



Leading learning and skills

DRAFT

EDUCATION AND TRAINING

FUNDING AGREEMENT
(Contract for Services)

Contents

Section

General Terms and Conditions

Schedule 1 Service Specification

Schedule 2 Finance, Volume and Data Capture

Schedule 3 Special Conditions

DRAFT

General Terms and Conditions

| | |
|----|---|
| 1 | Definitions |
| 2 | Commencement and Continuation |
| 3 | Contract Managers |
| 4 | The Contractor's Obligations |
| 5 | Assignment and Sub-Contracting |
| 6 | Freedom of Information and Confidentiality |
| 7 | Equality of Opportunity and Health and Safety |
| 8 | Liability |
| 9 | Insurance |
| 10 | Limitation of Liability |
| 11 | Access and Monitoring |
| 12 | Payment |
| 13 | Prohibited Activities |
| 14 | Data Protection |
| 15 | Quality Assurance |
| 16 | Fraud and Irregularity |
| 17 | European Funding and Other Sources of Funding |
| 18 | Breach |
| 19 | Termination |
| 20 | Transfer of Responsibility on Expiry or Termination |
| 21 | Force Majeure |
| 22 | Public Reputations of the Parties/Press Releases |
| 23 | Status of Contract |
| 24 | Waiver |
| 25 | Third Party Rights |
| 26 | Notice |
| 27 | Governing Jurisdiction |
| 28 | Dispute Resolution |
| 29 | Headings |
| 30 | Entire Contract/Amendments |



Leading learning and skills

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 “Annual Planning Review” means the review of THE CONTRACTOR’S progress in implementing its Development Plan and the achievement of headline of performance measures.

1.2 “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.

1.3 “Development Plan” means the three year development plan agreed between THE CONTRACTOR AND THE COUNCIL setting out how the Services contribute to the delivery of THE COUNCIL’S Local Plan.

1.4 “Inspectorates” means the Office for Standards in Education (OFSTED) and the Adult Learning Inspectorate (ALI).

1.5 “Learner” means any third party including any student, apprentice, trainee or similar to whom THE CONTRACTOR is required to deliver any of the Services.

1.6 “Parties” means THE COUNCIL and THE CONTRACTOR.

1.7 “Performance Review” means the review of the quality of the Services provided under the Contract.

1.8 “Premises” means the location where the Services are to be performed, as detailed in the Contract.

1.9 “Services” means the services to be provided as specified in the Contract.

1.10 “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 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.

5.3 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 thereunder 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 THE CONTRACTOR shall treat as confidential all documents and information provided by THE COUNCIL during or in connection with the performance of this Contract which contain Exempt Information. Such documents and information shall not be used by THE CONTRACTOR except for the purposes for which they were made available and shall not be disclosed by THE CONTRACTOR to any other person without the prior written consent THE COUNCIL. THE CONTRACTOR shall use all reasonable endeavours to ensure that its employees and its sub-contractors are under a similar obligation of confidentiality in respect of the relevant documents and information. The above restriction shall not apply to information which:

6.3.1 is or has become part of the public domain other than as a result of a breach of the obligations of confidentiality under this Contract; or

6.3.2 is disclosed to sub-contractors contracted to deliver all or part of the Services.

6.4 THE COUNCIL reserves the right to share information about THE CONTRACTOR'S performance under this Contract with the Department for Education and Skills and any other government department or government agency or other public body.

6.5 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 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 Education and Skills, 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, and 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:

- 11.3.1 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;
- 11.3.2 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;
- 11.3.3 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 2.

12.2 Payment by THE COUNCIL shall be without prejudice to any claims or rights which the 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

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.

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, the Inspectorates, 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, 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 through its Annual Planning Review process, 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 Planning Review or inspection by the Inspectorates, where the Services provided under this Contract are subject to inspection by either or both of the Inspectorates. 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.

15.5 Where the Services provided under this Contract are subject to inspection by either or both of the Inspectorates 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.

15.6 Where either or both of the Inspectorates 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 the Inspectorate is satisfied that action has been taken to remedy the weaknesses identified by the inspection.

