

## CONTRACT FOR XXXXXX

### PARTIES

1. UK COMMISSION FOR EMPLOYMENT AND SKILLS (COMPANY REGISTRATION NUMBER 6425800) WHOSE ADDRESS FOR CORRESPONDENCE IS 3 CALLFLEX BUSINESS PARK, GOLDEN SMITHIES LANE, WATH-UPON-DEARNE, SOUTH YORKSHIRE S63 7ER ("UK COMMISSION"); AND
2. XXXXX, (REGISTERED IN ENGLAND WITH COMPANY REGISTRATION NUMBER XXXXX) WHOSE REGISTERED OFFICE IS AT XXXXXXXXXX ("THE COMPANY OR CONTRACTOR") , AND WHOSE ADDRESS FOR CORRESPONDENCE IS XXXXXXXXXX

### RECITALS

1. THE UK COMMISSION FOR EMPLOYMENT AND SKILLS WILL FUND THE ACTIVITIES AS DESCRIBED IN SCHEDULE 1 TO THIS CONTRACT, ON THE FOLLOWING TERMS, AND IN CONSIDERATION FOR THE WARRANTIES, COVENANTS AND OBLIGATIONS GIVEN BY THE COMPANY.
2. THE UK COMMISSION'S REFERENCE NUMBER FOR THIS CONTRACT IS SP1 POXXX.

### 1. INTERPRETATION

- 1.1. In this Contract the following words shall mean:-

"Activities" the activities to be undertaken by the Company as specified in Schedule 1.

"UK Commission Data" means

(a) the data, text, drawings, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Company by or on behalf of the UK Commission; or

(ii) which the Company is required to generate, process, store or transmit pursuant to this Contract; or

(b) any Personal Data for which the UK Commission is the Data Controller

"Capital Asset" an individual asset with a purchase price in excess of £1000 which meets the recognition criteria set out in Financial Reporting Standard 10 (Goodwill and Intangible Assets) or Financial Reporting Standard 15 (Tangible Fixed Assets) and has been purchased for use in the operation of the business of the Company or used to produce its services, such as equipment, land, property or plant.

“Company’s Contract Manager”	XXXXX, tel: XXX, e-mail XXXX or such replacement as may be nominated by the Company from time to time and notified in writing to the UK Commission.
“UK Commission Contract Manager”	XXXXX, Programme Manager, UK Commission for Employment and Skills, 28-30 Grosvenor Gardens, London, SW1W OTT tel: 0207 881 XXXX, email: XXXX or such replacement as may be nominated by the UK Commission from time to time and notified in writing to the Company.
“DPA”	Means Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
“Devolved Administrations”	The Scottish Executive, Welsh Assembly Government and the Northern Ireland administration.
“Government”	the duly elected Government of the United Kingdom for the time being, any of the Devolved Administrations, and/or any department, committee, office, servant or officer of such Government or Devolved Administrations.
"Intellectual Property"	means any and all copyright, rights in designs, database rights, domain names, trade marks, service marks, patents or any applications for any of the foregoing, confidential information, know-how, moral rights and all or any other intellectual or industrial property rights, whether or not registered or capable of registration, together with all or any goodwill relating or attached thereto.
“Key Personnel”	means those persons named in Schedule 1 as being key personnel
“Legislation”	means in relation to the United Kingdom:  any Act of Parliament or Order in Council or any Act of any of the Devolved Administrations;  any subordinate legislation of Parliament or of any of the Devolved Administrations within the meaning of Section 21(1) of the Interpretation Act 1978;  any exercise of the Royal Prerogative;  any enforceable community right within the meaning of Section 2 of the European Communities Act 1972.
“Procurement Manager”	means Debbie Keogh, Contracting and Procurement Manager of the UK Commission for Employment and Skills, 3 Callflex Business Park, Golden Smithies Lane, Wath-upon-Deerne, S63 7ER, tel: 01709 774 877, e-mail Debbie.keogh@ukces.org.uk or such replacement as may be nominated by the UK Commission from

time to time and notified in writing to the Company.

“Staff” Means all person employed by the Company to perform its obligations under the Contract together with the Company’s servants, agents and sub-contractors used in the performance of its obligations under this Contract.

“Working Day” A day shall constitute 7.5 working hours, excluding a lunch break and travel time.

1.2. References to “Contract” mean this contract (and includes the Schedules) in each case as amended from time to time in accordance with the terms of this Contract. References to “Clauses” and “Schedules” mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.

