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EDUCATION AND TRAINING

FUNDING AGREEMENT
[Contract for Services]

SAMPLE

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SAMPLE

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General terms and conditions

This Contract is made this day of between:

and

THE LEARNING AND SKILLS
COUNCIL
CHEYLESMORE HOUSE
QUINTON ROAD
COVENTRY
CV1 2WT

Hereinafter called
THE CONTRACTOR

Hereinafter called
THE COUNCIL

GENERAL TERMS AND CONDITIONS

It is agreed as follows.

1 Definitions

- 1.1 “Contract” means the Contract between the above named parties consisting of these General Terms and Conditions, the specification and any other documents (or parts thereof) specified in the Contract and any variations to the Contract agreed in writing and signed by both Parties.
- 1.2 “Learner” means any third party including any student, apprentice, trainee or similar to whom THE CONTRACTOR is required to deliver any of the Services
- 1.3 “OFSTED” means the Office for Standards in Education
- 1.4 “Parties” means THE COUNCIL and THE CONTRACTOR.
- 1.5 “Premises” means the location where the Services are to be performed, as detailed in the Contract.
- 1.6 “Services” means the services to be provided as specified in the Contract.

1.7 “Specification” means the documents setting out THE COUNCIL’s requirements for the Services to be provided under this Contract.

2 Commencement and Continuation

2.1 The Contract shall commence on the date on which the provision of Services under this Contract commence as provided in Schedule 1 and shall finish on the date on which the Services provided under the Contract finish as provided for in Schedule 1 or as otherwise provided in the Contract.

3 Contract Managers

3.1 For the purpose of managing the Contract both Parties shall appoint a Contract Manager and shall notify the other Party in writing of the name of the Contract Manager.

3.2 THE CONTRACTOR’s Contract Manager shall co-operate with THE COUNCIL’S Contract Manager to ensure that the Services are delivered as specified in the Contract, that the quality of Service is maintained at least to minimum standards, that required performance levels are at least met and that management and other information is provided to THE COUNCIL as specified.

3.3 THE CONTRACTOR shall promptly comply with all reasonable requests or directions of THE COUNCIL’S Contract Manager.

4 The Contractor’s Obligations

4.1 THE CONTRACTOR shall carry out the Services with reasonable skill, care and diligence in accordance with the Contract.

4.2 THE CONTRACTOR shall be solely responsible in every way for its employees, agents, associates and sub-contractors.

5 Assignment and Sub-Contracting

5.1 Where THE CONTRACTOR assigns or sub-contracts any duties or obligations arising out of this Contract THE CONTRACTOR will give Notice in writing to THE COUNCIL save where the Contract provides that specified arrangements are exempt from the requirement to give Notice under this Clause. Sub-contracting any part of the Contract shall not relieve THE CONTRACTOR of any obligation or duty attributable to him under the Contract or these conditions.

5.2 Services under this Contract may only be sub-contracted to one level.

5.3 Where THE CONTRACTOR has sub-contracted any duties or obligations arising out of this Contract, THE CONTRACTOR shall send copies of the sub-contract to THE COUNCIL if requested in writing to do so. Where THE CONTRACTOR enters into a sub-contract for the purpose of performing the Contract, THE CONTRACTOR shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or Contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

5.4 In performing its obligations under this Contract THE CONTRACTOR shall ensure that the awarding of sub-contracts is based on fair and open competition.

6 Freedom of Information and Confidentiality

6.1 Definitions

“Exempt Information” means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Contract or otherwise relating to THE CONTRACTOR, which potentially falls within an exemption to FOIA (as set out therein).

“FOIA” means the Freedom of Information Act 2000 and all regulations made there under from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in this Clause 6; and

“FOIA notice” means a decision notice, enforcement notice and/or an information notice.

6.2. Freedom of Information

6.2.1 THE CONTRACTOR acknowledges and agrees that THE COUNCIL is subject to legal duties under FOIA, which may require THE COUNCIL to disclose on request information relating to this Contract or otherwise relating to THE CONTRACTOR.

6.2.2 THE CONTRACTOR acknowledges and agrees that THE COUNCIL is required by law to consider each and every request made under FOIA for information.

6.2.3 THE CONTRACTOR acknowledges and agrees that all decisions made by THE COUNCIL pursuant to a request under FOIA is solely a matter for and at the discretion of THE COUNCIL.

6.2.4 Notwithstanding anything in this Contract to the contrary (including without limitation any obligations of confidentiality), THE COUNCIL shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information THE COUNCIL shall use reasonable endeavours (but shall not be obliged) to consult THE CONTRACTOR and shall not:

- a) confirm or deny that information is held by THE COUNCIL; or
- b) disclose information requested.

to the extent that in THE COUNCIL’s opinion the information is eligible in the circumstances for an exemption and therefore THE COUNCIL may lawfully

refrain from doing either of the things described in parts (a) and (b) of this Clause.

6.2.5 In relation to information relating to THE CONTRACTOR or the Contract which THE CONTRACTOR requests should be exempt under the FOIA THE CONTRACTOR shall indemnify THE COUNCIL for any and all costs (including legal fees) incurred by THE COUNCIL in:

- a) assessing the application of any exemption under FOIA; and/or
- b) responding to any FOIA notice; and/or
- c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure.

where such costs are incurred pursuant to efforts by THE COUNCIL to withhold Exempt Information.

6.2.6 THE COUNCIL shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA of any Exempt Information or other information whether relating to this Contract or otherwise relating to THE CONTRACTOR.

6.2.7 THE CONTRACTOR shall assist THE COUNCIL as reasonably necessary to enable THE COUNCIL to comply with its obligations under FOIA.

6.3 Confidentiality

THE CONTRACTOR hereby warrants that:

6.3.1 any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall treat all Confidential Information belonging to THE COUNCIL as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Contract; and

6.3.2 any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of THE COUNCIL, except where disclosure is otherwise expressly permitted by the provisions of this Contract.

6.4 THE CONTRACTOR shall take all necessary precautions to ensure that all Confidential Information obtained from THE COUNCIL is treated as confidential and not disclosed (without prior approval) or used other than for the purposes of this Contract by any of its employees, servants, agents or sub-contractors.

6.5 The provisions of clauses 6.3 and 6.4 shall not apply to any information :

- 6.5.1 which is or becomes public knowledge (other than by breach of this Clause 6.5);

- 6.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
- 6.5.3 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.
- 6.6 Nothing in this Clause 6 shall be deemed or construed to prevent THE COUNCIL from disclosing any Confidential Information obtained from THE CONTRACTOR:
- 6.6.1 to any other Government Department, Non-Departmental or quasi Government body or agency, central or local;
- 6.6.2 to any consultant, contractor or other person engaged by THE COUNCIL directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, contractor or any other person.
- 6.7 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the Services, THE CONTRACTOR undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 6.8 THE CONTRACTOR will immediately notify THE COUNCIL of any breach of security in relation to Confidential Information and all data obtained in the course of the Services and will keep a record of such breaches. THE PRIME CONTRACTOR will use its best endeavours to recover such Confidential Information or data however it may be recorded. THE CONTRACTOR will co-operate with THE COUNCIL in any investigation that THE COUNCIL considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 6.9 THE CONTRACTOR shall, at its own expense, alter any security systems at any time during the Contract Period at THE COUNCIL'S request if THE COUNCIL reasonably believes THE CONTRACTOR has failed to comply with clause 6.7.
- 6.10 The provisions of this Clause 6 will apply for the duration of the Contract and after its termination.

7 Equality of Opportunity and Health and Safety

- 7.1 THE CONTRACTOR shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, Sex Discrimination Act 1975 or the Disability Discrimination Act 1995, The Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003 Employment Equality (Age) Regulations 2006 or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of services. THE CONTRACTOR shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of THE CONTRACTOR and all sub-contractors employed in the execution of the Contract. THE CONTRACTOR will comply with

the detailed requirements in relation to equality of opportunity set out in Schedule 3 to this Contract.

- 7.2 THE CONTRACTOR shall comply with all relevant health and safety legislation, and shall take all reasonable steps to ensure that the Services are provided in a safe, healthy and supportive environment, which meet the needs of Learners. THE CONTRACTOR shall comply with the detailed requirements in relation to Learner health and safety set out in Schedule 3 to this Contract.

8 Liability

- 8.1 THE CONTRACTOR shall indemnify and keep indemnified THE COUNCIL, its servants, employees, and agents against all loss, damage or liability (whether civil or criminal), claims, demands, costs and expenses incurred by or made against THE COUNCIL, its servants, employees, or agents in respect of any loss or damage or personal injury (including death) which arises out of or in the course of or caused by the negligent act or omission or wilful default of THE CONTRACTOR its servants or agents in the delivery of the Service except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful default of THE COUNCIL or its servants or agents.
- 8.2 THE CONTRACTOR warrants to THE COUNCIL that to the best of its knowledge and belief all works carried out under the Contract will not infringe, in whole or in part, any copyright or any other intellectual property right of any person and agrees to indemnify THE COUNCIL against any and all claims, demands, proceedings, expenses and losses, including any of a consequential nature, arising directly or indirectly out of any act of the foregoing in relation to any works, where such act is, or is alleged to be, an infringement of a third party's copyright or other intellectual property right. This warranty and indemnity shall survive the termination of the Contract and shall exist for the life of the copyright or other intellectual property right.
- 8.3 The liability of THE CONTRACTOR under this clause shall not exceed twice the value of the Contract or £1,000,000 whichever is the greater save that this limit shall not apply to claims in respect of death or personal injury.

9 Insurance

- 9.1 THE CONTRACTOR shall maintain at its own cost a policy or policies of insurance to cover the liability of THE CONTRACTOR in respect of any actual default for which it may become liable to indemnify THE COUNCIL under this Contract. THE CONTRACTOR should provide copies of any insurance certificates to THE COUNCIL including professional indemnity, employers' liability and public liability insurance following a written request from THE COUNCIL.

10 Limitation of Liability

- 10.1 THE COUNCIL shall not be liable to THE CONTRACTOR for any indirect or consequential loss, damage, injury or costs whatsoever.