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 Education 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 thereunder, 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 and payments made thereunder it shall have the right to suspend payments under the Contract.

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:

18.4.1 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;

18.4.2 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:

18.10.1 require THE CONTRACTOR to suspend recruitment of Learners to the Service to which the Serious Breach relates;

18.10.2 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 1981 are applicable, the Parties shall in good faith co-operate with each other in the disclosure of information and the provision of other assistance 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 of 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 Local Executive 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:

[Contract Manager to insert]
The General Terms and Conditions

Schedule 1

Schedule 2

Schedule 3

Any other documents which are specified in the Schedules as forming part of the Contract.

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.

AS WITNESS WHEREOF this Contract has been signed the day and year first above written.

Authorised Signatory for and
on behalf of the Learning and Skills Council

.....
Signature Position

Name (Print).....

Date:

Authorised Signatory for and
on behalf of the Contractor

.....
Signature Position

Name (Print).....

Date:

Schedule 1 X

European Social Fund Co-financing

Specification of Services (Open and Competitive Tendering Arrangements)

Contents

1. Commencement
2. Definitions
3. Basis of the Agreement
4. Description and Purpose of the Services to be Delivered under this Schedule
5. Sub-Contracting
6. Eligibility of Beneficiaries
7. Documentation
8. Arrangements for Disseminating Information about the Services Delivered under this Contract
9. Marketing and Publicity
10. State Aid Regulations
11. Raising Standards
12. Monitoring and Evaluation

Schedule 1 X

Specification for the provision of European Social Fund (ESF) Co-financing

1. Commencement

1.1 The Services to be provided under this Schedule shall commence on [date] and shall terminate on [date] or as otherwise provided in the Contract.

2. Definitions

“Beneficiary” means the individual or body who benefits from the Services delivered under the criteria set out in section 6 of this Schedule.

“Development Plan” means the three-year Development Plan setting out how the Services contribute to the delivery of THE COUNCIL’S Local Plan.

“Self-Assessment Report” means the report prepared by THE CONTRACTOR assessing the quality of the Services.

3. Basis of the Agreement

3.1 THE CONTRACTOR will carry out the Services under this Schedule in accordance with the General Terms and Conditions; Schedule 1 X, Schedule 2 X (and Appendices) and Schedule 3.

4. Description and Purpose of the Services to be delivered under this Schedule

4.1 Aim

See guidance on completing the Contract

4.2 Objectives

See guidance on completing the Contract

4.3 Delivery Mechanisms

See guidance on completing the Contract

4.4 Non-payment Outputs, Outcomes and Milestones

THE CONTRACTOR is required to complete the Appendix 2 to this Schedule (“Contract Delivery Plan”) and in so doing agrees with THE COUNCIL’S contract manager all non-payment outputs, outcomes and milestones, their descriptive

definition, associated evidence required to substantiate delivery and the specified time period for the delivery of given quantities of each non-payment output, outcome and milestone. THE CONTRACTOR will carry out the Contract fully in accordance with the Contract Delivery Plan and that the non-payment outputs, outcomes and milestones in it may only be altered with the written approval of THE COUNCIL.

5. Sub-Contracting

5.1 THE CONTRACTOR shall not sub-contract the Services specified under this Schedule without the prior written consent of THE COUNCIL. Where consent is given it will be on the condition that THE CONTRACTOR enters into a sub-contract which enables it to meet all its liabilities under this Contract, and THE CONTRACTOR must provide THE COUNCIL with a copy of the sub-contract.

5.2 Where THE COUNCIL gives its consent for THE CONTRACTOR to sub-contract all or any part of the services specified in this Schedule, THE CONTRACTOR shall include a term in the sub-contract preventing any further sub-contracting of the Services.

5.3 Where THE CONTRACTOR is proposing to sub-contract all (or over 50%) of the delivery of the Services under this Schedule the arrangements must be included in the Co-financing Plan and been cleared by the Government Office.