1.3. Reference to the singular include the plural and vice versa and references to any gender include all genders. References to a person include any individual, firm, unincorporated association or body corporate and their successors and permitted assigns or transferees.

1.4. References to any enactment, order, regulation or other similar instrument, statute or statutory provision shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted.

1.5. In the event of any conflict between the provisions of the Schedules and the provisions of the main body of this Contract, the provisions of the main body of this Contract will take precedence.

## **2. COMMENCEMENT AND CONTINUATION**

2.1. This Contract shall commence on XXXXX. Subject to Clause 12, the Company shall complete the Activities on or before XXXXX.

## **3. COMPANY OR CONTRACTOR’S STATUS**

3.1. In carrying out its obligations under this Contract the Company agrees that it will be acting as principal and not as the agent of the UK Commission.

3.2. The Company shall not say or do anything that may lead any other person to believe that the Company is acting as the agent of the UK Commission.

3.3. Nothing in this Contract shall be deemed to constitute or create a legal and binding partnership between the UK Commission and the Company.

3.4. The Company will not have any direct authority over, or entitlement to, UK Commission employees, equipment, consumables or other UK Commission resource unless expressly stated in the schedules. The UK Commission will use all reasonable endeavours to create the necessary environment for the Company to discharge their duties under the terms of this contract.

3.5. At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf

of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

#### **4. COMPANY'S OBLIGATIONS**

- 4.1. The Company shall promptly and efficiently complete the Activities in accordance with the provisions set out in Schedule 1 (and any annexes thereto). The Company shall use its best endeavours to complete each activity milestone specified in Schedule 1 by the completion date specified against that activity milestone in Schedule 1.
- 4.2. The Company shall comply with the accounting and information provisions of Schedules 2 (and the annexes thereto).
- 4.3. The Company shall comply and shall procure that its employees and sub-contractors comply with all relevant Legislation, orders or regulations applicable to the Activities.
- 4.4. The Company shall maintain an effective system of internal financial control and governance in line with indicators of good practice.
- 4.5. The Company shall report to the UK Commission in a timely manner any matters of financial concern in relation to the activities of the Company. In particular, the Company shall report the occurrence, or an intention to implement, of any of the events listed under clause 12.3 of the Contract.
- 4.6. The Company shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.
- 4.7. Where the UK Commission has financed expenditure on Capital Assets by the Company, the Company shall ensure that such assets are not disposed of without the UK Commission's prior written consent which shall not be unreasonably withheld.
  - 4.7.1. The Company shall ensure that repayment conditions are sufficient to secure the repayment of the Exchequer's due share of the proceeds of the sale, in order that funds may be repaid to the UK Commission for surrender to the Sponsor Department.
  - 4.7.2. The amounts recoverable under the procedures outlined in clause 4.7 and 4.7.1 shall be calculated by reference to the best possible value of the asset and in proportion to the Exchequer's original investment(s) in the asset.

#### **5. UK COMMISSION'S OBLIGATIONS**

- 5.1. The UK Commission will, subject to clauses 11 and 12, comply with the payment provisions of Schedule 2 provided that full and accurate information and documentation for work completed has been submitted by the Company to the UK Commission as required by Schedule 2, and that work has been completed to the satisfaction of the UK Commission.

#### **6. CHANGES TO THE UK COMMISSION'S REQUIREMENTS**

- 6.1. The UK Commission shall notify the Company of any change to the Activities aims and milestones under this Contract including, without limitation, to the activity milestones and completion dates set out in Schedule 1 and, following such notification, this Contract will be deemed to have been amended accordingly.
- 6.2. The Company shall use its best endeavours to accommodate any changes to the needs and requirements of the UK Commission provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes.
- 6.3. The Company shall be entitled to submit details of any changes in costs that it estimates will be reasonably and properly incurred as a result of the UK Commission proposed changes to the Activities pursuant to clause 6.1, provided that the Company shall be under a duty to mitigate any additional costs. The amount and terms of any additional funding relating to such costs shall be subject to agreement between the parties in writing.