11 Access and Monitoring

- 11.1 THE COUNCIL shall give THE CONTRACTOR reasonable advance notice in writing of proposed visits to THE CONTRACTOR or its sub-contractors, to observe the delivery of the Services, by any person who has taken or will take no direct part in the conduct or content of the Services.
- 11.2 For monitoring and evaluation purposes, THE COUNCIL, the Secretary of State and his agents, Department for Business Innovation and Skills, the Department for Children Schools and Families, the Department for Work and Pensions, the National Audit Office, Representatives of the European Commission and the European Court of Auditors, the Audit Commission and the Inspectorates shall have the right to visit all or any site(s) and view operations relating to the provision and to inspect relevant documents and interview Learners and THE CONTRACTOR'S staff during these visits.
- 11.3 THE CONTRACTOR shall ensure that its sub-contractors shall, permit access at any reasonable time to any of the representatives listed at Clause 11.2 in order to:
- a) examine, audit or take copies of any original or copy documentation, accounts, books and records of THE CONTRACTOR and its sub-contractors that relate to the Contract;
 - b) visit, view or assess the design, management and delivery relating to the Contract at any Premises where those operations are carried out (including those of sub-contractors) and conduct relevant interviews, including interviews with Learners, during these visits at any reasonable time;
 - c) carry out examinations into the economy, efficiency and effectiveness with which THE CONTRACTOR has used THE COUNCIL'S resources in the performance of the Contract.
- 11.4 Where reasonably required, THE CONTRACTOR and its sub-contractors shall provide copies of any relevant documents required by any of the representatives listed at Clause 11.2.
- 11.5 THE CONTRACTOR shall, if required by any of the representatives stated at Clause 11.2 provide appropriate oral or written explanations.
- 11.6 THE COUNCIL reserves the right, at any reasonable time, and as it may deem necessary to require THE CONTRACTOR at its own cost to:
- 11.6.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Contract;
 - 11.6.2 obtain a report by an independent accountant of THE COUNCIL'S choice on the financial systems and controls operated by THE CONTRACTOR in respect of payments claimed or received under the Contract;
 - 11.6.3 provide a copy of THE CONTRACTOR'S latest audited Accounts;
 - 11.6.4 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by THE COUNCIL;

11.6.5 provide any additional evidence to support payments made under this Contract, as THE COUNCIL shall reasonably require.

11.7 THE CONTRACTOR shall in performing the Services comply fully with all relevant rules and regulations of THE COUNCIL in force from time to time especially when on COUNCIL premises.

12 Payment

12.1 In consideration of the Services to be provided by THE CONTRACTOR, THE COUNCIL will make the payments to THE CONTRACTOR in accordance with Schedule 1 and 2.

12.2 Payment by THE COUNCIL shall be without prejudice to any claims or rights, which THE COUNCIL may have against THE CONTRACTOR and shall not constitute any admission by THE COUNCIL as to the performance by THE CONTRACTOR of its obligations hereunder. Prior to any such payment, THE COUNCIL shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against THE CONTRACTOR, arising from this Contract or any other Contract between THE CONTRACTOR and THE COUNCIL.

12.3 Where THE COUNCIL carries out a review or audit of a sample of the evidence which THE CONTRACTOR is required to provide under the Contract to support the payments made by THE COUNCIL and identifies errors in that evidence which it deems are material, THE COUNCIL reserves the right to recover from THE CONTRACTOR an amount based on the error rate identified and the total value of the Contract. Such amount may be recovered by making deductions from future payments due THE CONTRACTOR under the Contract. In all such reviews the decision of THE COUNCIL is final.

13 Prohibited Activities

13.1 THE CONTRACTOR shall not offer or give, or agree to give, to any member, employee or representative of THE COUNCIL 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 COUNCIL or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. THE CONTRACTOR'S attention is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916. Any offence by THE CONTRACTOR or its employees or by anyone acting on its behalf under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any Contract with THE COUNCIL or Her Majesty's Government shall entitle THE COUNCIL to terminate the Contract and recover from THE CONTRACTOR the amount of any loss resulting from such termination and/or to recover from THE CONTRACTOR the amount of value of any gift, consideration or commission.

13.2 THE CONTRACTOR shall not enter into any Contract with any political or religious organisation using any funding provided by THE COUNCIL under this Contract if the effect of that Contract would be to promote a particular political or religious point of view.

13.3 THE CONTRACTOR shall not hold itself out as acting on behalf of THE COUNCIL without THE COUNCIL'S permission.

14 Data Protection and Protection of Personal Data

14.1 The parties shall ensure that they at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing personal data, and all personal data acquired by either party from the other shall be returned to the disclosing party on request. Both parties hereby acknowledge that performance of a duty imposed by the Act shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other party. The clause shall not affect THE COUNCIL'S ability to make a search with a credit reference agency.

14.2 With respect to the parties' rights and obligations under this Contract the parties agree that THE COUNCIL is the Data Controller and THE CONTRACTOR is the Data Processor within the meaning of the Data Protection Act.

14.3 THE CONTRACTOR shall:

14.3.1 Process Personal Data only in accordance with the instructions from THE COUNCIL (which may be specific instructions or instructions of a general nature as set out in the Contract or otherwise notified by THE COUNCIL to THE CONTRACTOR during the term of the Contract);

14.3.2 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;

14.3.3 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;

14.3.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;

14.3.5 obtain prior written consent from THE COUNCIL in order to transfer the Personal Data to any Sub-contractors or other third parties for the provision of the Services;

14.3.6 ensure that all Contractor Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by THE COUNCIL;

14.3.7 notify THE COUNCIL within 5 working days if it receives:

- 14.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or
- 14.3.7.2 a complaint or request relating to THE COUNCIL'S obligations under the Data Protection Legislation;
- 14.3.8 provide THE COUNCIL with full co-operation and assistance in relation to any complaint or request made, including by:
 - 14.3.8.1 providing THE COUNCIL with full details of the complaint or request;
 - 14.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with THE COUNCIL'S instructions;
 - 14.3.8.3 providing THE COUNCIL with any Personal Data it holds in relation to a Data Subject (within the timescales required by THE COUNCIL); and
 - 14.3.8.4 providing THE COUNCIL with any information requested by THE COUNCIL;
- 14.3.9 permit THE COUNCIL or THE COUNCIL'S representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit THE CONTRACTOR'S data Processing activities (and/or those of its agents, subsidiaries, and Sub-contractors) and comply with all reasonable requests or directions by THE COUNCIL to enable THE COUNCIL to verify and/ or procure that THE CONTRACTOR is in full compliance with its obligations under this Contract;
- 14.3.10 provide a written description of the technical and organisational methods employed by THE CONTRACTOR for processing Personal Data (within the timescales required by THE COUNCIL); and
- 14.3.11 not Process Personal Data outside the European Economic Area without the prior written consent of THE COUNCIL and, where THE COUNCIL consents to a transfer, to comply with:
 - 14.3.11.1. 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 is transferred; and
 - 14.3.11.2 any reasonable instructions notified to it by THE COUNCIL.

15 Quality Assurance

- 15.1 THE CONTRACTOR undertakes to THE COUNCIL that it has the resources and skills necessary to carry out THE CONTRACTOR'S obligations pursuant to this Contract.

- 15.2 THE CONTRACTOR shall comply with the requirements and observe guidance, which may from time to time be issued by THE COUNCIL, OFSTED, the awarding bodies and other regulatory bodies and of which THE CONTRACTOR is made aware.
- 15.3 THE CONTRACTOR shall ensure that all activities carried out pursuant to this Contract shall be documented in accordance with the requirements of THE COUNCIL and shall provide such documentation to THE COUNCIL, as THE COUNCIL shall request from time to time.
- 15.4 THE CONTRACTOR shall have in place a rigorous system of quality assurance based on the regular review and assessment of the quality of the Services delivered. THE CONTRACTOR shall comply with the requirements and observe guidance on the process for review and assessment, including the Framework for Excellence which is issued by THE COUNCIL.
- 15.5 THE CONTRACTOR will make available to THE COUNCIL a report on its own assessment of the quality of the Services provided under this Contract in a form, which The COUNCIL may from time to time specify.
- 15.6 Where THE COUNCIL assesses the quality and delivery of the Services during its business cycle through the annual provider and commissioning dialogue and the Framework for Excellence, THE CONTRACTOR will be informed of the outcome of that process. THE COUNCIL may require THE CONTRACTOR to agree an action plan for the improvement of services following the annual provider and commissioning dialogue, and the Framework for Excellence outcomes including analysis of performance against THE COUNCIL'S published minimum levels of performance, financial health and/or control check performed by THE COUNCIL or inspection by OFSTED, or inspection by any Government inspectorate, where the Services provided under this Contract are subject to inspection by that Government inspectorate. Failure to agree an action plan or failure to comply with the agreed targets set out in the action plan will constitute a Serious Breach under clause 18 of the Contract.
- 15.7 Where the Services provided under this Contract are subject to inspection by OFSTED and the inspection results in the Services or part thereof being assessed as inadequate, THE COUNCIL may, in its absolute discretion, terminate the Contract in respect of the whole Service or that part which is assessed as inadequate.
- 15.8 Where the Services provided under this Contract fail to meet minimum levels of performance or fail to meet any other quality threshold, as set out on an annual basis by THE COUNCIL, THE COUNCIL may, in its absolute discretion, terminate the Contract in respect of the whole Service or that part which fails to meet the threshold.
- 15.9 Where OFSTED has, following an inspection, assessed THE CONTRACTOR'S leadership and management as inadequate, THE CONTRACTOR should not take any steps to sub-contract any of the Services under this Contract or extend any existing sub-contracting arrangements until OFSTED is satisfied that action has been taken to remedy the weaknesses identified by the inspection.

- 15.10 Where THE CONTRACTOR sub-contracts any part of the Services under this Contract, THE CONTRACTOR must ensure that the sub-contractor is able to meet the minimum levels of performance and any other quality threshold required by THE COUNCIL or identified through and inspection by OFSTED. THE COUNCIL may request evidence from THE CONTRACTOR that the Services delivered by the sub-contractor meet the requirements of the Contract.
- 15.11 THE COUNCIL has the right to require THE CONTRACTOR to undertake training or other activity designed to address or to minimize the risk that the quality of the Services will not meet the required quality thresholds.

