when the job outcomes shall be expected throughout the year in order to facilitate the monitoring of Providers' impact on APA performance and identify any potential over/underspends on the ORF element. Therefore please delete as appropriate]

ANNEX 3; CHILDCARE PAYMENTS

Contract

Reference:

This Annex 3 shows the amounts in respect of childcare (per Participant) which in exceptional circumstances the Authority Contract Manager may authorise payment of. The Daily Rate is payable but only to a maximum of no more than the Weekly Rate. There is one Daily Rate and one Weekly Rate for an individual child and another Daily Rate and Weekly Rate where there is more than one child. For the avoidance of doubt where there is more than one child, the Rate payable covers all children and is not payable in respect of each child.

The Authority shall notify the Provider of Participants who must be reimbursed for childcare costs. The Provider shall claim these payments back from the Authority monthly in arrears. For the avoidance of doubt, this Annex will be replaced by a revised updated version issued by the Authority from time to time.

Effective

This Annex shall take effect from [date]

Date:

[Title and number]

Program

me

Reference

Provision:

:

Rate	Total Amount for a Single Child	Total Amount for More than One Child
Daily Rate		
Weekly Rate		

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 Provider Manager. The Contract Managers and the Provider Manager shall within seven (7) calendar days of such a written request meet in a good faith effort to resolve the dispute (the "First Meeting").
- 8 If the dispute cannot be resolved in the First Meeting the dispute shall be referred to the Managing Director of the Provider and the Head of Commercial Employment

Provision to seek to resolve the dispute (the "Final Meeting"). If appropriate the Parties can invite key personnel to this meeting.

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

STAGE 3 - MEDIATION

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

SCHEDULE 8 – EQUALITY AND DIVERSITY REQUIREMENTS

1 GENERAL

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

2 COMPLIANCE

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

3 HARASSMENT POLICY

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

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

4 EQUALITY POLICY

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

- 4.2 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

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

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

6 SUPPLIER DIVERSITY

- 6.1 In the performance of the Contract the Provider shall at all times comply with the Agreed Supplier Diversity Plan. For the purposes of this Contract the expression "Agreed Supplier Diversity Plan" means the supplier diversity plan to be submitted to Momenta under the Accreditation process in Schedule 9 of this contract.
- 6.2 The Provider shall procure that each of its direct subcontractors employed in the performance of the contract, adopt a similar supplier diversity plan in respect of subcontractor employees engaged in the performance of the Contract.

7 MONITORING AND REPORTING

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

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

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

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

white

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

mixed

- d) white and black Caribbean;
- 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) Caribbean;

- m) African;
- n) of any other black background;
Chinese or other ethnic group
- o) Chinese;
- p) of any other ethnic group.

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

7.1.3 the proportion of its subcontractors that are:

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

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

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

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

SCHEDULE 9 – ACCREDITED PROVIDER INFORMATION

PROVIDER ACCREDITATION INFORMATION

- 1 This Schedule highlights documentation which is deemed appropriate to be part of the Contract.
- 2 The Authority will only award contracts over £50,000 to organisations that have been through the accreditation process delivered by Momenta TM (or any other future contracted supplier) on behalf of the Authority. If remedial actions are identified for the Provider following the accreditation process, then these must be cleared within the timescales indicated by the Authority and/or Momenta TM. Failure to complete remedial action within the stated timescales shall constitute a "Serious Breach" under Clause 20 (Provider Default) and shall be dealt with under the corresponding provisions of Clause 20.
- 3 This Schedule 9 (Provider Accreditation) shall be deemed to include the documents and information provided by the Provider in support of the initial and subsequent accreditation processes (including any and all subsequent clarification thereof). If any information supplied as part of an accreditation process is found to be incorrect, and such error could have materially affected the accreditation process, then accreditation shall be withdrawn.
- 4 Momenta TM will complete an annual review of all accredited providers. Providers must confirm during the course of such reviews whether information held in support of the last accreditation is correct, updating any relevant information as necessary. Providers must also supply any further information required by Momenta 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 20.
- 6 Providers 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 Provider Accreditation Service and Commercial Intelligence database notified to the Provider by the Authority from time to time.