## **7. MANAGEMENT**

- 7.1. The Company shall promptly comply with all reasonable requests or directions of the Contract Manager in respect of the Activities.
- 7.2. The Company must not take any instruction from any other party without the express written permission of the UK Commission's Contract Manager or one of the nominated authorities signing this Contract on behalf of the UK Commission for Employment and Skills. The UK Commission will not be liable for any such work undertaken by the Company without such proper instruction.
- 7.3. The Company shall address any enquiries about procedural or contractual matters in writing to the UK Commission's Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.
- 7.4. Within 30 Business Days of receiving a request from the UK Commission the Company's senior management must meet the UK Commission to review progress and achievements against the Activities and the Contract.

## **8. KEY PERSONNEL**

- 8.1. The Parties have agreed to the appointment of Key Personnel. The Company shall, and shall procure that any sub-contractors shall obtain the prior written consent of the UK Commission before removing or replacing any Key Personnel during the Contract Period, and written notice must be provided by the Company of its intention to replace Key Personnel within a minimum of three (3) Working Days of the Company becoming aware that the Key Personnel will be unable to continue to contribute to the provision of the Services (for any reason whatsoever).
- 8.2. The UK Commission shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Company or sub-contractor. The UK Commission may interview the candidates for Key Personnel positions before they are appointed.
- 8.3. The Company acknowledges that Key Personnel are essential to the proper provision of the Services to the UK Commission. Unless otherwise agreed in writing between the Parties, the Company shall ensure that the role of any Key Personnel is not vacant for any longer than three (3) Working Days and that any replacement shall be as or more qualified and experienced as the previous

incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he/she has replaced.

- 8.4. The Company shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that Person's role unless the UK Commission otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, the Company shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 8.5. The UK Commission may identify any of the Company personnel as Key Personnel. Key Personnel will be identified in Schedule 1 of this Contract.
- 8.6. The UK Commission may also require the Company to remove any Key Personnel that the UK Commission considers in any respect unsatisfactory. The UK Commission shall not be liable for the cost of replacing any Key Personnel.
- 8.7. The Company shall provide the UK Commission with a replacement to cover any periods of planned or unplanned absence of the Key Personnel.

## **9. COMPANY'S EMPLOYEES AND SUB-CONTRACTORS**

- 9.1. The Company shall include in its contracts with suppliers or sub-contractors engaged for the purposes of the Activities a written condition undertaking to make payment for the supply of their goods and/or services by the end of the month following the month of receipt of the supplier's or sub-contractor's invoice (provided that such goods and/or services have been supplied in accordance with the relevant contract).
- 9.2. The Company shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Activities and shall procure that all sub-contractors are subject to the same obligations of confidentiality as the Company is under this Contract.
- 9.3. The Company shall immediately notify the UK Commission if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.

## **10. INTELLECTUAL PROPERTY**

- 10.1. All Intellectual Property Rights in the Contract are at all times vested in the Company.
- 10.2. The Company hereby grants to the UK Commission and Government free of charge (and agrees to take whatever action is necessary to perfect) a non-exclusive, perpetual, irrevocable, royalty free and transferable licence (carrying the right to grant sub-licences) to use, exploit and/or adapt the Intellectual Property subsisting in any reports, documents, materials and outputs in any format whatsoever relating to or arising from the performance of the Company of its duties under this Contract for the purposes of:
  - 10.2.1. The activities of the UK Commission as the body responsible for appointing and monitoring Sector Skills Councils in the United Kingdom and as defined in its remit letter from the Government;
  - 10.2.2. It's duties under this Contract and/or any statutory duties that the UK Commission or its Sponsor Departments may have.

- 10.2.3. Together these are called the “Approved Purposes”, and in this clause “use” includes copying, modifying, adapting and translating the material in question and/or incorporating them with other materials.
- 10.3. The Company shall indemnify the UK Commission and its employees, servants, agents and sub-licensees from and against all claims, demands, actions, costs, expenses (including, without limitation, legal costs and disbursements on a solicitor and own client basis), losses and damages incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any Intellectual Property right of any third party arising out of or in connection with the use by the UK Commission or its employees, servants, agents and sub-licensees of any reports, documents, materials and outputs arising from the performance by the Company of its duties under this Contract.

