



Skills Funding  
Agency



**European Union**  
**European Social Fund**  
Investing in jobs and skills

## **CONTRACT FOR SERVICES - EDUCATION AND TRAINING**

**1 August 2014 – 31 July 2017**

## **FUNDING AGREEMENT**

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## Terms and Conditions

This Contract is made this 1st Day of August 2014 between:

[INSERT CONTRACTOR DETAILS  
HERE]

AND THE CHIEF EXECUTIVE OF SKILLS  
FUNDING  
THE SKILLS FUNDING AGENCY  
CHEYLESMORE HOUSE  
QUINTON ROAD  
COVENTRY  
CV1 2WT

Hereinafter called  
THE CONTRACTOR

Hereinafter called  
THE CHIEF EXECUTIVE

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## 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 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 “Funding Rules” 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 and which forms part of this Contract.
- 1.3 “Learner” means any third party including any student, apprentice, trainee or similar to whom THE CONTRACTOR is required to deliver any of the Services.

- 1.4 “Learner Files” means any information relating to a Learner generated by THE CONTRACTOR, the Learner or a third party for the purpose of the delivery of the Learning Programme.
- 1.5 “Learning Programme” means a programme of education and/or training delivered by THE CONTRACTOR under this Contract.
- 1.6 “OFSTED” means the Office for Standards in Education.
- 1.7 “Parties” means THE CHIEF EXECUTIVE acting on behalf of the Crown and THE CONTRACTOR.
- 1.8 “Premises” means the location where the Services are to be performed, as detailed in the Contract.
- 1.9 “Register of Training Organisations” means the register maintained by THE CHIEF EXECUTIVE of organisations qualified to receive funding from THE CHIEF EXECUTIVE.
- 1.10 “Services” means the services to be provided as specified in the Contract.
- 1.11 “Specification” means the documents setting out THE CHIEF EXECUTIVE’S requirements for the Services to be provided under this Contract.

## **2 Commencement and Continuation**

- 2.1 The Contract shall commence and terminate as set out in Appendix 1.

## **3 Contract Management**

- 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 CHIEF EXECUTIVE’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 CHIEF EXECUTIVE as specified.
- 3.3 THE CONTRACTOR shall promptly comply with all reasonable requests or directions of THE CHIEF EXECUTIVE’S Contract Manager.

## **4 Service Delivery**

- 4.1 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. The detailed requirements in respect of each Learning Programme are set out in the Funding Rules for 2014/15 as amended from time to time by THE CHIEF EXECUTIVE and which form part of the terms and conditions of this Contract.
- 4.2 The Services are to be delivered in accordance with the specific requirements of THE CHIEF EXECUTIVE, any tender document submitted by THE CONTRACTOR and the Supporting Documentation as attached at Appendix 2 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.

## **5 Assignment and Sub-Contracting**

- 5.1 Where THE CONTRACTOR sub-contracts or intends to sub-contract any duties or obligations arising out of this Contract, THE CONTRACTOR must provide THE CHIEF EXECUTIVE with details of all sub-contractors bi annually by fully and accurately completing the Declaration of Subcontractors form in accordance with the deadline set out in the Funding Rules. If THE CONTRACTOR is not sub-contracting then a nil return must be received by the deadline date. THE CONTRACTOR must notify THE CHIEF EXECUTIVE of any within year changes to its sub-contractors. THE CHIEF EXECUTIVE reserves the right to require THE CONTRACTOR not to enter into, or to terminate, any sub-contract to deliver the Services under this Contract.
- 5.2 THE CONTRACTOR must comply with the requirements on sub-contracting delivery of the Services set out in THE CHIEF EXECUTIVE'S Funding Rules as amended and updated. 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. THE CONTRACTOR is responsible for all the actions of its sub-contractors connected to or arising out of the delivery of the Services which it sub-contracts.
- 5.3 Services under this Contract may only be sub-contracted to one level unless THE CONTRACTOR obtains the consent of THE CHIEF EXECUTIVE in writing.
- 5.4 Where THE CONTRACTOR has sub-contracted any duties or obligations arising out of this Contract, THE CONTRACTOR shall ensure that there is in place a legally binding sub-contract and send copies of the sub-contract to THE CHIEF EXECUTIVE 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 ensure that the sub-contract includes any terms specified in the Funding Rules.

- 5.5 THE CONTRACTOR shall ensure that any sub-contract entered into for the purpose of delivering the Services under this Contract contains a term providing that THE CHIEF EXECUTIVE has the right to enforce the terms of the sub-contract.
- 5.6 THE CONTRACTOR shall ensure that sub-contractors are selected fairly and have sufficient capacity, capability, quality and financial standing to deliver the Services.
- 5.7 THE CONTRACTOR may not assign any rights, duties or obligations under this Contract without the consent of THE CHIEF EXECUTIVE.
- 5.8 THE CONTRACTOR must notify THE CHIEF EXECUTIVE if there is a change in its name and/or ownership. THE CHIEF EXECUTIVE reserves the right to terminate the Contract if they consider in their absolute discretion that the change in ownership would prejudice THE CONTRACTOR'S ability to deliver the Services.
- 5.9 THE CONTRACTOR shall ensure that any sub-contract entered into for the purpose of delivering the Services under this Contract contains a term providing that THE CONTRACTOR will make payment to the sub-contractor within 30 days of receiving a valid claim for payment.

## **6 Freedom of Information and Confidentiality**

### **6.1 Definitions**

**“Confidential Information”** means any information, including Personal Data as defined by the Data Protection Act 1998, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Parties including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential")

**“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)

<b>“FOIA”</b>	means the Freedom of Information Act 2000 and all regulations made there 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
<b>“FOIA notice”</b>	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 CHIEF EXECUTIVE is subject to legal duties under FOIA, which may require THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE 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 CHIEF EXECUTIVE pursuant to a request under FOIA are solely a matter for and at the discretion of THE CHIEF EXECUTIVE.

6.2.4 Notwithstanding anything in this Contract to the contrary (including without limitation any obligations of confidentiality), THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE 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 CHIEF EXECUTIVE;

or

b) disclose information requested

to the extent that in THE CHIEF EXECUTIVE opinion the information is eligible in the circumstances for an exemption and therefore THE CHIEF EXECUTIVE 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 CHIEF



EXECUTIVE for any and all costs (including legal fees) incurred by THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE to withhold Exempt Information.

6.2.6 THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE as reasonably necessary to enable THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE 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 CHIEF EXECUTIVE, 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 CHIEF EXECUTIVE 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 CHIEF EXECUTIVE from disclosing any Confidential Information obtained from THE CONTRACTOR:
- 6.6.1 to any other Central Government Body, Non-Departmental or Quasi Government Body or agency, central or local;
- 6.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 6.6.3 to any professional adviser, consultant, contractor or other person engaged by THE CHIEF EXECUTIVE directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, contractor or any other person;
- 6.6.4 on a confidential basis to any proposed successor body in connection with any assignment disposal of its rights, obligations or liabilities under this Contract.
- 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 CHIEF EXECUTIVE 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 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 CHIEF EXECUTIVE in any investigation that THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE'S request if THE CHIEF EXECUTIVE reasonably believes THE CONTRACTOR has failed to comply with Clause 6.7.
- 6.10 THE CHIEF EXECUTIVE reserves the right to publish details of this Contract and the payments made under it to comply with the Government's transparency requirements.