5.4 Where THE CONTRACTOR is the lead partner in a consortium where the other partners are not named or where new partners are required, THE CONTRACTOR should secure the partners through open and competitive tendering. All tendering processes should be fully documented and should be in accordance with the guidance set out in ESF CO-FINANCING GUIDANCE – (SPRING 2005 Annex 4.3) THE COUNCIL reserves the right to review the CONTRACTOR'S tendering processes.

5.5 THE COUNCIL reserves the right to satisfy itself as to the actuality, quality and probity of delivery by sub-contractors and may request further information about THE CONTRACTOR'S contract management processes.

5.6 THE CONTRACTOR must ensure that all sub-contracts, include terms and conditions, and set out the cost related outputs, outcomes and milestones as provided for in this Schedule..

5.7 THE CONTRACTOR is responsible for ensuring the reality and eligibility of expenditure under this Schedule and the delivery of the Services to which the expenditure relates. THE CONTRACTOR should ensure that there are fair, proper and cost-effective methodologies for allocation work to sub-contractors.

6. Eligibility of Beneficiaries

6.1 General eligibility for ESF beneficiaries is defined in the latest “Applications Guide” from the European Social Fund Division of the Department for Work and Pensions. The Applications Guide can be found on www.esf.gov.uk. All beneficiaries receiving the Services specified under this Schedule must meet the eligibility criteria defined in the Applications Guide as well as the specific eligibility criteria described below.

6.2 The specific eligibility criteria for beneficiaries to receive the Services specified under this schedule are detailed in Appendix 1 to this Schedule (“Beneficiary Eligibility Table”).

6.3 THE CONTRACTOR will be required to repay any funding which has been used in respect of beneficiaries who do not meet the eligibility criteria as detailed in this Schedule.

7. Documentation

7.1 THE CONTRACTOR is required to provide evidence to demonstrate the delivery of the Services detailed in this Schedule. The evidence requirements are detailed in the Contract Delivery Plan-Appendix 2 to this Schedule.

7.2 Where THE COUNCIL supplies beneficiary related documentation it must be used. The beneficiary related documentation will be the management information returns to substantiate delivery of the Services as set out in the Contract Delivery Plan. THE COUNCIL will inform THE CONTRACTOR which of these beneficiary related document(s) is applicable to their delivery. All beneficiary related documentation (some of which supplied by THE COUNCIL) must be fully completed and submitted by THE CONTRACTOR, with each **monthly / quarterly return (delete as applicable)**.

7.3 THE COUNCIL will review and agree all evidence relating to beneficiaries that THE CONTRACTOR will supply during the course of this Contract.

7.4 THE CONTRACTOR shall retain all original invoices and management information returns and all other documents necessary to demonstrate the delivery of the Services by THE CONTRACTOR or sub-contractors in relation to this Contract until 31 December 2014.

8. Arrangements for Disseminating Information about the Services Delivered under this Contract

8.1 THE COUNCIL may require THE CONTRACTOR to make available to THE COUNCIL details of best-practice, good news stories and case-studies in respect of the Services delivered under this Schedule.

9. Marketing and Publicity

9.1 THE COUNCIL will require THE CONTRACTOR to undertake approved marketing and publicity of the Services delivered under this Schedule.

9.2 THE CONTRACTOR must ensure that all beneficiaries are aware of the support of the European Social Fund in respect of the Services being delivered under this Schedule.

9.3 THE CONTRACTOR will comply with requests by THE COUNCIL to display the European Social Fund and European Union logos and emblems on any materials relating to funding by the ESF. THE COUNCIL will make available to THE CONTRACTOR all relevant European Social Fund and European Union logos and emblems.

9.4 THE CONTRACTOR must ensure that where the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: "This programme is part funded by the European Union through the European Social Fund".

9.5 THE CONTRACTOR must ensure that all beneficiaries are aware of the support of THE COUNCIL in respect of the Services being delivered under this Schedule.

9.6 THE CONTRACTOR will comply with requests by THE COUNCIL to display THE COUNCIL'S logo on any material co-financed by THE COUNCIL. THE COUNCIL will make available to THE CONTRACTOR all relevant COUNCIL logos and emblems.

9.7 THE CONTRACTOR must ensure that where the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: "This programme is co-financed by the Learning and Skills Council."