## **11. WARRANTY AND INDEMNITY**

- 11.1. The Company warrants to the UK Commission that the obligations of the Company under this Contract will be performed by appropriately qualified and trained personnel with all skill, care and diligence including but not limited to good industry practice. The UK Commission will be relying upon the Company's skill, expertise and experience in the performance of the Activities and also upon the accuracy of all representations or statements made and the advice given by the Company in connection with the performance of the Activities and the accuracy of any documents conceived, originated, made or developed by the Company as part of this Contract.
- 11.2. Without prejudice to any other remedy, if any part of the Activities is not performed in accordance with this Contract then the UK Commission shall be entitled, where appropriate to:
- 11.2.1. require the Company promptly to re-perform or replace the relevant part of the Activities without additional charge to the UK Commission; or
- 11.2.2. assess the cost of remedying the failure (“the assessed cost”) and to deduct from any sums due to the Company the assessed cost for the period that such failure continues.
- 11.3. The Company shall be liable for and shall indemnify the UK Commission in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the UK Commission or otherwise arising out of or in the course of or caused by the performance of the Activities.
- 11.4. The Company shall be liable for and shall indemnify the UK Commission against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Contract or otherwise through the default of the Company.
- 11.5. All property of the Company whilst on the UK Commission's premises shall be there at the risk of the Company and the UK Commission shall accept no liability for any loss or damage howsoever occurring to it.
- 11.6. The Company will be liable in full for any loss or damage of UK Commission property occurring directly or indirectly through their misuse or neglect.

11.7. The Company shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Company shall upon request produce to the UK Commission, its policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

## **12. TERMINATION**

12.1. This Contract may be terminated at any time by either party giving to the other party at least 30 days notice in writing.

12.2. In the event of any material breach of this Contract by either party, the other party may serve a notice on the party in breach requiring the breach to be remedied (if the breach is capable of being remedied) within a period specified in the notice, which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, or if the breach is not capable of being remedied the party not in breach may terminate this Contract with immediate effect by notice in writing.

12.3. This Contract may be terminated by the UK Commission with immediate effect by notice in writing if at any time:-

12.3.1. the Company passes a resolution that it be wound-up or that an application be made for an administration order or the Company applies to enter into a voluntary arrangement with its creditors; or

12.3.2. a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Company's property, assets or any part thereof; or

12.3.3. the court orders that the Company be wound-up or a receiver of all or any part of the Company's assets be appointed; or

12.3.4. the Company is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986 where the Company is incorporated in England and Wales or Scotland or in accordance with article 103 of the Insolvency Act (Northern Ireland) Order 1989 where the Company is incorporated in Northern Ireland.

12.3.5. there is a change in the legal or beneficial ownership or membership or there is a change in the control of the Company, unless the Company has previously notified the UK Commission in writing. For the purpose of this Sub-Clause 12.3.5 "control" means the power of a person to secure that the affairs of the Company are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power;

12.3.6. the Company is convicted (or any officers or representatives of the Company are convicted) of a criminal offence related to the business or professional conduct;

12.3.7. the Company commits (or any officers or representatives of the Company commit) an act of grave misconduct in the course of the business;

12.3.8. the Company fails (or any officers or representatives of the Company fail) to fulfil his/their obligations relating to the payment of Social Security contributions;



- 12.3.9. the Company fails (or any officers or representatives of the Company fail) to fulfil his/their obligations relating to payment of taxes;
- 12.3.10. the Company fails (or any officers or representatives of the Company fail) to disclose any serious misrepresentation in supplying information required by the UK Commission in or pursuant to this Contract.
- 12.3.11. in England and Wales, a petition is presented for the Company's bankruptcy or a criminal bankruptcy order is made against the Company or he or she makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors.
- 12.4. Nothing in this Clause 12 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

### **13. CONSEQUENCES OF TERMINATION**

- 13.1. On termination of this Contract by the UK Commission pursuant to clause 12.1 or by the Company under clause 12.2 the Company shall be entitled to payment for all Activities undertaken prior to such termination taking effect. The Company shall not have any claim for damages or compensation of any nature whatsoever against the UK Commission.
- 13.2. On termination of this Contract by the UK Commission pursuant to clauses 12.2 and/or 12.3 the Company shall not be entitled to any further payment from the UK Commission under this Contract.
- 13.3. The UK Commission shall be entitled, at the UK Commission's option, to either recover from the Company on demand all payments paid to the Company including, without limitation, any overpayments or payments to which the Company is not entitled under the terms of this Contract and/or to require the Company to deliver up to the UK Commission any assets purchased by the Company with any payments paid to the Company under this Contract.