SCHEDULE 10 – COMMERCIALLY SENSITIVE INFORMATION

The information in this Schedule 10 may have to be disclosed in response to a request under the FOIA as set out at Clause 15 of this Contract.

SCHEDULE 11 – SECURITY REQUIREMENTS AND PLAN

"Breach of Security"	the occurrence of unauthorised access to or use of the Authority Premises, the Sites, the Services, the Provider System or any ICT or data (including the Authority's Data) used by the Authority or the Provider in connection with this Agreement.
"Security Plan"	the Provider's security plan prepared pursuant to paragraph 3 of schedule 11 (Security Requirements and Plan) an outline of which is set out in Appendix 1 of schedule 11 (Security Requirements and Plan);
"Security Policy"	the Authority's security policy annexed to schedule 11 (Security Requirements and Plan) as updated from time to time;
"Security Tests"	shall have the meaning set out in paragraph 4.1 of schedule 11 (Security Requirements and Plan);

1 INTRODUCTION

This schedule covers:

- 1.1 principles of security for the Provider System, derived from the Security Policy, including without limitation principles of physical and information security;
 - 1.1.1 [wider aspects of security relating to the Service];
 - 1.1.2 the creation of the Security Plan;
 - 1.1.3 audit and testing of the Security Plan;
 - 1.1.4 conformance to ISO/IEC:27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification); and
 - 1.1.5 Breaches of Security.

2 PRINCIPLES OF SECURITY

- 2.1 The Provider acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Provider System. The Provider also acknowledges the confidentiality of the Authority's Data.
- 2.2 The Provider shall be responsible for the security of the Provider System and shall at all times provide a level of security which:
 - 2.2.1 is in accordance with Good Industry Practice and Law;
 - 2.2.2 complies with the Security Policy;
 - 2.2.3 meets any specific security threats to the Provider System; and

- 2.2.4 complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 4 of this schedule.
- 2.3 Without limiting paragraph 2.2, the Provider shall at all times ensure that the level of security employed in the provision of the Programme(s) is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):
- 2.3.1 loss of integrity of Authority Data;
- 2.3.2 loss of confidentiality of Authority Data;
- 2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;
- 2.3.4 unauthorised access to network elements, buildings, [the Authority Premises,] [the Sites,] and tools used by the Provider in the provision of the Programme(s);
- 2.3.5 use of the Provider System or services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
- 2.3.6 loss of availability of Authority Data due to any failure or compromise of the services.

3 SECURITY PLAN

Introduction

- 3.1 The Provider shall develop, implement and maintain a Security Plan to apply during the Term [and after the end of the Term (as applicable)] which will be approved by the Authority, tested, periodically updated and audited in accordance with this schedule.
- 3.2 A draft Security Plan provided by the Provider as part of its bid is set out in Appendix 1.

Development

- 3.3 Within 20 Days after the Effective Date and in accordance with paragraph 3.4 (Amendment and Revision), the Provider will prepare and deliver to the Authority for approval the full and final Security Plan which will be based on the draft Security Plan set out in Appendix 1.
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Provider shall amend it within [10] Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than [15] Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this paragraph 3.2.2 of this schedule may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1.1 to 3.5.5 shall be deemed to be reasonable.

Content

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Provider in relation to all aspects of the services and all processes associated with the delivery of the Programme(s) and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the services comply with:
- 3.5.1 the provisions of this schedule (including the principles set out in paragraph 2);
 - 3.5.2 the provisions of Schedule 2 (The Programme) relating to security;
 - 3.5.3 ISO/IEC27002 and ISO/IEC27001;
 - 3.5.4 the data protection compliance guidance produced by the Authority;
 - 3.5.5 [appropriate ICT standards for technical countermeasures which are included in the Provider System (*if required*)] and
 - 3.5.6 [encryption standards in accordance with S(E)N 02/3 from CESG (*if required*)].
- 3.6 The references to standards, guidance and policies set out in paragraph 3.3.1 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Provider should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Provider which provision the Provider shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001
- 3.9 The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Provider and the Authority engaged in the services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this schedule.