6.11 The provisions of this Clause 6 will apply for the duration of the Contract and after its termination.

## **7 Equality of Opportunity**

7.1 THE CONTRACTOR shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 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 Clauses 7.2 to 7.4.

7.2 THE CONTRACTOR will, in delivering the Services under this Contract, demonstrate that it has had regard to the duties placed on THE CHIEF EXECUTIVE and THE CONTRACTOR by the Equality Act 2010. 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 sub-contractors employed to deliver the Services.

7.3 THE CONTRACTOR shall ensure that equality of opportunity is built into all aspects of Services; the business planning process; and the self assessment process. THE CONTRACTOR shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. THE CONTRACTOR shall use appropriate, specific and measurable objectives. These will be proportionate, relevant and aligned to the Services THE CONTRACTOR is funded to deliver.

7.4 THE CHIEF EXECUTIVE may use a variety of equality information and data to support judgements about quality and eligibility for funding. These may include, but are not limited to: inspection judgements for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of Learners.

## **8 Learner Health, Safety & Welfare**

8.1 THE CONTRACTOR shall ensure so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of learners. THE CONTRACTOR shall provide information to THE CHIEF EXECUTIVE, as and when specifically requested, to give assurance that adequate arrangements exist for Learner Health, Safety and Welfare.

8.2 Where part of the learning takes place in an environment outside the direct control of THE CONTRACTOR, THE CONTRACTOR shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of Learners.

- 8.3 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 all necessary actions to comply with current legal safeguarding requirements. THE CONTRACTOR must make the necessary checks to ensure that employment that involves regular contact with young people under the age of 18 or other vulnerable learners is not offered to 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 Education and the Department of Health. Information should also be sought from the Disclosure and Barring Service. THE CONTRACTOR must undertake an adequate risk assessment to establish what action is required where their employees have regular contact with Learners under 18 or other vulnerable Learners.
- 8.4 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 its records and be able to demonstrate it has robust record-keeping procedures in relation to the checks it has undertaken and the staff it employs.
- 8.5 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.
- 8.6 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 Learner Health, Safety and Welfare are included in its contract with sub-contractors.
- 8.7 THE CONTRACTOR shall inform THE CHIEF EXECUTIVE of the death of any Learner which is a result of work undertaken whilst in employment and who is undertaking a related Learning Programme.

This shall be done by:

- 8.7.1 informing THE CHIEF EXECUTIVE'S representative by telephone or email immediately upon THE CONTRACTOR becoming aware of the event.
- 8.8 THE CONTRACTOR shall report all RIDDOR reportable incidents in line with the Regulations, and 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.

- 8.9 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) incidents that cause absence from learning, any loss to the Learner of any physical or mental faculty or any disfigurement and incidents of bullying and harassment.
- 8.10 THE CONTRACTOR shall co-operate with THE CHIEF EXECUTIVE and Department for Work and Pensions for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect to those Learners to which it applies.

## **9 Liability**

- 9.1 THE CONTRACTOR shall indemnify and keep indemnified THE CHIEF EXECUTIVE, their 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 CHIEF EXECUTIVE, their 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, their 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 CHIEF EXECUTIVE or their servants or agents.
- 9.2 THE CONTRACTOR warrants to THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE 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 an 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.
- 9.3 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.
- 9.4 THE CHIEF EXECUTIVE reserves the right to require THE CONTRACTOR to secure the provision of an appropriate guarantee in respect of THE CONTRACTOR'S liabilities under this Contract.

## **10 Insurance**

- 10.1 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 act or default for which it may become liable to indemnify THE CHIEF EXECUTIVE

under this Contract. THE CHIEF EXECUTIVE reserves the right to require THE CONTRACTOR to insure against any act or default which arises as a result of fraud or other criminal activity by THE CONTRACTOR, its employees, agents or sub-contractors THE CONTRACTOR should provide copies of any insurance certificates to THE CHIEF EXECUTIVE including professional indemnity, employers' liability and public liability insurance following a written request from THE CHIEF EXECUTIVE.

## **11 Limitation of Liability**

11.1 THE CHIEF EXECUTIVE shall not be liable to THE CONTRACTOR for any indirect or consequential loss, damage, injury or costs whatsoever.

## **12 Access and Monitoring**

12.1 THE CHIEF EXECUTIVE 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.

12.2 For monitoring and evaluation purposes, THE CHIEF EXECUTIVE or their representatives, the Secretary of State or their representatives, 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 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 CHIEF EXECUTIVE'S resources in the performance of the Contract.

12.3 THE CONTRACTOR shall, if required by any of the representatives stated at Clause 12.2 provide appropriate oral or written explanations.

12.4 THE CHIEF EXECUTIVE reserves the right, at any reasonable time, and as it may deem necessary to require THE CONTRACTOR at its own cost to:

- 12.4.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Contract;
- 12.4.2 provide such assurance as THE CHIEF EXECUTIVE may require that the delivery of the Services complies with the requirements of the Contract;
- 12.4.3 obtain a report by an independent accountant of THE CHIEF EXECUTIVE'S choice on;
  - 12.4.3.1 the financial systems and controls operated by THE CONTRACTOR or its subcontractors;
  - 12.4.3.2 the accuracy and regularity of funding claims in respect of payments claimed or received under the Contract;
  - 12.4.3.3 the evidence held by THE CONTRACTOR or its subcontractors to support delivery of the Services in accordance with the terms of the Contract

THE CONTRACTOR must agree the instructions for the work with THE CHIEF EXECUTIVE. The report and the work required in order to produce the report shall be carried out to the satisfaction of THE CHIEF EXECUTIVE, and THE CHIEF EXECUTIVE must be able to place reliance on it. THE CONTRACTOR shall provide a copy of the interim and final report to THE CHIEF EXECUTIVE as soon as they are available. THE CHIEF EXECUTIVE reserves the right to require THE CONTRACTOR to publish the report.

- 12.4.4 provide a copy of THE CONTRACTOR'S latest audited Accounts and submit further copies of the audited Accounts as they become available;
  - 12.4.5 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 CHIEF EXECUTIVE;
  - 12.4.6 provide any additional evidence to support payments made under this Contract, as THE CHIEF EXECUTIVE shall reasonably require.
- 12.5 THE CONTRACTOR shall in performing the Services comply fully with all relevant rules and regulations of THE CHIEF EXECUTIVE in force from time to time especially when on THE CHIEF EXECUTIVE'S premises.

### **13 Funding and Payment**

- 13.1 In consideration of the Services to be provided by THE CONTRACTOR, THE CHIEF EXECUTIVE agrees to pay THE CONTRACTOR the amounts set out in Appendix 1 (and as broken down on Appendix 2) 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 CHIEF EXECUTIVE following any review of the quality of the Services.