16 Fraud and Irregularity

- 16.1 THE CONTRACTOR shall notify THE COUNCIL immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Contract including, but not limited to, cases of:
- 16.1.1 collusion with members of the staff of THE COUNCIL or employees of the Department for Business Innovation and Skills;
 - 16.1.2 computer fraud;
 - 16.1.3 the submission to THE COUNCIL of inaccurate, incomplete, misleading or falsified management information;
 - 16.1.4 fraud involving awarding bodies;

provided that nothing in this clause 16 shall require THE CONTRACTOR to do anything, which may cause it to infringe any law.

- 16.2 Where THE COUNCIL has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, THE COUNCIL shall have the right of access to THE CONTRACTOR'S premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview THE CONTRACTOR'S servants or agents engaged with the delivery of the Contract.
- 16.3 Where THE COUNCIL has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract or any other contract between THE COUNCIL and THE CONTRACTOR and payments made thereunder it shall have the right to suspend payments under this Contract and any other Contract between the Parties.
- 16.4 The Parties shall co-operate in the identification of Learners who may be unlawfully claiming benefits. THE COUNCIL may from time to time brief THE CONTRACTOR as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Learners. THE COUNCIL shall provide a named contact or telephone answering machine for receiving such information.

17 European Funding and Other Sources of Funding

- 17.1 THE CONTRACTOR must not use the funding from the Contract to make bids or

claims from any European source of funding on its own behalf or on behalf of THE COUNCIL without obtaining consent in writing from THE COUNCIL, that it may do so (such consent not to be unreasonably withheld).

- 17.2 Where THE CONTRACTOR or any of its sub-contractors has access to other funding streams, THE CONTRACTOR will be required to demonstrate that no double funding has occurred in respect of the Services delivered under the Contract. Where THE COUNCIL identifies double funding in respect of the Services THE CONTRACTOR will be liable to repay to THE COUNCIL any sums paid by THE COUNCIL in respect of the Service for which THE CONTRACTOR has received funding from another source and THE COUNCIL reserves the right to deduct such sums from any monies owed to THE CONTRACTOR under the Contract.
- 17.3 THE COUNCIL reserves the right to use payments made under the Contract as match funding for European Social Fund Co-Financing Projects. Where requested to do so in writing by THE COUNCIL, THE CONTRACTOR shall provide such information and in the form as THE COUNCIL specifies to enable THE COUNCIL to comply with the requirements of the European Social Fund. THE CONTRACTOR shall if requested to do so by THE COUNCIL inform Learners or others that the Services provided have been financed in whole or part by the European Social Fund.

18 Breach

- 18.1 For the purpose of this Clause, the following definitions shall have the meanings set out below:
- 18.2 "Minor Breach" shall mean a delay or non-performance by either Party of its obligations under the Contract which does not materially, adversely or substantially affect the performance or delivery of the Service or the provision of a safe, healthy and supportive learning environment;
- 18.3 "Serious Breach" shall mean any breach defined as a Serious Breach in the Contract or any breach which adversely, materially and substantially affects the performance or delivery of the Service or the provision of a safe, healthy and supportive learning environment. Failure to comply with legislation, or actions or omissions by THE CONTRACTOR that endanger the health or safety of Learners would constitute a Serious Breach.
- 18.4 For the avoidance of doubt:
- a) neither Party shall be liable for any Minor Breach or Serious Breach under this Clause, which occurs as a direct result of any act or omission by the other Party, its staff or agents;
 - b) in the event of a breach the party not in breach may enforce the Clauses in the Contract relating to breach even if it has not done so in the event of earlier breaches.

Minor Breach

- 18.5 Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:
- 18.6 The Party not in breach shall be entitled to serve written notice on the Party in breach, giving full details of the breach and requiring the other Party to remedy the breach within a specified period.
- 18.7 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 18.6 or such other period as may be agreed between the Parties it shall constitute a Serious Breach by the Party in breach.

Serious Breach

- 18.8 Without prejudice to any other remedy, in the event of a Serious Breach, which is capable of remedy, the Parties shall adopt the following procedure:
- 18.9 The Party not in breach shall be entitled to serve written notice on the other Party giving full details of the breach and requiring the Party in breach to remedy the breach within a specified time period.
- 18.10 In the event that a Serious Breach of the Contract by THE CONTRACTOR cannot be remedied within the period specified in the notice served under Clause 18.9 or such other period as may be agreed between the Parties THE COUNCIL may:
- a) require THE CONTRACTOR to suspend recruitment of Learners to the Service to which the Serious Breach relates;
 - b) suspend payment to THE CONTRACTOR in respect of that part of the Service to which the Serious Breach relates.
- 18.11 In the event that any Serious Breach cannot be remedied at all or within the period specified in the notice served in accordance with Clause 18.9 or such other period as may be agreed between the Parties, the Party not in breach may at its sole discretion terminate the Contract or that part of the Service to which the breach relates with immediate effect on notice in writing to the other Party.

19 Termination

- 19.1 THE CONTRACTOR shall notify THE COUNCIL in writing immediately upon the occurrence of any of the following events:

19.1.1 where THE CONTRACTOR is an individual and if a petition is presented for THE CONTRACTOR'S bankruptcy or a criminal bankruptcy order is made against THE CONTRACTOR, or it makes any composition or arrangements with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

19.1.2 where THE CONTRACTOR is not an individual but is a firm; or a number of persons acting together in any capacity; if any event in clauses 19.1.1 or 19.1.3 of this condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for THE CONTRACTOR to be wound up as an unregistered company; or

19.1.3 where THE CONTRACTOR is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or management with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

- 19.2 On the occurrence of any of the events described in this Clause 19 THE COUNCIL shall be entitled to terminate this Contract by notice to THE CONTRACTOR with immediate effect.
- 19.3 Where THE CONTRACTOR is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 clause THE COUNCIL shall be entitled to terminate this Contract by notice to THE CONTRACTOR or its representatives with immediate effect.
- 19.4 Either Party may terminate this Contract with immediate effect in the event that in the reasonable opinion of the Party wishing to terminate this Contract, the conduct of the other in performing its obligations under this Contract amounts to a fundamental breach of the Contract, which is incapable of remedy.
- 19.5 In addition to the rights of termination under any other clauses of this Contract, either party shall be entitled to terminate this Contract in respect of all or part of the Service provided under the Contract by giving to the other not less than three months notice to that effect without the need to give a reason for termination.
- 19.6 Termination under clauses 19 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Contract.
- 19.7 THE CONTRACTOR shall upon termination of the Contract immediately deliver up to THE COUNCIL all correspondence, documents, specification papers and other property belonging to THE COUNCIL, which may be in its possession or under its control.

20 Transfer of Responsibility on Expiry or Termination

- 20.1 The Parties agree that if upon termination of this Contract or any part of the Service being provided under the Contract, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 are applicable, the Parties shall in good faith co-operate with each other in the disclosure of information and the provision of other assistance and comply with the provisions of Clause 12 in Schedule 3 of the Contract so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties.
- 20.2 The Parties agree that on termination or expiry of this Contract for any reason, the continuity of the Services is of paramount importance. THE CONTRACTOR shall do its utmost to minimise disruption caused to Learners and to assist the implementation of any contingency plan proposed by THE COUNCIL either prior to or after the termination or expiry of this Contract, to deal with the effects of such termination or expiry in so far as it is practicable to do so.

- 20.3 THE CONTRACTOR shall, at no cost to THE COUNCIL, promptly provide such assistance and comply with such timetable as THE COUNCIL may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or its equivalent) upon the expiry or other termination of this Contract. THE CONTRACTOR shall use all reasonable endeavours to ensure that its employees and its sub-contractors are under a similar obligation. THE COUNCIL shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Contract.
- 20.4 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of THE CONTRACTOR or its sub-contractors, which relate to performance, monitoring, management and reporting of the Programme, including the documents and data, if any, referred to in the Schedules.
- 20.5 THE CONTRACTOR undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of THE COUNCIL to ensure an orderly transfer of responsibility for provision of the Services.

21 Force Majeure

- 21.1 Neither party shall be liable for any delay or failure to meet its obligations under this Contract due to any cause outside its reasonable control, including (without limitation), inclement weather, Acts of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, refusal of licence, power failure or fire. If performance of the service is substantially prevented for a continuous period of 6 months by virtue of any of the aforesaid events, then either party may terminate this Contract by written notice to the other.

22 Public Reputations of the Parties/Press Releases

- 22.1 Both Parties recognise their respective public reputations and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.
- 22.2 The text of any press release or other communication to be published by or in the media concerning the subject matter of this Contract shall require the approval of each Party which shall not be unreasonably withheld or delayed.

23 Status of Contract

- 23.1 Nothing in this Contract shall have the effect of making THE CONTRACTOR the servant of THE COUNCIL. THE CONTRACTOR (if an individual) represents that he is regarded by both the Inland Revenue and the Department for Work and Pensions as self employed and accordingly shall indemnify THE COUNCIL against tax, national insurance contributions or similar imposed for which THE COUNCIL may be liable in respect of THE CONTRACTOR by reason of this Contract.

24 Waiver

- 24.1 No failure or delay on the part of either Party hereto to exercise any right or remedy under this Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and

remedies provided in this Contract are cumulative and are not exclusive of any rights or remedies provided by law.

25 Third Party Rights

25.1 None of the terms of this Contract are intended to be enforceable by any Learner or other third party.

26 Notice

26.1 Any notice or other document to be given under this Contract shall be in writing and shall be deemed to have been duly given if left at or sent by first class post by Royal Mail Special Delivery or other fast postal service or by facsimile or other electronic media to a Party at the address or relevant telecommunications number for such Party or such other address as the Party may from time to time designate by written notice to the other.