Amendment and Revision

- 3.10 The Security Plan will be fully reviewed and updated by the Provider annually, or from time to time to reflect:
- 3.10.1 emerging changes in Good Industry Practice;
 - 3.10.2 any change or proposed change to the Provider System, the Services and/or associated processes; and
 - 3.10.3 any new perceived or changed threats to the Provider System.
 - 3.10.4 a reasonable request by the Authority
- 3.11 The Provider will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.

- 3.12 Any change or amendment which the Provider proposes to make to the Security Plan (as a result of an Authority request or change to the schedule 2 (The Programme) or otherwise shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

4 AUDIT AND TESTING

- 4.1 The Provider shall conduct tests of the processes and countermeasures contained in the Security Plan ("**Security Tests**") on an [annual] basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.
- 4.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Provider shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 4.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Agreement, the Authority shall be entitled at any time and without giving notice to the Provider to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Provider's compliance with and implementation of the Security Plan. The Authority may notify the Provider of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Provider shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential security failure or weaknesses, the Provider shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Provider proposes to make in order to correct such failure or weakness. Subject to the Authority's approval in accordance with paragraph 3.4.3, the Provider shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph 4, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

5 COMPLIANCE WITH ISO/IEC 27001

- 5.1 [The Provider shall obtain independent certification of the Security Plan to ISO 27001 as soon as reasonably practicable and will maintain such certification for the duration of the Agreement (*if required*)]
- 5.2 [If certain parts of the Security Policy do not conform to good industry practice as described in ISO 27002 and, as a result, the Provider reasonably believes that its certification to ISO 27001 would fail in regard to these parts, the Provider shall promptly notify the Authority of this and the Authority in its absolute discretion may waive the requirement for certification in respect of the relevant parts.]
- 5.3 The Provider shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Authority any

associated security audit reports and shall otherwise notify the Authority of the results of such security audits.

- 5.4 If it is the Authority's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Provider, then the Authority shall notify the Provider of the same and give the Provider a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Provider does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.
- 5.5 If, as a result of any such independent audit as described in paragraph 5.4 the Provider is found to be non-compliant with the principles and practices of ISO 27001 then the Provider shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

6 BREACH OF SECURITY

- 6.1 Either party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Provider shall:
- 6.2.1 immediately take all reasonable steps necessary to:
- a) remedy such breach or protect the Provider System against any such potential or attempted breach or threat; and
 - b) prevent an equivalent breach in the future.
- Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Provider under this Agreement, then the Provider shall be entitled to refer the matter to the Change Control Procedure.
- 6.2.2 as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

APPENDIX 1: DRAFT SECURITY PLAN

APPENDIX 2: SECURITY POLICY FOR SUPPLIERS OF SERVICES

- 1 The Department for Work and Pensions treats its information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which the Department for Work and Pensions is the Data Controller.
- 2 In order to protect Departmental information appropriately, our suppliers must provide the security measures and safeguards appropriate to the nature and use of the information. All suppliers of services to the Department for Work and Pensions must comply, and be able to demonstrate compliance, with the Department's relevant policies and standards.
- 3 The Chief Executive or other suitable senior official of each supplier must agree in writing to comply with these policies and standards. Each supplier must also appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the supplier and where relevant sub-contractors, with access to Departmental IT Systems, Services or Departmental information must be made aware of these requirements and must comply with them.
- 4 All suppliers must comply with the relevant Standards from the DWP Information Systems Security Standards. The Standards are based on and follow the same format as International Standard 27001, but with specific reference to the Department's use.
- 5 The following are key requirements and all suppliers must comply with relevant DWP policies concerning:
 - 6 **PERSONNEL SECURITY**
 - 6.1 Staff recruitment in accordance with government requirements for pre-employment checks;
 - 6.2 Staff training and awareness of Departmental security and any specific contract requirements.
 - 7 **SECURE INFORMATION HANDLING AND TRANSFERS**
 - 7.1 Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.
 - 8 **PORTABLE MEDIA**
 - 8.1 The use of encrypted laptops and encrypted storage devices and other removable media when handling Departmental information.
 - 9 **OFFSHORING**
 - 9.1 The Department's Data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.
 - 10 **PREMISES SECURITY**
 - 10.1 Security of premises and control of access.