### **14. TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION**

- 14.1. The Company shall, at no cost to the UK Commission, promptly provide such assistance and comply with such timetable as the UK Commission may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The UK Commission shall be entitled to require the provision of such assistance both prior to and for a reasonable period of time after the expiry or other termination of this Contract.
- 14.2. Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Company which relate to this Contract.
- 14.3. The Company undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the UK Commission to ensure an orderly transfer of responsibility.

### **15. CONFIDENTIALITY**

- 15.1. The Company shall at all times during the term of this Contract and after its termination keep strictly confidential:
- all information supplied to it by the UK Commission or any of its employees, agents or representatives in relation to the subject matter of this Contract;

- all information which may otherwise come into its possession or of which it may become aware with respect to the business or financial affairs of the UK Commission; and
  - the terms of this Contract,
- provided that the provisions of this clause 15.1 shall not apply to information which is in the public domain otherwise than as a result of a breach of this clause by the Company or any of its employees, agents or sub-contractors or is trivial or cannot reasonably be considered to be confidential.

- 15.2. The Company undertakes to make no reference in any advertising or other promotional material to this Contract without the prior written consent of the UK Commission.
- 15.3. The UK Commission reserves the right to disclose any and all such information about this contract or obtained as a result of this contract as a matter of law or in the discharge of its obligations of public accountability and freedom of information.
- 15.4. The UK Commission reserves the right, after a period of 6 months from the date of the commencement of this contract to disclose and make public any or all prices payable under it.
- 15.5. In relation to all personal data, the Company shall at all times comply with the Data Protection Act 1998 (the "DPA") as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Activities.

## **16. DATA PROTECTION**

- 16.1. For the purposes of this Clause 16, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.
- 16.2. The Company shall (and shall ensure that all of its' Staff) comply with the notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Contract.
- 16.3. Notwithstanding the general obligation in Clause 16.2, where the Company is processing Personal Data (as defined in the DPA) as a Data Processor for the UK Commission the Company shall:
- 16.3.1. Process the Personal Data only in accordance with instructions from the UK Commission (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the UK Commission;
  - 16.3.2. comply with all applicable laws;
  - 16.3.3. Process the Personal Data only to the extent, and in such a manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body;
  - 16.3.4. 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;
- 16.3.5. take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
  - 16.3.6. obtain prior written consent from the UK Commission in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
  - 16.3.7. not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the UK Commission;
  - 16.3.8. ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 16;
  - 16.3.9. ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the UK Commission or in compliance with a legal obligation imposed on the UK Commission.
- 16.4. The Company shall notify the UK Commission (within five Working Days) if it receives:
- 16.4.1. a request from a Data Subject to have access to that person's Personal Data;  
or
  - 16.4.2. a complaint or request relating to the UK Commission's obligations under the DPA;
- 16.5. The Company shall provide the UK Commission with full co-operation and assistance in relation to any complaint or request made, including by:
- Providing the UK Commission with full details of the complaint or request;
  - Complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the UK Commission's instructions;
  - Providing the UK Commission with any Personal Data it holds in relation to a Data Subject (within the timescales required by the UK Commission) and;
  - Providing the UK Commission with any information requested by the UK Commission.
  - permitting the UK Commission or the Commission representative (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit, the Company's data processing activities (and/or those of its agents and sub-contractors) and comply with all reasonable requests or directions by the UK Commission to enable the UK Commission to verify and/or procure that the Company is in full compliance with its obligations under this Contract.
  - Providing a written description of the technical and organisational methods employed by the Company for processing Personal Data (within the timescales required by the UK Commission

16.6. The Company shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the UK Commission to breach any of its obligations under the Data Protection Legislation.

16.7. The provision of this Clause 16 shall apply during the Contract Period and indefinitely after its expiry;

## **17. UK COMMISSION DATA**

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

17.2. The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Company of its obligations under the Contract or as otherwise expressly authorised in writing by the authority.

17.3. To the extent that Authority Data is held and/or processed by the Company, the Company shall supply that Authority Data to the UK Commission in the format specified in Schedule 1.

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

17.5. The Company shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the UK Commission at all times upon request and are delivered to the UK Commission at no less than one (1) month intervals.

17.6. The Company shall ensure that any system on which the Company holds any Authority Data, including back-up data, is a secure system.

17.7. If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the UK Commission may:

17.7.1. require the Company (at the Company's expense) to restore or procure the restoration of Authority Data.