- 13.2 The Maximum Value of each Learning Programme as shown in Appendix 1 of this Contract may not be exceeded for any reason. THE CHIEF EXECUTIVE will not be liable to make any payment in excess of the Maximum Value of each Learning Programme unless this has been agreed and evidenced by a variation in writing.
- 13.3 Where THE CHIEF EXECUTIVE identifies that THE CONTRACTOR is failing to deliver the value of learning of this Contract it reserves the right in its absolute discretion to reduce the overall maximum value for that Learning Programme.
- 13.4 With the exception of Services funded by the European Social Fund (ESF), THE CHIEF EXECUTIVE will restrict delivery of this Contract against the funding available up to the 31 March 2015 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 CHIEF EXECUTIVE reserves the right at its absolute discretion to vary the Contract accordingly.
- 13.5 THE CHIEF EXECUTIVE reserves the right to give three months notice to reduce the overall maximum value for any Learning Programme without the need to give a reason.
- 13.6 Payment by THE CHIEF EXECUTIVE shall be without prejudice to any claims or rights, which THE CHIEF EXECUTIVE may have against THE CONTRACTOR and shall not constitute any admission by THE CHIEF EXECUTIVE as to the performance by THE CONTRACTOR of its obligations hereunder. Prior to any such payment, THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE.
- 13.7 Where THE CHIEF EXECUTIVE carries out a review, investigation 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 CHIEF EXECUTIVE and identifies errors in that evidence which he deems are material, THE CHIEF EXECUTIVE reserves the right to recover from THE CONTRACTOR an amount based on the error rate identified and the total value of the Contract. Such amounts may be recovered by making adjustments to data submitted by THE CONTRACTOR under the Contract, or by raising an invoice for payment by THE CONTRACTOR, or making deductions from future payments due to THE CONTRACTOR under the



Contract. Failure to settle such amounts by THE CONTRACTOR will constitute a Serious Breach under Clause 21 of the Contract. The decision of THE CHIEF EXECUTIVE as to the amount of recovery under this Clause is final.

- 13.8 All payments by THE CHIEF EXECUTIVE will be made via BACS.
- 13.9 THE CHIEF EXECUTIVE is generally unable to recover any Value Added Tax charged. The maximum sum payable under this contract, as set out in Appendix 1 includes the cost of the service and any other VAT or taxes to be charged, where they apply.
- 13.10 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 CHIEF EXECUTIVE 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.

#### **14 Review of Contractual Performance and Reconciliation of Contracts**

- 14.1 Where THE CONTRACTOR receives profile payments from THE CHIEF EXECUTIVE, payments will be reconciled to cash earned by actual delivery of the Services or the period to the timetable published in the Funding Rules.
- 14.2 Where THE CONTRACTOR'S actual delivery will result or has already resulted in an overpayment to THE CONTRACTOR by THE CHIEF EXECUTIVE, THE CHIEF EXECUTIVE 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.
- 14.3 Where THE CONTRACTOR'S actual delivery has resulted in an underpayment to THE CONTRACTOR by THE CHIEF EXECUTIVE, THE CHIEF EXECUTIVE will adjust the amount due to THE CONTRACTOR accordingly. This adjustment shall not exceed the overall maximum value set out in Appendix 1 of this Contract.
- 14.4 Should there be an under or over payment to THE CONTRACTOR, THE CHIEF EXECUTIVE'S Contract Manager may at their absolute discretion require a Contract variation.
- 14.5 A Contract review will take place at the end of the period of this Contract in respect of the Services specified in Appendix 1 of this Contract. THE CHIEF EXECUTIVE 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 Appendix 1. At this stage final cash reconciliation will take place. Any overpayment made to THE CONTRACTOR by THE CHIEF EXECUTIVE will be repayable within 30 days of receiving an invoice. THE CHIEF EXECUTIVE reserves the right to reduce future payments to recover any overpayments.

THE CHIEF EXECUTIVE will pay any outstanding monies owed, up to the overall maximum value specified in Appendix 1 of this contract, within 30 days of final reconciliation being completed.

- 14.6 The evidence required in respect of each Learning Programme is set out in the Funding Rules and THE CONTRACTOR must retain such evidence for inspection on demand.

## **15 Prohibited Activities**

- 15.1 THE CONTRACTOR shall not offer or give, or agree to give, to any member, employee or representative of THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE 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 Bribery Act 2010. Any offence by THE CONTRACTOR or its employees or by anyone acting on its behalf under the Bribery Act 2010 in relation to this or any Contract with THE CHIEF EXECUTIVE or Her Majesty's Government shall entitle THE CHIEF EXECUTIVE 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.
- 15.2 THE CONTRACTOR shall not enter into any Contract with any political or religious organisation using any funding provided by THE CHIEF EXECUTIVE under this Contract if the effect of that Contract would be to promote a particular political or religious point of view.
- 15.3 THE CONTRACTOR shall not hold itself out as acting on behalf of THE CHIEF EXECUTIVE without THE CHIEF EXECUTIVE'S permission.

## **16 Data Protection and Protection of Personal Data**

- 16.1 The Parties shall ensure that information acquired by the Parties and sub-contractors in the delivery of this Contract will 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 CHIEF EXECUTIVE'S ability to make a search with a credit reference agency.

- 16.2 With respect to the Parties' rights and obligations under this Contract the Parties agree that THE CHIEF EXECUTIVE is the Data Controller and THE CONTRACTOR is the Data Processor within the meaning of the Data Protection Act.
- 16.3 THE CONTRACTOR shall:
- 16.3.1 process Personal Data only in accordance with the instructions from THE CHIEF EXECUTIVE (which may be specific instructions or instructions of a general nature as set out in the Contract or otherwise notified by THE CHIEF EXECUTIVE to THE CONTRACTOR during the term of the Contract);
  - 16.3.2 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;
  - 16.3.3 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;
  - 16.3.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
  - 16.3.5 obtain prior written consent from THE CHIEF EXECUTIVE in order to transfer the Personal Data to any sub-contractor or other third parties for the provision of the Services;
  - 16.3.6 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 CHIEF EXECUTIVE;
  - 16.3.7 notify THE CHIEF EXECUTIVE within 5 working days if it receives:
    - 16.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or
    - 16.3.7.2 a complaint or request relating to THE CHIEF EXECUTIVE obligations under the Data Protection Legislation;
  - 16.3.8 provide THE CHIEF EXECUTIVE with full co-operation and assistance in relation to any complaint or request made, including by:

- 16.3.8.1 providing THE CHIEF EXECUTIVE with full details of the complaint or request;
  - 16.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with THE CHIEF EXECUTIVE'S instructions;
  - 16.3.8.3 providing THE CHIEF EXECUTIVE with any Personal Data it holds in relation to a Data Subject (within the timescales required by THE CHIEF EXECUTIVE); and
  - 16.3.8.4 providing THE CHIEF EXECUTIVE with any information requested by them or their representatives.
- 16.3.9 permit THE CHIEF EXECUTIVE or THE CHIEF EXECUTIVE'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 CHIEF EXECUTIVE to enable THE CHIEF EXECUTIVE to verify and/ or procure that THE CONTRACTOR is in full compliance with its obligations under this Contract;
- 16.3.10 provide a written description of the technical and organisational methods employed by THE CONTRACTOR for processing Personal Data (within the timescales required by THE CHIEF EXECUTIVE); and
- 16.3.11 provide THE CHIEF EXECUTIVE with information about how the Learner Files are stored including details of the location where the Learner Files are kept and the arrangements for their security. THE CONTRACTOR is required to notify THE CHIEF EXECUTIVE of any changes to this information
- 16.3.12 not Process Personal Data outside the European Economic Area without the prior written consent of THE CHIEF EXECUTIVE and, where THE CHIEF EXECUTIVE consents to a transfer, to comply with:
- 16.3.12.1 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
  - 16.3.12.2 any reasonable instructions notified to it by THE CHIEF EXECUTIVE.