10. State Aid Regulations

10.1 THE COUNCIL will inform THE CONTRACTOR in writing if the European rules on State Aid apply to the Services being delivered under this Schedule.

10.2 Where the rules on State Aid apply THE COUNCIL will supply THE CONTRACTOR with details of the records that THE CONTRACTOR will need to collect and retain.

10.3 THE COUNCIL reserves the right to require THE CONTRACTOR to obtain a contribution towards the cost of the Services delivered under this Schedule from the employer of any beneficiary. Where a contribution is required, THE COUNCIL will confirm to THE CONTRACTOR in writing the exact percentage of the contribution.

10.4 Where THE COUNCIL requires THE CONTRACTOR to obtain a contribution towards the cost of the Services under clause 10.3 of this Schedule, THE CONTRACTOR must provide evidence that the contribution has been received.

11 Raising Standards

11.1 THE CONTRACTOR shall deliver the Services to an acceptable standard of quality as defined by THE COUNCIL and shall take all reasonable steps to:

11.1.1 minimise drop out rates and deliver high completion and achievement rates, and appropriate progression;

11.1.2 ensure competent and appropriately qualified staff deliver and assess learning;

11.1.3 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;

11.1.4 provide a safe, healthy and supportive environment, which meets the needs of Learners;

11.1.5 provide good management and leadership of the learning process; and

11.1.6 deliver value for money and financial probity.

11.2 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.

11.3 THE CONTRACTOR shall conduct continuous self-assessment of the Services against the quality requirements shown in paragraphs 19-21 of Quality improvement and self-assessment (May 2005) and Annex 3 of Planning for Success (which includes the requirements under the Common Inspection Framework published by the Inspectorates). 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 or the Inspectorates in support of statements made in the self-assessment report.

11.4 If THE COUNCIL assesses THE CONTRACTOR to be at serious risk of failure to deliver the Services under this part of the Contract following THE COUNCIL'S Annual Planning Review, THE COUNCIL may:

- 11.4.1 cease fund all or part of the Services in respect of which planned improvement is not achieved or is at an unacceptable rate, or where the Services fails to meet minimum levels of performance or quality.
- 11.4.2 agree detailed improvement plans and measures that set out clearly the expected timescale for improvement.
- 11.4.3 agree arrangements for more frequent monitoring of quality improvement plans.
- 11.4.4 terminate the Contract in respect of this part of the Services on 31 July in the Contract year in which the outcome of the Annual Planning Review judges THE CONTRACTOR to be at serious risk.
- 11.4.5 require THE CONTRACTOR to include in its Development Plan decisive actions and 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 frequencies specified by THE COUNCIL and in agreement with THE CONTRACTOR.
- 11.4.6 If THE COUNCIL judge, as part of the Annual Planning Review process, and continued monitoring that THE CONTRACTOR is failing to deliver the actions agreed under 6.4.2 above it shall constitute a serious breach under Clause 18 of the General Terms and Conditions of this Contract.

11.5 THE COUNCIL may at its discretion agree a programme of support for THE CONTRACTOR to assist delivery of the Development Plan and actions to improve the quality of services.

11.6 When THE CONTRACTOR receives notification from either of the Inspectorates that its Services (including leadership and management) is to be inspected, THE CONTRACTOR shall provide THE COUNCIL with a copy of its current Development Plan and details of its quality improvement activity, and any other relevant information in accordance with the required timescale of the Inspectorates. The Council will refer in turn to the CONTRACTOR's latest self-assessment report using the Provider Gateway.

11.7 Following any inspection by the Inspectorates of the Services provided under this part of the contract, THE CONTRACTOR will update its Development Plan outlining 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 its Development Plan setting out how it intends to implement its quality improvement actions.

11.8 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 unsatisfactory, THE COUNCIL will regard THE CONTRACTOR as being at serious risk of failure to deliver the Services, and the provisions set out at paragraph 6.4 will apply.

11.9 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).

11.10 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.