26.2 All such notices and documents shall be in the English language. Any notice or other document shall be deemed to have been received by the addressee two working days following the date of despatch of the notice or other document by post or, where the notice or other document is sent by hand or on the day of delivery or where notice is given by facsimile or other electronic media, on the working day following the delivery or transmission provided that a printed report is obtained confirming successful transmission or if the addressee acknowledges receipt. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.

27 Governing / Jurisdiction

27.1 This Contract shall be governed by and construed in accordance with English Law.

28 Dispute Resolution

28.1 Any dispute, difference or question arising between the parties either during the currency of the contract or afterwards shall be referred to the Contract Managers for discussion and review in order to try to resolve the same.

28.2 In the event of the Contract Managers being unable to resolve the relevant issue, upon the instigation of either party the parties will refer the matter to THE COUNCIL'S Area Director and THE CONTRACTOR'S representative nominated for this purpose (jointly "the Dispute Resolution Panel") for formal review and consideration. The Dispute Resolution Panel will meet within 14 days of a matter being referred to them in order to objectively review the position and use their best endeavours to resolve the relevant issue.

28.3 In the event of the Dispute Resolution Panel failing to resolve within 28 days of the date of referral a relevant issue referred to it by the parties, then any dispute arising out of or in connection with this Contract including any question regarding its existence, validity or termination, save for any matter or thing as to which the decision of THE COUNCIL is under the Contract deemed to be final and conclusive, shall be referred to and finally resolved by arbitration and the provisions

of the Arbitration Act 1996 (or any statutory modification or re-enactment thereof) shall apply to such arbitration.

28.4 The arbitration will be conducted by a sole arbitrator, jointly agreed by the CONTRACTOR and THE COUNCIL. In the event of the parties being unable to agree the identity of the arbitrator within 14 days of the service of the Notice of Arbitration, either THE CONTRACTOR or THE COUNCIL may request the Chairman of the Chartered Institute of Arbitrators to make the appointment.

28.5 The place of arbitration shall be London, England

29 Headings

29.1 The headings to conditions shall not affect their interpretation.

30 Entire Contract / Amendments

30.1 The Contract shall comprise the following:

The General Terms and Conditions

Schedule 1

Schedule 2

Schedule 3

30.2 This Contract constitutes the entire Contract between the parties and shall not be varied except by an instrument in writing signed by the parties.

31 Machinery of Government Changes

Subject to the passage of the Apprenticeships, Skills, Children and Learning Bill, THE COUNCIL will be dissolved in April 2010. The legislation may provide for THE COUNCIL'S rights and liabilities under this contract to transfer to the Secretary of State, the Chief Executive of Skills Funding Agency, the Young People's Learning Agency, a Local Authority or any other person specified in an order made by the Secretary of State.

Schedule 1

Service Specification

1. Definitions

2. The Services

Appendix 1 - Summary of Programme Funding

Appendix 2 - Supporting Documentation

SAMPLE

1. Definitions

- 1.1 "Funding Requirements" means the document which sets out the detailed requirements with which THE CONTRACTOR must comply in respect of each Learning Programme delivered under this Contract.
- 1.2 "Learning Programme" means a programme of education and/or training delivered by THE CONTRACTOR under this Contract.

2. The Services

- 2.1. The Services to be delivered under this Contract are the delivery of the Learning Programmes as set out in Appendix 1 the Summary of Programme Funding and at Appendix 2 of this Schedule. The detailed requirements in respect of each Learning Programme are set out in the Funding Requirements for 2009/10 as amended from time to time by THE COUNCIL and which form part of the terms and conditions of this Contract.
- 2.2 The maximum value for each Learning Programme as shown in Appendix 1 above may not be exceeded for any reason except by an agreed variation in writing to the Contract. THE COUNCIL will not be liable to make any payment in excess of the maximum values set out above or as varied in writing. Where the Contract period is longer than one year, funding for subsequent years is subject to funds being made available to THE COUNCIL. THE CONTRACTOR is not permitted to vire funding between Learning Programmes except by way of an agreed variation in writing to the Contract.
- 2.3 The Services are to be delivered in accordance with any specific regional requirements, any tender document submitted by THE CONTRACTOR and the Supporting Documentation as attached at Appendix 2 to this Schedule 1 which sets out the activity and/or scheduled payment profiles for the Services agreed by the Parties, which all form part of the terms and conditions of the Contract. THE CONTRACTOR is not permitted to vire funding between Learning Programmes except by way of an agreed variation in writing to the Contract.
- 2.4 For the avoidance of doubt the overall maximum values for each Learning Programme at Appendix 1 above takes precedence over the delivery profile and volumes in Appendix 2. Where THE CONTRACTOR considers that the combination of funding rates, as published on the Learning Aims Database and volumes would result in the overall maximum value being exceeded, THE CONTRACTOR must notify THE COUNCIL and the Parties will either agree a variation to the volumes, funding rates or to the maximum value for the Learning Programme to ensure THE CONTRACTOR remains within the agreed maximum value.
- 2.5 Where THE COUNCIL identifies that the CONTRACTOR is failing to deliver the volumes for any Learning Programme set out in Appendix 1 and Appendix 2 of this Contract it reserves the right in its absolute discretion to reduce the overall maximum value for that Learning Programme.
- 2.6 THE COUNCIL will restrict delivery of this Contract against the funding available up to the 31 March 2010 as detailed in Appendix 1. Where the delivery within this

financial year fails to meet the minimum levels of performance or where the delivery in this period would result in the overall maximum value being exceeded, THE COUNCIL reserves the right at its absolute discretion to vary the Contract accordingly.

SAMPLE

APPENDIX 1 SUMMARY OF PROGRAMME FUNDING 2009/2010

SAMPLE

Appendix 2 Supporting Documentation - AMPS Funding Agreement & Summary Statement of Activity (SSoA)

SAMPLE

Schedule 2

Finance, Volume and Data Capture

- 1 Contract Details
- 2 Funding Activity and Payment Profiles
- 3 Monthly Returns
- 4 Review of Contractual Performance and Reconciliation of Contracts
- 5 Final Reconciliation
- 6 Payment Process
- 7 Evidence

1 Contract Details

- 1.1 THE CONTRACTOR shall deliver the Services specified in Schedule 1 of this Contract and subject to the terms and conditions of the Contract as detailed and in accordance with THE COUNCIL'S Funding Guidance 2009/10

2 Funding, Activity and Payment Profiles

- 2.1 THE COUNCIL agrees to pay to THE CONTRACTOR the amounts set out in Schedule 1, Appendix 1 of this Contract on condition that THE CONTRACTOR delivers the Services in accordance with the terms and conditions of the Contract provided that THE CONTRACTOR is not assessed as being at serious risk of failure to deliver the Services under this contract by THE COUNCIL following any review of the quality of the Services.
- 2.2 Where THE CONTRACTOR delivers Learner Responsive provision payments will be made in accordance with the Funding Agreement set out in the Supporting Documentation for the Learning Programmes which have been agreed at Schedule 1 Appendix 2 of this Contract.
- 2.3 Where THE CONTRACTOR delivers Employer Responsive provision payments will be made in arrears, in accordance with the actual delivery reported to THE COUNCIL through the ILR submissions
- 2.4 Where THE CONTRACTOR delivers Employer Responsive provision, the payment will be split between the 1 August 2009 up to the 31 March 2010; and the 1 April 2010 up to the 31 July 2010. THE COUNCIL will only pay for delivery in the financial year the delivery takes place; claims made for delivery outside of the relevant financial year will not be paid.
- 2.5 Where THE CONTRACTOR delivers provision which requires invoice submission, payments will be paid in arrears against actual costs incurred. To ensure these payments, THE COUNCIL must receive invoices no later than 10 working days after the period end, the period end being the last day of the calendar month.

3 Monthly Returns

- 3.1 THE CONTRACTOR must supply to THE COUNCIL'S Data Service data on each individual learner, in accordance with the data collections framework set out in the '*Specification of the Individualised Learner Record 2009/10* as amended and updated which is published on the Information Authority's website (www.theia.org.uk) and in accordance with the '*Provider Support Manual 2009/10* and subsequent additions.

4 Review of Contractual Performance and Reconciliation of Contracts

- 4.1 Where THE CONTRACTOR receives profile payments from THE COUNCIL payments will be reconciled to cash earned by actual delivery of the Services or the period to the timetable published in the Funding Requirements.

- 4.2 Where THE CONTRACTOR'S actual delivery will result or has already resulted in an overpayment to THE CONTRACTOR by THE COUNCIL, THE COUNCIL will withhold from, or deduct the amount owed from, payments due to THE CONTRACTOR under the Contract for current or subsequent months or years accordingly.
- 4.3 Where THE CONTRACTOR'S actual delivery has resulted in an underpayment to THE CONTRACTOR by THE COUNCIL, THE COUNCIL will adjust the amount due to THE CONTRACTOR accordingly. This adjustment shall not exceed the overall maximum value set out in Schedule 1 of this contract.
- 4.4 Should there be an under or over payment to THE CONTRACTOR, THE COUNCIL'S Contract Manager may at their absolute discretion require a contract variation.

5 Final Reconciliation

- 5.1 A Contract review will take place at the end of the period of this contract in respect of the Services specified in Schedule 1 of this Contract. THE COUNCIL will notify THE CONTRACTOR of the actual amount of money, which has been earned against the Services delivered and compare this to the total profile payments made and to the overall maximum value specified in Schedule 1 above. At this stage final cash reconciliation will take place. Any overpayment made to THE CONTRACTOR by THE COUNCIL will be repayable within 30 days of receiving an invoice. THE COUNCIL reserves the right to reduce future payments to recover any overpayments. THE COUNCIL will pay any outstanding monies owed, up to the overall maximum value specified in Schedule 1 of this contract, within 30 days of final reconciliation being completed. Payment will be made as detailed in Clause 6.1.

6 Payment Process

- 6.1 All payments by THE COUNCIL will be made via BACS
- 6.2 THE COUNCIL is generally unable to recover any Value Added Tax charged. The maximum sum payable under this contract, as set out in Schedule 1 includes the cost of the service and any other VAT or taxes to be charged, where they apply.
- 6.3 Under the provision of Item 5A to Group 6 of Schedule 9 of the VAT Act 1994, the supply of education or vocational training funded by THE COUNCIL, and the supply by the person providing that education or vocational training, of any good or services essential to that provision, is considered to be an exempt supply for VAT purposes."