- 16.4 Where THE CONTRACTOR is providing the Services to Learners claiming out of work benefits, the Secretary of State for Work and Pensions (or their successor) is the Data Controller in relation to Personal Data which THE CONTRACTOR is required to provide to the Secretary of State for Work and Pensions. This Clause 16 will be enforceable by the Secretary of State for Work and Pensions in relation to any Personal Data processed by THE CONTRACTOR on their behalf.
- 16.5 Where THE CONTRACTOR is providing the Service to Learners who are subject to active management by the Offender Manager in respect of an order or licence, the Secretary of State for Justice (or their successor) is the Data Controller in relation to Personal Data which THE CONTRACTOR is required to provide to the Secretary of State for Justice.

## **17 Submission of Learner Data**

- 17.1 THE CONTRACTOR must supply THE CHIEF EXECUTIVE data on each individual learner, in accordance with the data collections framework set out in the 'ILR specification validation rules and appendices 2014 to 2015' as amended and updated, which is published on THE CHIEF EXECUTIVE'S website (<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2014-to-2015>) in accordance with the 'Provider Support Manual' as amended and updated.
- 17.2 THE CONTRACTOR must supply THE CHIEF EXECUTIVE with data in accordance with the following:
- 17.2.1 in line with agreed audit arrangements;
  - 17.2.2 in adherence with the Data Protection Act;
  - 17.2.3 to support payments to be made;
  - 17.2.4 to enable reconciliation to take place; and
  - 17.2.5 to support the contract management and allocation processes.
- 17.3 Data collected must be transmitted to THE CHIEF EXECUTIVE through THE CHIEF EXECUTIVE'S web portal <https://www.gov.uk/government/publications/sfa-the-hub> . Access to THE CHIEF EXECUTIVE'S web portal is restricted and THE CONTRACTOR agrees to comply with the conditions of use regarding the supply of data to THE CHIEF EXECUTIVE set out in this Clause 17 and in 'Individualised Learner Record Specification 2014/15 and relevant Provider Support Manual as amended and updated available on THE CHIEF EXECUTIVE'S web site (<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2014-to-2015>)

- 17.4 In circumstances where no data has been added or updated for a given collection period THE CONTRACTOR must inform THE CHIEF EXECUTIVE of a 'Nil Return' through THE CHIEF EXECUTIVE'S web portal.
- 17.5 Where THE CHIEF EXECUTIVE is concerned about the quality of the data, including the completeness or accuracy of the data, provided by THE CONTRACTOR, THE CHIEF EXECUTIVE may require THE CONTRACTOR to supply data more frequently for such period as THE CHIEF EXECUTIVE shall require.
- 17.6 THE CHIEF EXECUTIVE reserves the right to require THE CONTRACTOR, at its own cost, to carry out such work as THE CHIEF EXECUTIVE deems necessary to improve the quality of data.
- 17.7 THE CHIEF EXECUTIVE 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.
- 17.8 Failure to transmit complete and accurate data to THE CHIEF EXECUTIVE in accordance with this Clause 17 will constitute a Serious Breach of Contract in accordance with Clause 21 of the Terms and Conditions of the Contract.
- 17.9 Where THE CONTRACTOR is providing the Services to Learners claiming out of work benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to THE CONTRACTOR. Failure to transmit complete and accurate data under this Clause 17 will constitute a Serious Breach of Contract in accordance with Clause 21 of the General Terms and Conditions of the Contract and may result in payments for this part of the Services to be delayed or withheld.
- 17.10 THE CONTRACTOR must update the course information funded by THE CHIEF EXECUTIVE at [www.coursedirectoryproviderportal.org.uk](http://www.coursedirectoryproviderportal.org.uk) in accordance with the course directory data requirements which can be found at <http://www.coursedirectoryproviderportal.org.uk/datarequirements>.
- 17.11 THE CONTRACTOR shall register with UKRLP and maintain contact details on an on-going basis. (<http://www.ukrlp.co.uk>).

## **18 Quality Assurance and Raising Standards**

- 18.1 THE CONTRACTOR undertakes to THE CHIEF EXECUTIVE that it has the resources and skills necessary to carry out THE CONTRACTOR'S obligations pursuant to this Contract.
- 18.2 THE CONTRACTOR shall comply with the Performance Management Rules published by the Chief Executive as amended from time to time and any other requirements, which may from time to time be issued by THE CHIEF

EXECUTIVE, OFSTED, the awarding bodies and other regulatory bodies and of which THE CONTRACTOR is made aware.

- 18.3 THE CONTRACTOR shall ensure that all activities carried out pursuant to this Contract shall be documented in accordance with the requirements of THE CHIEF EXECUTIVE and shall provide such documentation to them as THE CHIEF EXECUTIVE shall request from time to time.
- 18.4 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 CHIEF EXECUTIVE satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. THE CHIEF EXECUTIVE reserves the right to require THE CONTRACTOR to provide THE CHIEF EXECUTIVE or OFSTED evidence to support the quality improvement processes.
- 18.5 THE CONTRACTOR shall use all reasonable endeavours to:
- 18.5.1 minimise drop out rates and deliver high completion and achievement rates and appropriate progression;
  - 18.5.2 at least meet the minimum quality standards that apply to the appropriate Services purchased. These minimum quality standards and other types of underperformance will be set out by THE CHIEF EXECUTIVE;
  - 18.5.3 ensure competent and appropriately qualified staff deliver and assess learning. THE CONTRACTOR shall be responsible for the professional development and training of its staff;
  - 18.5.4 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
  - 18.5.5 provide a safe, healthy and supportive environment, which meets the needs of Learners;
  - 18.5.6 provide good management and leadership of the learning process;
  - 18.5.7 deliver value for money and financial probity; and
  - 18.5.8 ensure all sub-contractors delivering Services under the Contract on behalf THE CONTRACTOR comply with the requirements set out in 18.5.1 to 18.5.7 above.
- 18.6 Failure to meet the requirements set out in clauses 18.5.1 to 18.5.8 may result in THE CHIEF EXECUTIVE assessing THE CONTRACTOR to be in Serious Breach of the Contract under Clause 21 of the Contract.