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

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

## **18. ACCESS AND INFORMATION**

18.1. The Company shall on reasonable notice provide access to premises at which records relating to the Activities are retained and such reasonable assistance may be required by:

- the UK Commission or its duly appointed representative or agent;
- duly authorised staff or agents of the Secretary of State for Employment and Skills;

- representatives of the National Audit Office, the Audit Commission, the European Commission and/or the European Court of Auditors and/or committees of Parliament, the Devolved Administrations or other parliamentary bodies

to inspect such documents and carry out such financial and quality audits as considered necessary in connection with this Contract and the Company shall provide oral or written explanations in connection with such inspection, examination or audit as may be required.

- 18.2. The UK Commission shall be entitled to make available any information obtained pursuant to this clause 16 to any Government department.

## **19. AMENDMENT AND VARIATION**

- 19.1. Save as provided in clause 6, no amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Company shall comply with any formal procedures for amending or varying contracts which the UK Commission may have in place from time to time.

## **20. ASSIGNMENT AND SUB-CONTRACTING**

- 20.1. The benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by the Company without the prior written consent of the UK Commission. Such consent may be given subject to any conditions that the UK Commission considers necessary. The UK Commission may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Company.
- 20.2. The Company shall not be relieved of any of its obligations under this Contract by entering into a sub-contract for the performance of any part of the Activities.
- 20.3. The UK Commission shall be entitled to assign or otherwise transfer its rights and/or obligations under this Contract without the Company's consent.

## **21. ENTIRE AGREEMENT**

- 21.1. This Contract, including the Schedules, contains the entire agreement between the parties in relation to the Activities and supersedes all previous agreements and understandings between the parties relating to this matter. Each party acknowledges and confirms that it does not enter into this Contract on the basis of any representation, warranty or other undertaking not expressly set out or referred to in this Contract provided that nothing in this clause 21 shall exclude any liability which either party would otherwise have in respect of any statements made fraudulently prior to the date of this Contract.

## **22. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

- 22.1. A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this shall not affect any right or remedy of any third party which exists or is available apart from that Act.

## **23. WAIVER, SEVERABILITY AND SURVIVAL**

- 23.1. No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any

such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

- 23.2. If any provision of this Contract shall be prohibited or adjudged by a court to be unlawful, void or unenforceable, such provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract and shall not in any way affect the validity or enforceability of the remaining provisions of this Contract.
- 23.3. To the extent that the provisions of this Contract are capable of surviving the expiry or termination of this Contract and such survival is required to give effect to such provisions, such provisions shall remain in full force and effect.

## **24. NOTICES**

- 24.1. Any notices to be given under this Contract shall be delivered personally or sent by pre-paid first class post or by facsimile transmission to the UK Commission Contracting and Procurement Manager (in the case of the UK Commission) or to the address set out in this Contract (in the case of the Company) or to such other address as may be notified in writing from time to time. Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, or if sent by post, 48 hours after posting, or if sent by facsimile transmission, 12 hours after proper transmission provided that a confirmatory copy is, on the same day that the facsimile is transmitted, sent by pre-paid first class post in the manner provided for in this clause 24.

## **25. LAW AND JURISDICTION**

- 25.1. This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts.

## **26. FREEDOM OF INFORMATION**

- 26.1 The Company acknowledges that the UK Commission is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the UK Commission (at the Company's expense) to enable the UK Commission to comply with these Information disclosure requirements.
- 26.2 The Company shall and shall procure that its agents and sub-contractors shall:
- (a) transfer the Request for Information to the UK Commission as soon as practicable after receipt and in any event within [two] Working Days of receiving a Request for Information;
  - (b) provide the UK Commission with a copy of all Information in its possession or power in the form that the UK Commission requires within five [5] Working Days (or such other period as the UK Commission may specify) of the UK Commission requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the UK Commission to enable the UK Commission to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

- 26.3 The UK Commission shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
  - (b) is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information unless expressly authorised to do so by the UK Commission.
- 26.4 The Company acknowledges that the UK Commission may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Company, or
  - (b) following consultation with the Company and having taken its views into account.
- 26.5 The Company shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the UK Commission to inspect such records as requested from time to time.
- 26.6 The Company acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the UK Commission may nevertheless be obliged to disclose Confidential Information in accordance with Clause 26.4.