7 Evidence

- 7.1 The evidence requirements in respect of each Learning Programme are set out in the Funding Requirements and THE CONTRACTOR must retain such evidence for inspection on demand.

Schedule 3

Contents

1. Equal Opportunities
2. Retention of Documents
3. Intellectual Property Rights
4. Disposal of Assets and Change of Use
5. Data Collection
6. Specific Learner Incident Reporting Requirements
7. Learner Health, Safety and Welfare
8. Raising Standards
9. Feedback and Complaints
10. Branding and Logos
11. Information, Advice and Guidance
12. Transfer of Undertakings (Protection of Employment) Regulations 2006 and Pensions Aspects
13. Treatment of New Staff Employed To Deliver The Services

1 Equal Opportunities

- 1.1 THE CONTRACTOR will in providing the Services under this Contract to demonstrate that it has had regard to the duties placed on THE COUNCIL by the Learning and Skills Act 2000, (sections 13 and 14) and relevant equality legislation. Legislation, regulation and policy provide a framework within which THE COUNCIL will strive to deliver equality of opportunity for all learners, irrespective of their age, race, gender, religion or belief, sexual orientation, physical or learning abilities. The provision of the Services under the Contract should comply with the principles set out in THE COUNCIL'S National Single Equality Scheme 2007/10. THE CONTRACTOR will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of THE CONTRACTOR and all subcontractors employed in the execution of the Contract.
- 1.2 THE CONTRACTOR shall ensure that equality of opportunity is built into all aspects of provision; the business planning process; the self assessment process and that its strategic plan identifies SMART priorities in this area.
- 1.3 THE CONTRACTOR shall use analysis of data to inform future planning to improve the participation and success of under represented groups and challenge stereotyping. THE CONTRACTOR shall use appropriate Equality and Diversity Impact Measures (EDIMs). These will be proportionate, relevant and aligned to the Services THE CONTRACTOR has agreed to deliver under the Contract. THE CONTRACTOR will provide sufficient assurance that it is monitoring progress on these EDIMs and taking action on underperformance.

2 Retention of Documents

- 2.1 THE CONTRACTOR and its sub-contractors shall maintain original invoices; management information returns and all other documents necessary to verify the services provided by itself or by its sub-contractors in relation to this Contract for 6 years from the end of the financial year in which the last payment is made using monies from the European Social Fund, or where any payments made under this Contract for the Services have been used as match-funding for a European Social Fund Co-Financing Project. THE CONTRACTOR will be required to retain documents until 31 December 2022.

3 Intellectual Property Rights

3.1 Definitions

“Background Intellectual Property”

Any Intellectual Property, other than Foreground Intellectual Property, which is used in performing the Services or comprises part of the Work;

“Confidential Information”

Includes all designs, drawings, data, specifications and all other technical business and similar information relating to the Services including all readable or computer or

other machine readable data or material and any material relating to or comprising software which may be part of the provision of the Services;

“Foreground Intellectual Property”

Is any Intellectual Property that arises or is obtained or developed by, or on behalf of, THE CONTRACTOR in respect of the Work in the course of or in connection with the provision of the Services;

“Intellectual Property”

Is any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including, without limitation:

- (a) any renewals, revisions and extensions created or provided by the laws of any country;
- (b) all rights of action and remedies (including but not limited to an injunction, damages and/or an account of profits) in relation to past infringements; and
- (c) the right to apply for registration of any such rights in any country of the world;

“Work”

Means all materials created by THE CONTRACTOR as a result of the provision of the Services including Confidential Information.

- 3.2 In consideration of THE COUNCIL making the payments set out in Schedule 2 to THE CONTRACTOR in connection with the Services THE CONTRACTOR hereby grants (and, where relevant, shall procure from any necessary third parties the grant) to THE COUNCIL a non-exclusive, irrevocable, worldwide, royalty-free licence (with the right to license others) of any of THE CONTRACTOR’S Foreground Intellectual Property that THE COUNCIL may reasonably require to be able fully to exploit, develop and commercialise the results of the Services, including, without limitation, the Work.
- 3.3 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising

4 Disposal of Assets and Change of Use

- 4.1 In respect of Assets whose value exceeds £2,500 including VAT the following provisions shall apply.
- 4.2 For the purposes of this section:
- a) ‘Asset’ shall mean any property, real or personal, tangible or intangible;

- b) an Asset shall be considered to have been financed by THE COUNCIL if it has been acquired wholly or partly with funds provided by THE COUNCIL
 - c) the use of any Asset shall be considered to have changed if THE CONTRACTOR uses it for any purpose other than for the provision or connected with the provision of Services under the Contract;
 - d) 'the appropriate proportion thereof' shall be the proportion represented by the amount of funding provided by THE COUNCIL to acquire, develop or improve an asset in relation to the entire price paid for its acquisition, or its market value when its development or improvement have been completed.
- 4.3 THE CONTRACTOR shall ensure that any Asset financed by THE COUNCIL is adequately insured.
- 4.4 THE CONTRACTOR shall inform THE COUNCIL if it proposes to dispose of, or change the use of, any Asset that has been financed by THE COUNCIL.
- 4.5 THE CONTRACTOR shall not dispose of any Asset financed by monies provided by THE COUNCIL unless it has first obtained the written consent of THE COUNCIL to such a disposal.
- 4.6 Where THE CONTRACTOR disposes of the Asset it shall pay to THE COUNCIL whichever is the greater either the amount of funding provided by THE COUNCIL in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to THE COUNCIL unless otherwise agreed with THE COUNCIL.
- 4.7 If THE CONTRACTOR changes the use of any such Asset it will be treated as a disposal and THE CONTRACTOR shall make a payment to THE COUNCIL in accordance with clause 4.6 above.
- 4.8 In the event of THE CONTRACTOR being taken over, merging or going into liquidation, all Assets financed by THE COUNCIL, or the equivalent portion of their market value, will become the property of THE COUNCIL.
- 4.9 The provisions of this clause shall apply during the continuance of this Contract and after its termination howsoever arising. THE COUNCIL shall reserve the right to decide when its interest in Assets financed by THE COUNCIL under the terms of THE CONTRACT shall cease.

5 Data Collection

- 5.1 THE CONTRACTOR must supply to THE COUNCIL'S **The Data Service**, who collects this information on behalf of THE COUNCIL, data on each individual learner, in accordance with the data collections framework set out in the '*Specification of the Individualised Learner Record For 2009/10*' as amended and updated which is published on the **Information Authority's** website (www.theia.org.uk) in accordance with the '*Provider Support Manual 2009/10*' as amended and updated.

- 5.2 THE CONTRACTOR must supply THE COUNCIL with data in accordance with the following:
- 5.2.1 in line with agreed audit arrangements;
 - 5.2.2 in adherence with the data protection act
 - 5.2.3 to support payments received on profile;
 - 5.2.4 to enable reconciliation to take place; and
 - 5.2.5 to support the contract management and allocation processes.
- 5.3 THE CONTRACTOR shall transmit data for each part of the Service specified in Schedule 1 to THE COUNCIL in one of the following ways:
- 5.3.1 data is entered online using the provider online system specified by THE COUNCIL; or
 - 5.3.2 data is sent to THE COUNCIL electronically in a batch file specified by THE COUNCIL (provider batch).
- 5.4 THE CONTRACTOR must agree with THE COUNCIL the data transmission method to be used for each part of the Service. THE CONTRACTOR will not change from one method to another unless agreed in writing by THE COUNCIL. THE COUNCIL reserves the right to require THE CONTRACTOR to move to another form of data transmission.
- 5.5 Data collected must be transmitted to THE COUNCIL through THE COUNCIL'S web portal <http://providers.lsc.gov.uk>. Access to THE COUNCIL'S web portal is restricted and THE CONTRACTOR agrees to comply with the conditions of use regarding the supply of data to THE COUNCIL set out in this Clause 7 and in '*Specification of the Individualised Learner Record For 2009/10* and relevant *Provider Support Manual 2009/10* and subsequent editions are available on the Information Authority's web site www.theia.org.uk
- 5.6 In circumstances where no data has been added or updated for a given collection period THE CONTRACTOR must inform THE COUNCIL of a 'Nil Return' through THE COUNCIL'S web portal.
- 5.7 THE CONTRACTOR must ensure that data is received by THE COUNCIL by the 4th working day following the last day of the month. THE CONTRACTOR should also refer to the [The Information Authority](http://www.theia.org.uk) website www.theia.org.uk for data guidance and information.
- 5.8 Where THE COUNCIL is concerned about the quality of the data, including the completeness or accuracy of the data, provided by THE CONTRACTOR, THE COUNCIL may require THE CONTRACTOR to supply data more frequently for such period as THE COUNCIL shall require.

- 5.9 THE COUNCIL reserves the right to require THE CONTRACTOR, at its own cost, to carry out such work as THE COUNCIL deems necessary to improve the quality of data.
- 5.10 THE COUNCIL reserves the right to suspend payments to THE CONTRACTOR under the Contract where data quality gives rise to concern about the accuracy of the data provided by THE CONTRACTOR.
- 5.11 Failure to transmit complete and accurate data to THE COUNCIL in accordance with Clause 5.7 above will constitute a Serious Breach of Contract in accordance with Clause 18 of the General Terms and Conditions of the Contract.
- 5.12 THE CONTRACTOR shall provide to University for Industry (Ufi) details of the learning opportunity information procured under the terms of this Contract for inclusion on the Ufi national learning directory (www.learnndirect-advice.co.uk/nrs/provider/) and ensure that the information provided is current.
- 5.13 THE CONTRACTOR shall register with UKRLP and maintain contact details on an on-going basis. (www.ukrlp.co.uk)
- 5.14 THE CONTRACTOR shall, where applicable, advise Connexions as soon as possible if a young person does not enrol for a place they have accepted, or if they leave before completing their Learning Programme.