12. Monitoring and Evaluation

12.1 The outputs, outcomes, milestones and timescales for the delivery of the Services under this Schedule are detailed in the Contract Delivery Plan. THE COUNCIL'S contract manager will monitor and track progress in relation to the services to be delivered under this schedule against the Contract Delivery Plan.

12.2 THE CONTRACTOR will confirm progress in achieving the outputs, outcomes, milestones and timescales for the Services specified in this Schedule by completing the sections marked 'Actual' on the 'Outputs' tab, 'Outcomes' tab and 'Milestones' tab of the Co-financing Monitoring Return ("the Return") – Appendix 3 to this schedule, on Provider On-Line, in accordance with Section 7 of Schedule 3 to this Contract. The Return must be made within 5 working days of the end of each **month / quarter (delete as applicable)** to which the Return relates.

12.3 THE CONTRACTOR will also complete the sections contained within the 'Monitoring' tab of the Return in accordance with clause 12.2 above.

12.4 THE COUNCIL'S contract manager will carry out **monthly / quarterly (delete as applicable)** monitoring visits unless additional visits are required. Dates for planned visits will be agreed in writing, between the Parties, THE COUNCIL'S

contract manager will use the Return as the basis for carrying out the monitoring visits.

12.5 THE COUNCIL will review the delivery of the Services at the termination of the Contract and will confirm the total outputs, outcomes and milestones delivered by THE CONTRACTOR.

DRAFT

Schedule 2X

European Social Fund Co-financing

**Financial Information and Data Requirements
(Open and Competitive Tendering Arrangements)**

Contents

1. Contract Value
2. Service Delivery and Eligibility
3. Payment Outputs, Outcomes and Milestones
4. Conditions of Payment

DRAFT

Schedule 2X

Financial Information and Data Requirements ESF Co-financing (OCT Arrangements)

1. Contract Value

1.1 THE CONTRACTOR shall deliver the Services specified in Schedule 1X of the Contract subject to the Terms and Conditions of the Contract as detailed.

1.2 THE COUNCIL will pay up to a maximum of £XXX as profiled in the Appendix 4, Version number to this Schedule ("Contract Payments Profile") for the period as specified in clause 1.1 of Schedule 1X. This maximum amount includes any Value Added Tax ("VAT") or other taxes to be charged. This amount cannot be exceeded.

1.3 THE COUNCIL is generally unable to recover any VAT charged. The maximum sum payable under this Contract, as set out in paragraph 1.2 above includes the cost of the Service and any VAT or other taxes charged.

1.4 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 goods or Services essential to that provision, is considered to be an exempt supply for VAT purposes.

1.5 THE COUNCIL will make the profiled payments to THE CONTRACTOR in respect of the Services specified in the Contract Payments Profile.

2

Service Delivery and Eligibility

2.1 All payments are subject to satisfactory performance and delivery of the specific outputs, outcomes or milestones set out in the Contract Delivery Plan. THE COUNCIL reserves the right to deduct, defer, suspend, or recover payment where evidence of satisfactory performance and delivery of the Services in accordance with the Contract Delivery Plan is lacking.

2.2 THE CONTRACTOR must ensure that all expenditure incurred in relation to this Contract is deemed 'eligible' as defined by the Applications Guide.

2.3 No payment will be made by THE COUNCIL in respect of any variation to the Services that have not been agreed in writing by THE COUNCIL.

3. Payment Outputs, Outcomes and Milestones

3.1 THE CONTRACTOR is required to complete the Contract Delivery Plan and in doing so will agree payment outputs, outcomes and milestones, their specific definition, details of evidence requirements to substantiate delivery and the specified time period for the delivery of given quantities of each payment output, outcome and milestone with THE COUNCIL.

3.2 THE CONTRACTOR is required to carry forward the payment outputs, outcomes and milestones as agreed in the Contract Delivery Plan to the Contract Payments Profile. Any payments from THE COUNCIL will directly relate to the payment outputs, outcomes and milestones detailed within Contract Payments Profile.

4. Conditions of Payment

4.1 All payments will be made on the condition that THE COUNCIL is satisfied that the Services being delivered are undertaken in accordance with the terms and conditions of the Contract including the Contract Delivery Plan to the required standard and are supported by satisfactory evidence.