- 18.7 THE CHIEF EXECUTIVE may assess the quality and delivery of the Services and THE CONTRACTOR'S compliance with the requirements in clause 18.5.1 to 18.5.8 during the term of the Contract. THE CONTRACTOR will be informed of the outcome of that process. Where THE CHIEF EXECUTIVE assesses THE CONTRACTOR to be in Serious Breach of Contract following such assessment THE CHIEF EXECUTIVE will issue a notice in accordance with clause 21.9 of the Contract which may:
- 18.7.1 require THE CONTRACTOR to meet improvement indicators to improve the quality of its Services. THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE and in agreement with THE CONTRACTOR;
  - 18.7.2 agree detailed improvement plans and measures that set out clearly the expected timescale for improvement;
  - 18.7.3 agree arrangements for more frequent monitoring of quality improvement plans.
- 18.8 THE CHIEF EXECUTIVE may at their discretion agree a programme of support for THE CONTRACTOR to assist it in taking action to improve the quality of the Services.
- 18.9 When THE CONTRACTOR receives notification from OFSTED that the Services - are to be inspected, THE CONTRACTOR shall provide THE CHIEF EXECUTIVE with details of its quality improvement activity, and any other relevant information in accordance with the required timescale of OFSTED. THE CONTRACTOR must notify THE CHIEF EXECUTIVE of the date of the meeting at which OFSTED give feedback on the inspection and allow THE CHIEF EXECUTIVE'S nominated representative to attend the meeting. THE CONTRACTOR must confirm to THE CHIEF EXECUTIVE in writing the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.
- 18.10 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 THE CHIEF EXECUTIVE is satisfied that action has been taken to remedy the weaknesses identified by the inspection
- 18.11 Where all or any part of the Services delivered under this part of the Contract is assessed by the Inspectorates as inadequate, THE CHIEF EXECUTIVE will regard THE CONTRACTOR as being in Serious Breach of the Contract, and the provisions set out at Clause 18.7 will apply.



- 18.12 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 quality standards and any other quality threshold required by THE CHIEF EXECUTIVE or identified through and inspection by OFSTED. THE CHIEF EXECUTIVE may request evidence from THE CONTRACTOR that the Services delivered by the sub-contractor meet the requirements of the Contract.
- 18.13 Where appropriate, THE CONTRACTOR shall confirm in writing to THE CHIEF EXECUTIVE 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). THE CONTRACTOR must notify THE CHIEF EXECUTIVE immediately in writing if it receives any sanction from an awarding body.
- 18.14 THE CONTRACTOR shall for those staff delivering the services be responsible for their professional development and training and meeting any legal requirements to ensure that they are appropriately qualified and trained.
- 18.15 As part of the delivery of the Services, THE CONTRACTOR must provide high quality and easily accessible information and advice to help Learners to understand the opportunities and support available to them about education, training or connected matters (including employment);
- 18.15.1 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 to have or attain the matrix Standard accreditation within six months of the Contract being awarded; and
- 18.15.2 If the information and advice is embedded as part of the delivery of the Services THE CONTRACTOR should work towards achieving the matrix Standard accreditation within 12 months of the start of the Contract.
- 18.15.3 Where the Services are delivered by a sub-contractor on behalf of THE CONTRACTOR, the requirements set out in clauses 18.15.1 and 18.15.2 must be applied to the sub-contractor. This does not apply where THE CONTRACTOR retains responsibility for the delivery of information and advice to the Learners.
- 18.15.4 Once achieved, matrix Standard accreditation is valid for three years. As part of their accreditation THE CONTRACTOR is required to successfully demonstrate their continuous improvement activities to their matrix Assessor through the use of the online Self Reflection Tool on an annual basis.

18.16 THE CONTRACTOR must take all reasonable steps to meet the relevant

requirements for data gathering for the FE Choices Performance Indicators as outlined currently at <http://fechoicesinformation.skillsfundingagency.bis.gov.uk> and in any subsequent updates to these web pages.

## **19 Fraud and Irregularity**

19.1 THE CONTRACTOR shall notify THE CHIEF EXECUTIVE 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:

19.1.1 collusion with members of the staff of THE CHIEF EXECUTIVE or employees of the Department for Business Innovation and Skills;

19.1.2 computer fraud;

19.1.3 the submission to THE CHIEF EXECUTIVE of inaccurate, incomplete, misleading or falsified information for the purpose of a claim for funding;

19.1.4 fraud involving awarding bodies;

19.1.5 fraud involving sub-contractors;

provided that nothing in this Clause 19 shall require THE CONTRACTOR to do anything, which may cause it to infringe any law.

19.2 Where THE CHIEF EXECUTIVE has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, THE CHIEF EXECUTIVE 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 including electronic records and to interview THE CONTRACTOR'S servants or agents engaged with the delivery of the Contract.

19.3 Where THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE and THE CONTRACTOR and payments made there under it shall have the right to suspend payments and/or require THE CONTRACTOR to suspend recruitment of Learners under this Contract and any other Contract between the Parties.

19.4 The Parties shall co-operate in the identification of Learners who may be unlawfully claiming benefits. THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE shall provide a named contact or telephone answering machine for receiving such information.

## **20 European Funding and Other Sources of Funding**

- 20.1 Where notified in writing by THE CHIEF EXECUTIVE that the funding under this Contract is required to be used as match funding:
- 20.1.1 THE CONTRACTOR must not use the funding paid under this Contract to support bids or claims that will be used to secure funding from any European source, either on its own behalf or on behalf of THE CHIEF EXECUTIVE, including but not limited to as match funding.
  - 20.1.2 Where THE CONTRACTOR or any of its sub-contractors has access to other funding streams, THE CONTRACTOR or any of its sub-contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of THE CHIEF EXECUTIVE or any other body undertaking the audit or monitoring), to THE CHIEF EXECUTIVE and any body set out in clause 12.2 that no double funding has occurred in respect of the Services delivered under the Contract.
  - 20.1.3 Where THE CHIEF EXECUTIVE identifies double funding in respect of the Services, or any part thereof, THE CONTRACTOR will be liable to repay to THE CHIEF EXECUTIVE any sums paid, or part thereof, by THE CHIEF EXECUTIVE in respect of the Services for which THE CONTRACTOR has received funding from another source and THE CHIEF EXECUTIVE reserves the right to deduct such sums from any monies owed to THE CONTRACTOR under the Contract or any subsequent Contract.
  - 20.1.4 THE CHIEF EXECUTIVE reserves the right to use payments made under the Contract as match funding for European Structural and Investment Fund (ESIF) projects. These funds include ESF, ERDF and EAFRD. Where requested to do so in writing by THE CHIEF EXECUTIVE, THE CONTRACTOR shall provide such information and in the form as THE CHIEF EXECUTIVE specifies to enable THE CHIEF EXECUTIVE to comply with the requirements of the European Structural and Investment Funds.
  - 20.1.5 THE CONTRACTOR shall inform Learners or others that the Services delivered have been financed in whole or part by the European Structural and Investment Funds.
  - 20.1.6 General eligibility for ESF participants is set out in the ESF Operational Programme for England and supporting Guidance, from the European Social Fund Division of the Department for Works and Pensions which can be found on <http://www.dwp.gov.uk/esf>. Learners must meet the eligibility criteria defined in the Operational Programme as well as the specific eligibility criteria set out in the Contract.