6 Specific Learner Incident Reporting Requirements

- 6.1 THE CONTRACTOR shall inform THE COUNCIL of injuries and diseases to Learners within the scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995 and fatal road traffic accidents. This shall be done by:
- 6.1.1 in the case of fatal accidents and 'major injuries' (as defined in RIDDOR) - informing THE COUNCIL by telephone or fax immediately THE CONTRACTOR becomes aware of the event; and
- 6.1.2 all RIDDOR events - sending to THE COUNCIL a completed Learner Incident Record Form within 10 days of THE CONTRACTOR becoming aware of the event.
- 6.2 THE CONTRACTOR shall investigate or assess the circumstances of all learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals' (HSG245) ISBN 0717628272. THE CONTRACTOR shall only use persons competent to investigate/assess learner incidents with a view to identifying the causes of any incident and lessons to be learned.
- 6.3 THE CONTRACTOR shall also monitor, and act on, any other harm to learners to the extent that THE CONTRACTOR could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) other incidents that cause absence from learning, any loss to the Learner of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.

6.4 THE CONTRACTOR shall co-operate with THE COUNCIL and Department for Work and Pensions for the purposes of the Analogous Industrial Injuries Scheme in respect to those Learners to which it applies.

7 Learner Health, Safety and Welfare

7.1 THE CONTRACTOR shall co-operate with and provide information to THE COUNCIL, as requested, to give assurance that adequate arrangements exist for Learner health and safety, to enable THE COUNCIL to review Learner incidents, and to assist THE COUNCIL with regard to its Policy on Learner Health and Safety.

7.2 THE CONTRACTOR shall ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of Learners, and in doing so shall:

7.2.1 operate an effective health and safety management system, which continually seeks to raise standards. THE COUNCIL will use Health and Safety Executive (HSE) publication HSG65 'Successful Health and Safety Management' as a benchmark when evaluating the arrangements of THE CONTRACTOR. Where THE CONTRACTOR is required to carry out self-assessment of the quality of learning provided, Learner health and safety shall be included in accordance with the requirements of THE COUNCIL and the Common Inspection Framework;

7.2.2 promote good practice and, in particular, the concept of the 'Safe Learner'. This includes Learners, through the quality of their learning, gaining an understanding of health and safety, the identification and control of risk, and developing a set of safe behaviours;

7.2.3 where part of the learning takes place in an environment outside the direct control of THE CONTRACTOR, for example, with another employer, THE CONTRACTOR shall make an informed judgement about health and safety suitability prior to learning being delivered with that employer/in that environment. To be suitable employers and environments shall at least meet THE COUNCIL'S health and safety procurement standard for learner health and safety. THE CONTRACTOR shall periodically review suitability as an integral part of the quality of the learning being delivered;

7.2.4 ensure it has access to persons sufficiently competent in health and safety and the occupational area to meet its obligations in respect of Learner Health Safety and Welfare and in particular to be able to make the informed judgement of health and safety suitability under Clause 7.2.3;

7.2.5 maintain adequate records in relation to Learner health and safety including; assessments of employer/environment suitability; agreements or commitments on health and safety with employers and Learners; information relating to harm to Learners; and records of assessments, monitoring and reviews of learner health and safety understanding/capabilities;

7.2.6 take account of relevant Health and Safety Executive guidance and other sources of good practice;

- 7.2.7 ensure Learners receive effective and timely information, instruction and training and effective supervision based on an assessment of risk. In the case of Learners below the minimum school leaving age, Learners under 18 and/or Learners with special needs, the environment in which the learning is delivered should be such that risks have been reduced to the lowest level practicable; and
- 7.2.8 ensure that Learners health and safety understanding and practical capabilities are periodically assessed based on an assessment of risk.
- 7.3 THE CONTRACTOR shall adopt recruitment processes that comply with the law and will ensure that children and vulnerable adult learners are protected. THE CONTRACTOR **will** take the necessary actions in order to comply with current vulnerable groups legislation and safeguarding requirements, will register with the criminal records bureau where their employees may have regular contact with learners under 18 or other vulnerable learners and make the appropriate checks to ensure that employment that involves regular contact with young people under the age of 18 or other vulnerable learners is not offered or held by anyone who has been convicted of certain specified offences, or whose name is included on lists of people considered unsuitable for such work held by the Department for Children Schools and Families and the Department of Health. THE CONTRACTOR will carry out criminal records bureau checks on all overseas applicants for employment and seek additional information about an applicant's conduct. THE CONTRACTOR must review their records and be able to demonstrate that they have robust record-keeping procedures through checks on record keeping undertaken.
- 7.4 In working with other organisations/bodies, THE CONTRACTOR shall make arrangements to co-ordinate and co-operate effectively for reasons of Learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.
- 7.5 THE CONTRACTOR shall, in circumstances where it sub-contracts the management and/or delivery of the Services under this Contract, ensure that all the Clauses in respect of Specific Learner Incident Reporting Requirements and Learner Health Safety and Welfare are included in its contract with sub-contractors.

8 Raising Standards

- 8.1 THE CONTRACTOR shall deliver the Services to an acceptable standard of quality as defined by THE COUNCIL and shall
- 8.1.1 minimise drop out rates and deliver high completion and achievement rates, and appropriate progression;
- 8.1.2 at least meet the minimum levels of performance that apply to the appropriate Services purchased. These minimum levels of performance and other types of underperformance will be set out by THE COUNCIL;
- 8.1.3 meet the requirements of inspection criteria, as assessed by the OFSTED;
- 8.1.4 ensure competent and appropriately qualified staff deliver and assess learning;

- 8.1.5 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
- 8.1.6 provide a safe, healthy and supportive environment, which meets the needs of Learners;
- 8.1.7 provide good management and leadership of the learning process;
- 8.1.8 deliver value for money and financial probity; and
- 8.1.9 ensure all sub-contractors delivering Services under the Contract on behalf THE CONTRACTOR comply with the requirements set out in 8.1.1 to 8.1.8 above.

Failure to meet the requirements set out in clauses 8.1.1 to 8.1.9 may result in THE COUNCIL assessing THE CONTRACTOR to be at serious risk of failing to deliver the Services under this Contract.

- 8.2 THE CONTRACTOR shall continuously seek to improve the Services and raise standards to benefit the Learner. The CONTRACTOR shall have the primary responsibility for improving standards and will need to demonstrate to THE COUNCIL'S satisfaction that it has an effective quality assurance system based on annual self-assessment and the implementation of its own quality improvement process. THE CONTRACTOR must provide evidenced continuous improvement. Failure to demonstrate improvement in the quality of the Services may result in THE COUNCIL assessing THE CONTRACTOR to be at serious risk of failing to deliver the Services.
- 8.3 THE CONTRACTOR shall conduct continuous self-assessment of the Services against the quality requirements shown in Quality improvement and self-assessment (May 2005) and Annex B of Planning for Success (which includes the requirements under the Common Inspection Framework published by OFSTED). THE CONTRACTOR shall annually submit their self-assessment reports electronically onto the Provider Gateway by a specified date and where required, evidence shall be provided to THE COUNCIL and/or to OFSTED in support of statements made in the self-assessment report.
- 8.4 If THE COUNCIL assesses THE CONTRACTOR to be at serious risk of failure to deliver the Services under this Contract following THE COUNCIL may in its absolute discretion:
 - 8.4.1 require THE CONTRACTOR to meet improvement indicators to improve the quality of its Services. THE COUNCIL will meet with THE CONTRACTOR to discuss and reach agreement on implementation of these actions and improvement indicators and to agree arrangements for monitoring and reviewing progress. In such cases reviews will take place at the frequency specified by THE COUNCIL and in agreement with THE CONTRACTOR;
 - 8.4.2 agree detailed improvement plans and measures that set out clearly the expected timescale for improvement;

- 8.4.3 agree arrangements for more frequent monitoring of quality improvement plans;
- 8.4.4 cease funding all or part of the Services or
- 8.4.5 terminate the Contract.
- 8.5 THE COUNCIL may at its discretion agree a programme of support for THE CONTRACTOR to assist it in taking action to improve the quality of the Services.
- 8.6 When THE CONTRACTOR receives notification from OFSTED that it's Services (including leadership and management) is to be inspected, THE CONTRACTOR shall provide THE COUNCIL with details of its quality improvement activity, and any other relevant information in accordance with the required timescale of OFSTED. THE COUNCIL will refer in turn to THE CONTRACTOR's latest self-assessment report using the Provider Gateway.
- 8.7 Following any inspection by OFSTED of the Services provided under this Contract, THE CONTRACTOR will set out in writing to THE COUNCIL how it will develop the strengths and address the areas for improvement identified in the inspection. THE CONTRACTOR will update and agree with THE COUNCIL revisions to any current action plans setting out how it intends to implement its quality improvement actions.
- 8.8 Where all or any part of the Services (including leadership and management) delivered under this part of the Contract is assessed by the Inspectorates as inadequate, THE COUNCIL will regard THE CONTRACTOR as being at serious risk of failure to deliver the Services, and the provisions set out at Clause 8.4 will apply.
- 8.9 Where it is identified that the Services delivered is not meeting the minimum levels of performance, THE COUNCIL will regard THE CONTRACTOR as being at serious risk of failure to deliver the Services, and the provisions set out at paragraph 8.4 will apply.
- 8.10 Where appropriate, THE CONTRACTOR shall confirm in writing to THE COUNCIL that their Centre Approval Status is still current. The written statement will need to confirm approved centre status for the specific National Vocational Qualification titles and levels, including awarding body name(s).
- 8.11 THE CONTRACTOR shall ensure that appropriately qualified and trained staff will deliver the Services. THE CONTRACTOR shall be responsible for the professional development and training of its staff and for meeting any minimum requirements of THE COUNCIL for the proportion of its staff to be appropriately qualified. THE CONTRACTOR will ensure that its staff are trained in accordance with the Further Education Teachers Qualification (England) Regulations 2007 and the Further Education Teachers Continuing Professional and Registration (England) Regulations 2007 and LLUK Standards.

9 Feedback and Complaints

- 9.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services shall rest with THE

CONTRACTOR. THE CONTRACTOR shall have procedures in place, which are acceptable to THE COUNCIL, to gather and act upon feedback and complaints from Learners and/or their representatives and employers and the wider community.