4.2 Payments will be made via BACS, subject to meeting Profile, on the 18th working day of the month.

4.3 THE COUNCIL will assess acceptable evidence **monthly / quarterly (delete as appropriate)** in support of the Contract Delivery Plan from THE CONTRACTOR in support of the previous month's payment.

4.4 THE COUNCIL will periodically undertake a reconciliation exercise during the delivery of the services detailed in Schedule 1X, the frequency of which will be agreed in writing between THE CONTRACTOR and THE COUNCIL'S contract manager

4.5 Where actual performance falls below the agreed delivery profile for that period by more than 10%, the COUNCIL reserves the right to suspend further payments under the Contract. This suspension will remain in place until such time as actual performance and agreed profile are in agreement or until a variation to the delivery profile has been made in accordance with clause 4.6 of this Schedule.

4.6 The COUNCIL reserves the right , following discussions with the CONTRACTOR and having considered whether THE CONTRACTOR will be able to meet the agreed delivery profile within in two monthly periods, to vary the delivery profile.

4.7 If THE COUNCIL makes an overpayment, THE CONTRACTOR will repay the amount overpaid to THE COUNCIL on demand.

4.8 THE CONTRACTOR will maintain separate account codes for the delivery of the Services as described in Schedule 1X. Both input and output VAT will be included as separate items in such accounts.

4.9 THE CONTRACTOR will be liable to repay any monies amounting to any funds already received from THE COUNCIL, or will be refused payment of expenditure amounting to unclaimed funds if THE COUNCIL is, as a consequence of THE CONTRACTOR'S actions, asked to repay or are refused payments by the relevant Government Office European Programmes Secretariat or if THE COUNCIL considers:

4.9.1 That the future of the Services to be delivered under Schedule 1X are in jeopardy;

4.9.2 Progress towards completion of the Services to be delivered under Schedule 1X are unsatisfactory, or if such Services are not completed by the specified completion date applying to such Services;

4.9.3 THE CONTRACTOR fails to notify THE COUNCIL of changes to the Services to be delivered: nature, scale, cost or timing that in the opinion of THE COUNCIL are substantial;

4.9.4 THE CONTRACTOR fails to notify THE COUNCIL of any changes to the outputs, outcomes or milestones, as detailed in the Contract Delivery Plan which have not received prior approval or endorsement by THE COUNCIL;

4.9.5 Any of the information provided by THE CONTRACTOR in the application, or in the progress of the Services to be delivered under Schedule 1X are subsequently found to be substantially incorrect or incomplete;

4.9.6 The payment of funds is not used for the purpose of the Services specified in Schedule 1X and/or such Services are being paid for out of alternate funds originating from the European Commission. Where double funding is proven to have occurred, THE CONTRACTOR is responsible for all repayments at the request of THE COUNCIL;

4.9.7 THE CONTRACTOR owes money to the UK Government or the European Commission in respect of any other projects.

4.10 It is THE CONTRACTOR'S obligation to inform THE COUNCIL immediately and in writing if any of the above applies to the Services to be delivered under Schedule 1X.

4.11 THE CONTRACTOR must inform THE COUNCIL in advance of any revenue to be potentially generated as consequence of delivering the Services as detailed in Schedule 1X.

DRAFT

Open and Competitive Tendering Arrangements

ESF Co-financing Schedule 1X - Appendix 1

Beneficiary Eligibility Table

| General Eligibility Descriptor | Detailed Beneficiary Eligibility Criteria for this Contract (1) | Detailed Beneficiary Eligibility Criteria for this Contract (2) | Detailed Beneficiary Eligibility Criteria for this Contract (3) | ILR/SR fields Evidence |
|---------------------------------------|--|--|--|-------------------------------|
| Age | | | | |
| Gender | | | | |
| Employment Status | | | | |
| Length of Unemployment | | | | |
| Geographical Area | | | | |
| Disadvantage (categories from ILR) | | | | |
| Last Learning Event | | | | |
| Company Size | | | | |
| Company Sector | | | | |
| Prior Attainment Level | | | | |