- 20.2 THE CONTRACTOR will comply with written requests by THE CHIEF EXECUTIVE to display the ESF logos and emblems on any materials relating to funding by the ESF. THE CHIEF EXECUTIVE will make available to THE CONTRACTOR all relevant ESF logos and emblems.
- 20.3 THE CONTRACTOR must ensure that where it is agreed with THE CHIEF EXECUTIVE that 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".
- 20.4 THE CONTRACTOR must ensure that all Learners are aware of the support of the ESF in respect of the Services being delivered under this Contract.
- 20.5 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 Skills Funding Agency".
- 20.6 THE CONTRACTOR shall complete the Non ILR participant data spreadsheet and/or Actual Costs claim form (available on <http://skillsfundingagency.bis.gov.uk/providers/programmes/esf/>) to substantiate data submitted on the delivery statement. THE CONTRACTOR shall submit this to THE CHIEF EXECUTIVE and Secretary of State through the Provider Gateway.
- 20.7 At any time during the delivery of any ESF funded programme provided under this Contract where THE CONTRACTOR is unable to provide the required evidence for any deliverable (as set out in the Evidence Requirements Table in the ESF Schedule(s)) THE CONTRACTOR must write to THE CHIEF EXECUTIVE providing the reason(s) why they are unable to comply with the evidence requirements and giving full details of alternative evidence to be considered. THE CHIEF EXECUTIVE will review the request and notify THE CONTRACTOR in writing of any revisions to the evidence requirements which shall form part of the terms and conditions of the Contract. In all such reviews, the decision of THE CHIEF EXECUTIVE shall be final.

## **21 Breach**

- 21.1 For the purpose of this Clause, the following definitions shall have the meanings set out below:
- 21.2 "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;
- 21.3 "Serious Breach" shall mean any breach defined as a Serious Breach in the Contract or any breach or breaches which adversely, materially or substantially affect the performance or delivery of the Services or compliance

with the terms and conditions of the Contract 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.

21.4 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*

21.5 Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:

21.6 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.

21.7 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 21.6 or such other period as may be agreed between the Parties it shall constitute a Serious Breach by the Party in breach.

#### *Serious Breach*

21.8 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:

21.9 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.

21.10 Where THE CHIEF EXECUTIVE has served a notice under clause 21.9 THE CHIEF EXECUTIVE has the right to require THE CONTRACTOR to suspend the recruitment of Learners until THE CHIEF EXECUTIVE has confirmed that the breach has been remedied.

21.11 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 21.9 or such other period as may be agreed between the Parties THE CHIEF EXECUTIVE may cease funding THE CONTRACTOR in respect of that part of the Service to which the Serious Breach relates.

21.12 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 21.9 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.

## **22 Termination**

22.1 THE CONTRACTOR shall notify THE CHIEF EXECUTIVE in writing immediately upon the occurrence of any of the following events:

22.1.1 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 their affairs; or

22.1.2 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 22.1.1 or 22.1.3 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

22.1.3 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 administrator, receiver or manager is appointed by the company, a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

22.2 On the occurrence of any of the events described in this Clause 22 THE CHIEF EXECUTIVE shall be entitled to terminate this Contract by notice to THE CONTRACTOR with immediate effect.

22.3 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 CHIEF EXECUTIVE shall be entitled to terminate this Contract by notice to THE CONTRACTOR or its representatives with immediate effect.

22.4 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.

- 22.5 THE CHIEF EXECUTIVE reserves the right to terminate this Contract with immediate effect by giving notice in writing if THE CONTRACTOR ceases to be on the Register of Training Organisations maintained by THE CHIEF EXECUTIVE.
- 22.6 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.
- 22.7 Termination under Clauses 22 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.
- 22.8 Where THE CONTRACTOR goes into administration or liquidation, THE CHIEF EXECUTIVE must be assumed to be a creditor of THE CONTRACTOR. THE CONTRACTOR must take steps to ensure that THE CHIEF EXECUTIVE is provided with details of the administrator or liquidator and receives notification of any creditors meetings. THE CHIEF EXECUTIVE will confirm whether in fact he is a creditor within 8 weeks of being notified that THE CONTRACTOR is in administration or liquidation.
- 22.9 THE CONTRACTOR shall upon termination of the Contract immediately deliver up to THE CHIEF EXECUTIVE all correspondence, documents, specification papers and other property belonging to THE CHIEF EXECUTIVE, which may be in its possession or under its control.
- 22.10 Notice of termination of the Contract under Clause 21 or this Clause 22 shall result in THE CONTRACTOR being removed from the Register of Training Organisations.
- 22.11 THE CONTRACTOR must not recruit new Learners after notice of termination of the Contract has been given under Clause 21 or this Clause 22. THE CHIEF EXECUTIVE will not be liable to make payments in respect of any Learners recruited in breach of this Clause.

### **23 Transfer of Responsibility on Expiry or Termination**

- 23.1 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 1 in Schedule 1 of the Contract so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties.

- 23.2 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 CHIEF EXECUTIVE 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.
- 23.3 On termination or expiry of this Contract for any reason the Learner Files will become the property of THE CHIEF EXECUTIVE. THE CONTRACTOR shall allow THE CHIEF EXECUTIVE her servants or agent to have access to its premises to remove Learner Files or otherwise comply with a request by THE CHIEF EXECUTIVE to transfer Learner Files to any third party nominated by THE CHIEF EXECUTIVE.
- 23.4 THE CONTRACTOR shall, at no cost to THE CHIEF EXECUTIVE, promptly provide such assistance and comply with such timetable as THE CHIEF EXECUTIVE 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 endeavors to ensure that its employees and its sub-contractors are under a similar obligation. THE CHIEF EXECUTIVE shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Contract.
- 23.5 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.
- 23.6 THE CONTRACTOR undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of THE CHIEF EXECUTIVE to ensure an orderly transfer of responsibility for provision of the Services.

## **24 Force Majeure**

- 24.1 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.

## **25 Public Reputations of the Parties/Press Releases**

- 25.1 Both Parties recognise their respective public reputations and legal responsibilities. Each Party shall use all reasonable endeavours not to harm



or compromise these.

- 25.2 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.

## **26 Branding and logos**

- 26.1 THE CONTRACTOR shall comply with the requirements of the endorsement identity, available on the Skills Funding Agency identity guidelines website at <https://brand.skillsfundingagency.bis.gov.uk/>; on all and any promotional materials or activities in relation to the Services. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.

26.1.1 THE CONTRACTOR shall be given access to any logos and statements, which it is required to use. THE CONTRACTOR will be required to use logos and statements in accordance with the terms of use and should not alter or amend such logos or statements. Logos and statements are only to be used in relation to the Services under this Contract. Any breach of this clause 26 or the requirements or terms of use of which THE CONTRACTOR is made aware shall constitute a serious breach under the Clause 21 of the General Terms and Conditions of this Contract.

26.1.2 THE CONTRACTOR may also be required to use logos from other co-branding or co-funding participants and must comply with any terms which apply to the use of such logos.

- 26.2 THE CONTRACTOR must ensure that the terms of this Clause 26 are contained in any sub-contract of the Services.

## **27 Retention of Documents**

- 27.1 THE CONTRACTOR and its sub-contractors shall maintain original invoices; management information returns and all other documents necessary to verify the Services in relation to this Contract for 6 years from the end of the financial year in which the last payment is made.