11 SECURITY INCIDENTS

- 11.1 Includes identification, managing and agreed reporting procedures for actual or suspected security breaches.
- 12 All suppliers must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and central government requirements. These arrangements will clearly vary according to the size of the organisation.
- 12.1 It is the supplier's responsibility to monitor compliance of any sub-contractors and provide assurance to DWP.
- 12.2 Failure to comply with any of these Policies or Standards could result in termination of contract.

SCHEDULE 12 – WELSH LANGUAGE SCHEME

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

1 GENERAL

- 1.1 The Provider acknowledges that in relation to the operation of its employment programmes which are delivered in Wales, the Authority must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.
- 1.2 In the performance of the Contract, the Provider shall ensure that it cooperates with The Authority wherever possible in satisfying this duty, by fully complying with the requirements of this Schedule 12.

2 THE JOBCENTRE PLUS WELSH LANGUAGE SCHEME

- 2.1 The Jobcentre 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/policy-publications/welsh-language-scheme/annexes/jobcentre-plus/>

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

3 DELIVERY OF PROGRAMMES THROUGH THE MEDIUM OF WELSH

- 3.1 The Provider undertakes that those who have dealings with them are able to do so in English or Welsh.
- 3.2 The Provider will ensure that:
- 3.2.1 Those who want, or are required, to correspond with the Provider 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 Provider's offices in Wales will have a pre-recorded bilingual message;
 - 3.2.6 All people who partake in the Programmes 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 Provider, in accordance
with Clause 10 and Schedule 4 of this Agreement, to ensure that they are complying
with the requirements of this Schedule 12.

SCHEDULE 13 – SUSTAINABLE DEVELOPMENT REQUIREMENTS

This schedule sets out the Sustainable Development Requirements which are applicable to the provision of the Programme(s).

1 GENERAL

- 1.1 The Contractor acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development.
- 1.2 In the performance of the Contract, the 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 13.

2 COMPLIANCE

- 2.1 The Contractor shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with DWP guidance and clauses 2.2 and 2.3 of this Schedule 13, within 6 (six) months of the contract start date.
- 2.2 In the performance of the Contract the Contractor shall prepare a Sustainable Development Policy Statement giving:
 - 2.2.1 full assurance of waste disposal by a registered waste collector in accordance with current government regulations;
 - 2.2.2 full assurance of the observation of Waste Electrical and Electronic Equipment (WEEE) regulations;
- 2.3 In the performance of the Contract, the Contractor shall prepare a Sustainable Development Plan, in accordance with DWP guidance which as a minimum includes:
 - 2.3.1 details of how they will minimise waste produced and how recycling will be promoted within their business;
 - 2.3.2 details of how they will minimise energy consumption within their business;
 - 2.3.3 details of consideration of how they will minimise transport use and details of how the use of public transport will be promoted within their business, both to staff and customers where appropriate;
 - 2.3.4 details of a baseline assessment of their current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available);
 - 2.3.5 annual estimates of the progress of their Sustainable Development actions in accordance with DWP guidance;
 - 2.3.6 details of how staff awareness of Sustainability will be increased in line with their Sustainable Development Plan.

WITNESS TO THE PARTIES

Signed by

Name

Position in Organisation

for and on behalf of (the
"Provider")

in the presence of

Name

Date

Signed by

Name

Date

Position in Organisation

for and on behalf of The Secretary of State for Work and Pensions ("The Authority")

in the presence of

Name

Date