9.2 THE COUNCIL may issue guidance for THE CONTRACTOR on dealing with feedback and handling complaints, and will set out the minimum standards expected.

9.3 THE CONTRACTOR shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by THE COUNCIL.

9.4 Where a complaint has not been resolved to the satisfaction of the complainant THE CONTRACTOR will advise the complainant of his or her right to complain to THE COUNCIL and co-operate with any investigation carried out by THE COUNCIL.

10 Branding and logos

10.1 The CONTRACTOR shall when receiving funding from THE COUNCIL for any programme, meet the requirements of the endorsement branding guidelines, available on THE COUNCIL'S brand website, on all and any promotional materials or activities. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products. Failure to meet with this requirement could lead to a reduction in the amount of funding given.

10.1.1 The CONTRACTOR shall be given access to the current COUNCIL logos and statements, which are to be used. This requirement may include but not subject to the use of Logo's from other co-branding or co-funding participants. Details will be available from THE COUNCIL'S website or communications team; and

10.1.2 this access, when granted, shall be limited to the use of the current logos and statements and under no circumstances will THE CONTRACTOR be allowed to amend or alter the logo on statements, nor use it for anything not covered by this Contract. Failure to comply with the requirements of this Clause shall constitute a serious breach under the Clause 18 of the General Terms and Conditions of this Contract.

10.2 All the terms of this Clause 10 shall also apply to THE CONTRACTOR'S sub-contractors in carrying out its responsibilities under this Contract.

11 Information, Advice and Guidance

11.1 As part of the delivery of the Services, THE CONTRACTOR will have to provide high quality and easily accessible information and advice in helping learners to understand the opportunities and support available to them about education, training or connected matters (including employment).

11.1.1 Where one of the main objectives of the Services to be provided under this Contract is to deliver information and advice, THE CONTRACTOR will have

- 1) The Teachers Pension Scheme (TPS)
- 2) The Local Government Pension Scheme (LGPS)
- 3) The Principal Civil Service Pension Scheme (PCSPS).

As applicable;

- 12.1.12 “Relevant Legislation” means any statute or regulations or the EC Treaty (or any directives or regulations made there under);
- 12.1.13 “Relevant Personnel Documentation” means the information set out in Appendix C;
- 12.1.14 “Relevant Transferring Members” means:
- 1) Those Transferring Employees who were members of the LGPS or TPS or who were eligible to join the LGPS or TPS;
- 12.1.15 “Required Information” means the information set out in the Appendix A-F;
- 12.1.16 “Successor Contractor” means the person nominated by the COUNCIL to undertake the services substantially the same as the Services after the termination of this Contract;
- 12.1.17 “Successor Contractor’s Scheme” means:
- 1) The LGPS or TPS or PCSPS; or
 - 2) Any other retirement benefit scheme established by the Successor Contractor or to which the Successor Contractor is party,
- As applicable;
- 12.1.18 “Transferring Employees” means those employees of the Previous Contractor or THE COUNCIL who are employed in the performance of services substantially the same as the Services; and
“Transferring Employees” shall be construed accordingly; and
- 12.1.19 “TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time.

12.2 Transfer of Undertakings (Protection of Employment) on Commencement

- 12.2.1 THE CONTRACTOR shall on the Employee Transfer Date become the employer of the Transferring Employee and, whether or not by virtue of TUPE, or as a term of this Agreement, all the respective employer’s rights, duties, powers, liabilities and obligations in respect of the contract of employment of the Transferring Employee shall transfer to the CONTRACTOR. The Parties shall respectively comply with all the requirements and obligations, which TUPE

imposes on a transferor and transferee in respect of such transfer whether or not as a matter of law TUPE applies;

12.2.2 For the avoidance of doubt, THE CONTRACTOR assumes full responsibility for any claims made by a Transferring Employee in respect of their terms and conditions of employment and will indemnify THE COUNCIL and the Previous Contractor in respect of any claim brought by any Transferring Employee which arises from operation of this Clause 12.2; and

12.2.3 Where the Transferring Employee is a Public Sector Employee THE CONTRACTOR must comply with the Cabinet Office Statement of Practice ODPM Circular 03/2003.

12.3 Protection of Pensions – Public Sector Employees

12.3.1 THE CONTRACTOR shall:

12.3.1.1 In respect of service from the Employee Transfer Date and at a date not later than one month prior to the Employee Transfer Date;

12.3.1.1(a) Establish, or have become party to an employee's retirement benefit scheme that makes retirement provision which is approved or capable of approval by the Inland Revenue as an exempt approved scheme under Chapter 1 of Part XIV of the Income and Corporation Taxes Act 1988 and capable of receiving a transfer payment from the Public Sector Pension Scheme and certified by the Government Actuary's Department or other actuary to be agreed between the Parties, to be broadly comparable to the Public Sector Pension Scheme ("the Contractor's Scheme"); or

12.3.1.1(b) Have entered into an Admission Agreement in respect of, or otherwise be able to provide a Relevant Transferring Member with membership of, a Public Sector Pension Scheme, where permissible by the rules of that scheme, or

12.3.1.1(c) Establish, or have become party to an employee's retirement benefit scheme that makes retirement provision which is accepted in writing by each individual transferring employee as being adequate for their personal retirement provision.

Admission of the Relevant Transferring Members to the Contractor's Scheme

12.3.1.2 Procure that the Relevant Transferring Members shall be automatically admitted to the Contractor's Scheme with effect from the Employee Transfer Date unless any of the Relevant Transferring Members elect within three (3) months of the Employee Transfer Date by notice in writing not to become members of the Contractor's Scheme from such date;

- 12.3.1.3 Invite those Relevant Transferring Members who elect to join the Contractor's Scheme to request that a payment is made from the Public Sector Pension Scheme to the Contractor's Scheme in respect of the retirement benefits accrued in the Public Sector Pension Scheme on behalf of those Relevant Transferring Members;
- 12.3.1.4 Procure that the Contractor's Scheme will accept a cash payment equal to the Transfer Value made from the Public Sector Pension Scheme to the Contractor's Scheme;
- 12.3.1.5 Procure that the Contractor's Scheme will provide [x] years of reckonable service in respect of each year of a Relevant Transferring Member's period of reckonable service under the Public Sector Pension Scheme to those that each Relevant Transferring Member respectively had under the Public Sector Pension Scheme as at the Transfer Date;

Admission of the Relevant Transferring Members into a Public Sector Pension Scheme

- 12.3.1.6 Where THE CONTRACTOR selects the option set out in 12.3.1.1(b)., ensure that each Transferring Employee may participate, or continue to participate in their respective Public Sector Pension Scheme; and

Continuity of Schemes

- 12.3.1.7 Neither by voluntary act or omission either prevent the Contractor's Scheme from continuing in full force and effect throughout the term of this Contract, or where THE CONTRACTOR selects the option set out in 12.3.1.1(b)., at any time end the participation of a Transferring Employee of a Public Sector Pension Scheme.
- 12.3.2 Within a reasonable time prior to the Employee Transfer Date THE CONTRACTOR shall notify each of the Transferring Employees in writing of the terms and conditions upon which they will be employed by THE CONTRACTOR on and after the Employee Transfer Date and the details of the Contractor's Scheme, or Public Sector Pension Scheme and the proposed organisation of the undertaking after the Employee Transfer Date.
- 12.3.3 THE CONTRACTOR shall procure that an amendment shall only be made to the Contractor's Scheme which could reduce the value of the benefits of any Relevant Transferring Member which have accrued to the date upon which the power to amend is exercised, if any such amendment is required by legislation or is made with the written consent of the Relevant Transferring Member. The value of the benefits shall make explicit allowance for expected future salary growth as determined by the actuary of THE CONTRACTOR'S

Scheme as if the Relevant Transferring Member had continued in employment with THE CONTRACTOR.

- 12.3.4 At the expiry or termination of this Contract, THE CONTRACTOR shall procure that the Contractor's Scheme shall offer members of the Contractor's Scheme who were Relevant Transferring Members and whose employment transfers to the Successor Contractor, the option to transfer their accrued pension rights to the Successor Contractor's Scheme on an actuarial basis certified by the actuary as no less favourable than the Transfer Value. The value of such accrued pension rights shall not be reduced because of inadequate funds being available in the Contractor's Scheme.
- 12.3.5 THE CONTRACTOR shall ensure that on a full or partial wind-up of the Contractor's Scheme, the benefits of any Relevant Transferring Member who is currently employed by THE CONTRACTOR and accruing benefits immediately before such winding up have been increased to those which could be provided by a past service reserve. The past service reserve is to be calculated with regard to projected final pensionable pay at the assumed date of retirement, or earlier death, or leaving service and not the final pensionable pay at the date of wind-up or earlier date of leaving the Contractor's Scheme and each reserve is to be calculated on a basis determined by the actuary of the Contractor's Scheme.
- 12.3.6 Where any Relevant Transferring Member transfers to a Sub-Contractor engaged in the provision of the Services, THE CONTRACTOR shall ensure that in any such transfer, the Sub-Contractor shall establish, or have become party to an employee's retirement benefits scheme on the terms set out in clause 12.3.1.1 ("the Sub-Contractor's scheme"). THE CONTRACTOR shall procure that the Relevant Transferring Member is invited to join the Sub-Contractor's scheme on the terms set out in clauses 12.3.1.2 – 12.3.1.7 THE CONTRACTOR shall ensure that the Sub-Contractor's scheme shall include the conditions set out in clauses 12.3.3, 12.3.4, 12.3.5 and 12.3.6.

12.4 Expiry of Contract

- 12.4.1 THE COUNCIL and THE CONTRACTOR shall act on the basis that TUPE applies on expiry or termination of the Contract where THE COUNCIL is proposing re-contract for services which are substantially the same as the Services.
- 12.4.2 During the period of 18 months preceding the expiry of the Contract or within 21 days after THE COUNCIL or THE CONTRACTOR has given notice to terminate the Contract, THE CONTRACTOR shall disclose to THE COUNCIL and shall permit THE COUNCIL to disclose to any tenderer for services which are substantially the same as the Services, the Initial Staff Information provided that prior to so doing any such tenderer shall have executed in writing a confidentiality undertaking in favour of THE CONTRACTOR.