- 27.2 Where the Services have been funded using monies from the European Structural and Investment Funds, or where any payments made under this Contract for the Services have been used as match-funding for a European Structural and Investment Fund Co-Financing project THE CONTRACTOR will be required to retain all documents necessary to verify the Services provided by itself or by its sub-contractors. Documents to support claims must be retained for a minimum of three years after the European Commission has made its final payment. For the 2007-13 ESF Programme this is expected to be until at least 31 December 2022 and for the 2014-20 ESF Programme until at least 31 December 2030

- 27.3 Confirmation of the document destroy date will be notified in writing by THE CHIEF EXECUTIVE. Without prejudice to any of the other rights under the Contract to recover funds, THE CHIEF EXECUTIVE will be entitled to recover from THE CONTRACTOR any sums which she is required to repay to the European Social Fund as a result of THE CONTRACTOR'S failure to comply with this Clause.
- 27.4 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.

## **28 Status of Contract**

- 28.1 Nothing in this Contract shall have the effect of making THE CONTRACTOR, the servant or agent of THE CHIEF EXECUTIVE, 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 CHIEF EXECUTIVE against tax, national insurance contributions or similar imposed for which THE CHIEF EXECUTIVE may be liable in respect of THE CONTRACTOR by reason of this Contract.

## **29 Waiver**

- 29.1 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.

## **30 Third Party Rights**

- 30.1 Save as specifically provided in the Contract none of the terms of this Contract are intended to be enforceable by any Learner or other third party.

## **31 Notice**

- 31.1 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
- 31.2 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.

## **32 Governing / Jurisdiction**

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

## **33 Dispute Resolution**

33.1 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.

33.2 In the event of the Contract Managers being unable to resolve the relevant issue, either party may request in writing that the matter is referred to THE CHIEF EXECUTIVE'S nominated representative and THE CONTRACTOR'S representative nominated for this purpose (jointly "the Dispute Resolution Panel") for formal review and consideration. Any request for referral to the Dispute Resolution Panel must include details of the dispute and any proposals to resolve it.

33.3 The Dispute Resolution Panel will meet within 28 days of receiving a request for referral made in accordance with clause 33.2 above.

## **34 Feedback and Complaints**

34.1 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 CHIEF EXECUTIVE, to gather and act upon feedback and complaints from Learners and/or their representatives and employers and the wider community.

34.2 THE CONTRACTOR must ensure that Learners are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Learners who wish to complain.

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

34.4 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 CHIEF EXECUTIVE and co-operate with any investigation carried out by THE CHIEF EXECUTIVE and act on any recommendations made by THE CHIEF EXECUTIVE following the investigation.

## **35 State Aid**

- 35.1 THE CONTRACTOR should satisfy itself, if the European rules on State Aid apply to the Services delivered under this Contract.
- 35.2 Where the rules on State Aid apply, THE CHIEF EXECUTIVE will supply to THE CONTRACTOR details of the records that THE CONTRACTOR will need to collect and retain.
- 35.3 THE CHIEF EXECUTIVE reserves the right to require THE CONTRACTOR to obtain a contribution towards the cost of the Services delivered under this Contract from the employer of any participant. Where a contribution is required, THE CHIEF EXECUTIVE will confirm to THE CONTRACTOR in writing the exact percentage of the contribution.
- 35.4 Where Chief Executive requires THE CONTRACTOR to obtain a contribution towards the cost of the Services under clause 35.3 above, THE CONTRACTOR must provide evidence that the contribution has been received.
- 35.5 In the event that any funding paid under this Contract is deemed to constitute unlawful state aid THE CHIEF EXECUTIVE reserves the right to require immediate repayment of any such funding.

## **36 Intellectual Property Rights**

### **36.1 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 excluding Learner Files;

**“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.

36.2 In consideration of THE CHIEF EXECUTIVE making the payments 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 CHIEF EXECUTIVE 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 CHIEF EXECUTIVE may reasonably require to be able fully to exploit, develop and commercialise the results of the Services, including, without limitation, the Work.

36.3 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising

**37 Disposal of Assets and Change of Use**

37.1 In respect of Assets whose value exceeds £2,500 including VAT the following provisions shall apply.

37.2 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 CHIEF EXECUTIVE if it has been acquired wholly or partly with funds provided by THE CHIEF EXECUTIVE;
  - 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 CHIEF EXECUTIVE 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.
- 37.3 THE CONTRACTOR shall ensure that any Asset financed by THE CHIEF EXECUTIVE is adequately insured.
- 37.4 THE CONTRACTOR shall inform THE CHIEF EXECUTIVE if it proposes to dispose of, or change the use of, any Asset that has been financed by THE CHIEF EXECUTIVE.
- 37.5 THE CONTRACTOR shall not dispose of any Asset financed by monies provided by THE CHIEF EXECUTIVE unless it has first obtained the written consent of THE CHIEF EXECUTIVE to such a disposal.
- 37.6 Where THE CONTRACTOR disposes of the Asset it shall pay to THE CHIEF EXECUTIVE whichever is the greater either the amount of funding provided by THE CHIEF EXECUTIVE in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to THE CHIEF EXECUTIVE unless otherwise agreed with THE CHIEF EXECUTIVE.
- 37.7 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 CHIEF EXECUTIVE in accordance with clause 37.6 above.
- 37.8 In the event of THE CONTRACTOR being taken over, merging or going into liquidation, all Assets financed by THE CHIEF EXECUTIVE, or the equivalent portion of their market value, will become the property of THE CHIEF EXECUTIVE.
- 37.9 The provisions of this clause shall apply during the continuance of this Contract and after its termination howsoever arising. THE CHIEF EXECUTIVE shall reserve the right to decide when its interest in Assets financed by THE CHIEF EXECUTIVE under the terms of the Contract shall cease.

### **38 Headings**

38.1 The headings to conditions shall not affect their interpretation.

### **39 Entire Contract / Amendments**

39.1 The Contract shall comprise the following:

Terms and Conditions

Appendices 1 and 2

Funding Appendix (added as appropriate)

Schedule 1

Schedule 2 (PPA to add as appropriate to include ESF funding)

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

**APPENDIX 1 SUMMARY OF PROGRAMME FUNDING 2014/2015 [Provider Performance Adviser to insert CCM Appendix 1 here]**



**APPENDIX 2**

**FUNDING AGREEMENT(S) [Provider Performance Adviser  
to insert CCM Funding Agreements here]**

## FUNDING APPENDIX – ADDED AS APPROPRIATE

## **SCHEDULE 1**

- 1 Transfer of Undertakings (Protection of Employment) Regulations 2006 and Pensions Aspects
- 2 Treatment of New Staff Employed To Deliver the Services