- 12.4.3 During the period of three months preceding the expiry of this Contract or within 21 days after THE COUNCIL or THE CONTRACTOR has given notice to terminate the Contract, THE CONTRACTOR shall, subject to the provisions of the Data Protection Act 1998, provide and thereafter keep updated at monthly intervals, to THE COUNCIL and to the Successor Contractor information equivalent to the Relevant Personnel Documentation and the Prescribed Particulars in respect of each employee whom THE CONTRACTOR reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor Contractor nominated by THE COUNCIL shall have executed in writing a confidentiality undertaking in favour of THE CONTRACTOR.
- 12.4.4 THE CONTRACTOR shall make reasonable endeavours to assist the Successor Contractor to communicate with, meet and inform and consult with the employees whom THE CONTRACTOR reasonably believes will be a Future Transferring Employee and their trade union or other employee representatives for the purposes of complying with TUPE.
- 12.4.5 THE CONTRACTOR shall immediately prior to the Future Transfer Date provide to THE COUNCIL or the Successor Contractor a complete and accurate list of the Prescribed Particulars and Identification Details of all employees whom it reasonably believes will be Future Transferring Employees.
- 12.4.6 Within a period of 21 days following the expiry or termination of this Contract THE CONTRACTOR shall provide to THE COUNCIL or the Successor Contractor in writing Final Pay Details of the Future Transferring Employees.
- 12.4.7 THE CONTRACTOR warrants that it shall supply complete and accurate information pursuant to clauses 12.4.2, 12.4.3, 12.4.5 and 12.4.6 in all material respects and THE CONTRACTOR shall indemnify and keep THE COUNCIL indemnified fully now and in the future in respect of all or any costs whether arising in contract or under any Relevant Legislation suffered or incurred by THE COUNCIL or the Successor Contractor nominated by THE COUNCIL by reason of any proceeding, claim or demand arising from or in connection with the provision of information and/or the failure to provide complete and accurate information under clauses 12.4.2, 12.4.3, 12.4.5, and 13.4.6, and/or the provision of assistance and/or failure to provide assistance under clause 12.4.4 of this Contract.
- 12.4.8 After receiving notice of the termination of this Contract and for six (6) months preceding expiry of this Contract THE CONTRACTOR shall promptly notify THE COUNCIL or the Successor Contractor:
- 12.4.8.1 Of the period of notice given by THE CONTRACTOR or received from any employee whom THE CONTRACTOR

reasonably believes will be a Future Transferring Employee regardless of when such notice is to take effect;

12.4.8.2 Of the termination, for whatever reason, of the employment of any employee whom THE CONTRACTOR reasonably believes will be a Future Transferring Employee; and

12.4.8.3 Of any other change to any employee whom THE CONTRACTOR reasonably believes will be a Future Transferring Employee and their terms and conditions of employment, their Prescribed Particulars and their Relevant Personnel Documentation.

12.4.9 The CONTRACTOR warrants that it shall supply the Required Information completely and accurately in all respects at the time of supply and shall indemnify and keep THE COUNCIL and/or any Successor Contractor indemnified in respect of all and any costs suffered or incurred by THE COUNCIL or the Successor Contractor by reason of any proceedings, claim or demand arising out of or in connection with:

12.4.9.1 Any claim against THE COUNCIL or the Successor Contractor by any Future Transferring Employee so far as it relates to any act or omission of THE CONTRACTOR after the Employee Transfer Date and prior to the Future Transfer Date; and

12.4.9.2 Any claim against THE COUNCIL or the Successor Contractor by any Future Transferring Employee whose name is not included on the list provided by THE CONTRACTOR pursuant to Clause 12.4.5 so far as it relates to the dismissal of such Future Transferring Employee within two Months of THE COUNCIL or Successor Contractor becoming aware of the transfer of such Future Transferring Employee.

12.4.10 For the purposes of Clause 12.4.9, in the event that THE COUNCIL or the Successor Contractor incurs costs, liabilities or expenditure in respect of Future Transferring Employees which is greater than would have been the case if the Required Information supplied by THE CONTRACTOR had been accurate and complete, then such (net) greater costs, liabilities or expenditure shall be deemed to be costs suffered or incurred by THE COUNCIL or Successor Contractor and included within the indemnity provided by THE CONTRACTOR.

12.4.11 THE COUNCIL or Successor Contractor shall be entitled to recover from THE CONTRACTOR in full any legal, accountancy and other costs actually and reasonably incurred by THE COUNCIL or Successor Contractor in connection with the costs and liabilities indemnified by THE CONTRACTOR.

12.4.12 This clause 12.4 shall continue in effect for six months following the expiry or termination of this Contract.

13 Treatment of New Staff Employed To Deliver The Services

- 13.1 Where THE CONTRACTOR recruits new employees to deliver the Services, THE CONTRACTOR must offer employment on fair and reasonable terms and conditions which are, overall, no less favorable than those employees who have transferred to THE CONTRACTOR.

SAMPLE

APPENDIX A TO CLAUSE 12 SCHEDULE 3

“Initial Staff Information” Means:

1. Number of staff to be transferred;
2. Gender;
3. Date of Birth;
4. Whether disabled for the purposes of the Disability Discrimination Act 1995;
5. Job description;
6. Work Location;
7. Conditioned hours of work per week;
8. Date of commencement of continuous employment and (if different) the commencement date;
9. Relevant Personnel Documentation;
10. Annual salary and rates of pay band/grade including pending increases;
11. Shifts, unsociable hours or other premium rates of pay;
12. Allowance and bonus details over the last twelve (12) Months including date, type, amount and pending allowances/bonuses;
13. Leave entitlement;
14. Any factors affecting redundancy entitlement;
15. Whether currently on maternity leave or other long term leave of absence;
16. Details of all dismissals or terminations of employment within the preceding six (6) Months of anyone previously employed to or engaged in connection with the provision of the Services;
17. Details of all agreements or arrangements (whether or not legally binding) entered into in relation to the staff with any trade union or organisation or body representing employees or with any employee representatives;
18. Details of all trade disputes and industrial action occurring at any time during the preceding twelve (12) Months to which any member of staff was a party;
19. Details of any trade union or organisation or body representing employees.

APPENDIX B TO CLAUSE 12 SCHEDULE 3

“PRESCRIBED PARTICULARS” MEANS:

1. Personal Details

Gender;

Date of Birth;

Whether known to be disabled for the purposes of the Disability Discrimination Act 1995, and details of any reasonable accommodation in respect thereof;

2. Employment Details

Job Title;

Staff Number;

Job Description;

Work Location;

Conditioned hours of work per week;

Date of commencement of continuous employment and (if different) commencement date;

Relevant Personnel Documentation;

Notice Periods (for employer and employee);

Annual salary and rates of pay band/grade including pending salary increases;

Shifts, unsociable hours or other premium rates of pay;

Overtime entitlement and details of last twelve (12) Months overtime;

Allowance and bonus details over the last twelve (12) Months including date, type, amount and pending allowances/bonuses;

Provisional details about standing loan/advances on salary or debts;

Existing and future training or sponsorship commitments;

Leave entitlement and accrued leave entitlement including any leave outstanding or expected to be outstanding at the Future Transfer Date;

Annual leave reckonable service date;

Additional employment benefits;

Other payments;

Copies of pay slip data for immediately preceding five (5) Months;

Provisional details of Cumulative Pay (for tax and pension purposes) and cumulative tax paid;

Tax Code;
Voluntary deductions from pay;
National insurance (NI) Number,
NI Contributions rate;
NI benefit start date;

3. Records of Employment Service

Last two appraisal report markings and/or performance assessment details and dates thereof;

Sickness and absence records for two (2) years immediately preceding (including maternity leave);

Details of any current warnings for breach of discipline or poor performances including warning reason, warning date, warning status and start and end date or penalty period.

Details of any other outstanding disputes or grievances including all proceedings before any Employment Tribunal.

4. Method of payment

Instrument of payment;

Bank/building society account details for payroll purposes.

5. Pensions

For pension purposes, the notional reckonable service date;

Pensionable pay history for preceding 3 years;

Percentage of any pay currently contributed under additional voluntary contribution arrangements;

Percentage of pay currently contributed under any added years arrangements.

APPENDIX C TO CLAUSE 12 SCHEDULE 3

“RELEVANT PERSONNEL DOCUMENTATION” MEANS:

1 General Practices and Policies

Maternity, paternity and parental leave (including names of those on long-term leave or maternity leave);

Special leave and career breaks;

Sick leave and pay;

Disciplinary/grievance policy and procedures;

Equal Opportunities policy;

All documents relevant to terms and conditions of employment, including manuals, codes, handbooks, procedure guides, publications and agreements (including collective agreements);

Any other letters or documents or collective agreements affecting terms and conditions of employment;

2 Redundancy

Full details of any practice, policy or procedure which the CONTRACTOR has in relation to redundancy and copies of relevant documents.

APPENDIX D TO CLAUSE 12 SCHEDULE 3

“FINAL PAY DETAILS” MEANS:

In respect of each Future Transferring Employee, the following information:

- Final Month's copy pay slip data;
- Cumulative pay for tax and pension purposes;
- Cumulative tax paid;
- Tax code.

SAMPLE

APPENDIX E TO CLAUSE 12 SCHEDULE 3

“IDENTIFICATION DETAILS” MEANS:

1. In respect of each Future Transferring Employee, the following information:
 - Name
 - Home Address
 - Work Telephone Number
 - Home Telephone Number (where available)
 - Next of Kin

SAMPLE

APPENDIX F TO CLAUSE 12 SCHEDULE 3

ODPM Circular 3/2003: Best Value Performance Improvement

This circular can be found at:

<http://www.communities.gov.uk/index.asp?id=1163718>

SAMPLE

APPENDIX G TO CLAUSE 12 OF SCHEDULE 3

TRANSFER VALUES

Bulk transfer values will be inserted in the Contract prior to signing.

SAMPLE