# 1. Transfer of Undertakings (Protection Of Employment) Regulations 2006 and Pensions Aspects

## 1.1. Definitions

- 1.1.1. "Admission Agreement" means an agreement between THE CHIEF EXECUTIVE and THE CONTRACTOR and a Public Sector Pension Scheme, so that each Transferring Employee may continue to participate in that employee's respective Public Sector Pension Scheme, after the Employee Transfer Date;
- 1.1.2. "Employee Transfer Date" means in respect of any particular Transferring Employee the date on which the part of the Services to which they are assigned transfers from the Previous Contractor to THE CONTRACTOR;
- 1.1.3. "Fair Deal" means the guidance issued by HM Treasury in October 2013 or any subsequent guidance on fair deal for staff pensions for staff transferring from the public sector under the control of Central Government
- 1.1.4. "Final Pay Details" means the information set out in Appendix D;
- 1.1.5. "Future Transfer Date" means the date of termination or expiry of this Contract;
- 1.1.6. "Future Transferring Employees" means those employees of THE CONTRACTOR who are at the Future Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to TUPE or the Acquired Rights Directive 187/77/EC or otherwise to any Successor Contractor;
- 1.1.7. "Initial Staff Information" means the information set out in Appendix A;
- 1.1.8. "Original Transfer Date" means [                                  ];
- 1.1.9. "Prescribed Particulars" means in respect of each of the Future Transferring Employee the information set out in Appendix B;
- 1.1.10. "Previous Contractor" means THE CONTRACTOR engaged in providing services substantially the same as the Services set out in this Contract prior to the coming into force of this Contract;

1.1.11 “Public Sector Employee” means a Transferring Employee who immediately before the Employee Transfer Date was employed by an employer covered by a Public Sector Pension Scheme;

1.1.12 “Public Sector Pension Scheme” means:

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

As applicable;

1.1.13 “Relevant Legislation” means any statute or regulations or the EC Treaty (or any directives or regulations made there under);

1.1.14 “Relevant Personnel Documentation” means the information set out in Appendix C;

1.1.15 “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;

1.1.16 “Required Information” means the information set out in the Appendix A-F;

1.1.17 “Successor Contractor” means the person nominated by THE CHIEF EXECUTIVE to undertake the services substantially the same as the Services after the termination of this Contract;

1.1.18 “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;

1.1.19 “Transferring Employees” means those employees of the Previous Contractor or THE CHIEF EXECUTIVE who are employed in the performance of services substantially the same as the Services; and “Transferring Employees” shall be construed accordingly; and

1.1.20 "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time.

## **1.2. Transfer of Undertakings (Protection of Employment) on Commencement**

1.2.1 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;

1.2.1.1 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 CHIEF EXECUTIVE and the Previous Contractor in respect of any claim brought by any Transferring Employee which arises from operation of this Clause 1.2; and

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

## **1.3. Protection of Pensions – Public Sector Employees**

1.3.1. THE CONTRACTOR shall:

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

1.3.1.1 (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

- 1.3.1.1 (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 in accordance with Fair Deal, or
- 1.3.1.1 (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**

- 1.3.1.2 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;
- 1.3.1.3 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;
  - 1.3.1.3.1 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;
- 1.3.1.4 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**

- 1.3.1.5 Where the option set out in 1.3.1.1(b), applies ensure that each Transferring Employee may participate, or continue to participate in their respective Public Sector Pension Scheme; and

## **Continuity of Schemes**

- 1.3.1.6 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 1.3.1.1(b)., at any time end the participation of a Transferring Employee of a Public Sector Pension Scheme.
- 1.3.2. 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.
- 1.3.3. 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.
- 1.3.4. 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.
- 1.3.5. 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.



1.3.6. 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 1.3.1.1 ("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 1.3.1.2 –1.3.1.6 THE CONTRACTOR shall ensure that the Sub-Contractor's scheme shall include the conditions set out in clauses 1.3.3, 1.3.4, 1.3.5 and 1.3.6.

#### **1.4. Expiry of Contract**

1.4.1. THE CHIEF EXECUTIVE and THE CONTRACTOR shall act on the basis that TUPE applies on expiry or termination of the Contract where THE CHIEF EXECUTIVE is proposing re-contract for services which are substantially the same as the Services.

1.4.2. During the period of 18 months preceding the expiry of the Contract or within 21 days after THE CHIEF EXECUTIVE or THE CONTRACTOR has given notice to terminate the Contract, THE CONTRACTOR shall disclose to the CHIEF EXECUTIVE and shall permit the CHIEF EXECUTIVE 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.

1.4.3. During the period of three months preceding the expiry of this Contract or within 21 days after THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE 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 CHIEF EXECUTIVE shall have executed in writing a confidentiality undertaking in favour of THE CONTRACTOR.

1.4.4. 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.

1.4.5. THE CONTRACTOR shall immediately prior to the Future Transfer Date provide to THE CHIEF EXECUTIVE 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.

- 1.4.6. Within a period of 21 days following the expiry or termination of this Contract THE CONTRACTOR shall provide to THE CHIEF EXECUTIVE or the Successor Contractor in writing Final Pay Details of the Future Transferring Employees.
- 1.4.7. THE CONTRACTOR warrants that it shall supply complete and accurate information pursuant to clauses 1.4.2, 1.4.3, 1.4.5 and 1.4.6 in all material respects and THE CONTRACTOR shall indemnify and keep THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE or the Successor Contractor nominated by THE CHIEF EXECUTIVE 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 1.4.2, 1.4.3, 1.4.5, and 1.4.6, and/or the provision of assistance and/or failure to provide assistance under clause 1.4.4 of this Contract.
- 1.4.8. 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 CHIEF EXECUTIVE or the Successor Contractor:
- 14.8.1 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;
  - 14.8.2 Of the termination, for whatever reason, of the employment of any employee whom THE CONTRACTOR reasonably believes will be a Future Transferring Employee; and
  - 14.8.3 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.
  - 14.8.4 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 CHIEF EXECUTIVE and/or any Successor Contractor indemnified in respect of all and any costs suffered or incurred by THE CHIEF EXECUTIVE or the Successor Contractor by reason of any proceedings, claim or demand arising out of or in connection with:
  - 14.8.5 Any claim against THE CHIEF EXECUTIVE 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

- 14.8.6 Any claim against THE CHIEF EXECUTIVE or the Successor Contractor by any Future Transferring Employee whose name is not included on the list provided by THE CONTRACTOR pursuant to Clause 1.4.5 so far as it relates to the dismissal of such Future Transferring Employee within two Months of THE CHIEF EXECUTIVE or Successor Contractor becoming aware of the transfer of such Future Transferring Employee.
- 1.4.9. For the purposes of Clause 1.4.9, in the event that THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE or Successor Contractor and included within the indemnity provided by THE CONTRACTOR.
- 1.4.10. THE CHIEF EXECUTIVE 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 CHIEF EXECUTIVE or Successor Contractor in connection with the costs and liabilities indemnified by THE CONTRACTOR.
- 1.4.11. This clause 1.4 shall continue in effect for six months following the expiry or termination of this Contract.

## **APPENDIX A TO CLAUSE 1 SCHEDULE 1**

“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 1 SCHEDULE 1**

“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 1 SCHEDULE 1**

“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 1 SCHEDULE 1**

“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.



## APPENDIX E TO CLAUSE 1 SCHEDULE 1

“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

## **APPENDIX F TO CLAUSE 1 SCHEDULE 1**

ODPM Circular 3/2003: Best Value Performance Improvement

This circular can be found at:

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/index.asp?id=1163718>

## **APPENDIX G TO CLAUSE 1 OF SCHEDULE 1**

### **TRANSFER VALUES**

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