As witness the hands of the parties

<p>Authorised to sign for and on behalf of the UK Commission for Employment and Skills.</p> <p><b>Contracts greater than £10,000 are only binding on the UK Commission when properly countersigned.</b></p>	<p>Authorised to sign for and on behalf of XXXXXX</p>
<p><b>Signature</b></p>	<p><b>Signature</b></p>
<p><b>Name in CAPITALS</b></p>	<p><b>Name in CAPITALS</b></p>
<p><b>Position in Organisation</b></p>	<p><b>Position in Organisation</b></p>
<p><b>DATE:</b></p>	<p><b>DATE:</b></p>
<p>UK Commission for Employment and Skills 3 Callflex Business Park Golden Smithies Lane Wath upon Dearne South Yorkshire. S63 7ER</p>	<p>Address in full XXXX</p>
<p><b>FOR CONTRACTS GREATER THAN £10,000</b></p>	
<p>Countersigned By Corporate Services Signature</p>	
<p><b>Name</b> (delete as appropriate) <b>KAY DICKINSON</b> Director of Corporate Services <b>SIMON RENNY</b> Head of UKCES Finance and Performance</p>	
<p><b>DATE:</b></p>	
<p>Address as above</p>	



## **SCHEDULE 1**

### **AIMS AND OBJECTIVES**

### **METHOD**

**End of Schedule 1**

**ACTIVITY FORM**

<b>CONTRACT FOR XXXX</b>		<b>Contract reference number</b>	XXX
<b>UK Commission Contract Manager</b>	XXX	<b>Company Contract Manager</b>	XXX

**SCHEDULE OF WORKS**

No	Output of Activities and technical specification	Start date	End date	Cost (incl VAT)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
			<b>TOTAL</b>	

**SCHEDULE OF INVOICES**

Activities being invoiced (list the line numbers from the above table)	Date	Invoice Value
<i>Note: Payment will only be made based on this invoicing profile – there is no provision for payment on account</i>	<b>TOTAL</b>	

## **SCHEDULE 2**

### **1. FINANCIAL CONTRIBUTION**

- 1.1. Invoices must be submitted within 14 days of the milestone target dates stated in Schedule 1 of the Contract.

### **2. VALUE ADDED TAX**

- 2.1. It is the responsibility of the Company to determine with its local Customs and Excise Office whether this Contract and the Activities to which it relates falls within the scope of VAT or is exempt from or outside of the scope of VAT.
- 2.2. The total value of this Contract is inclusive of any VAT liable to be incurred by the Company in carrying out work under this Contract.

### **3. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**

- 3.1. The Parties acknowledge and agree that this Contract constitutes a contract for the provision of Services and not a contract of employment. The Contractor shall at all times indemnify the UK Commission and keep the UK Commission indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the client is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of this Contract.

### **4. MAINTENANCE OF RECORDS**

- 4.1. The Company shall maintain full and accurate financial records and accounts for this Contract against all relevant expenditure headings. Such records and accounts shall be retained for at least 6 years after the end of the financial year in which the last payment is made under this Contract. Input and output VAT shall be included as separate items in such accounts.
- 4.2. The Company shall permit duly authorised staff or agents of the UK Commission or its appointed representative to examine the financial records and accounts at any reasonable time and shall furnish oral or written explanations of the account if required. The UK Commission reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Company has used the UK Commission's resources in the performance of this Contract.

### **5. CLAIMS FOR PAYMENT**

- 5.1. The UK Commission shall make payment to the Company in accordance with this paragraph 5. Payment by the UK Commission shall not be taken as an indication that the UK Commission is satisfied with the Company's performance of the Activities.
- 5.2. Claims for payment under this Contract shall be made in accordance with Schedule 1 only in respect of completed milestones. In addition, the UK Commission may request that, a full cost breakdown is provided giving details of expenditure against the milestone. Where the invoiced value differs from the

amount specified in the authorised Activity Assignment Schedule, the lesser sum will be paid.

- 5.3. An invoice shall be submitted within 14 days of each Milestone Target date set out in Schedule 1, unless prior agreement has been received in writing from the UK Commission for alternative arrangements.
- 5.4. Invoices shall be sent to the **Finance Team**, UK Commission for Employment and Skills, 3 Callflex Business Park Golden Smithies Lane, Wath upon Dearne, South Yorkshire, S63 7ER. Invoices must not be addressed to any other individual or team within the UK Commission.
- 5.5. The UK Commission reserves the right not pay the invoice if the agreed milestone(s) have not been delivered to the satisfaction of its appointed representative.
- 5.6. The UK Commission aims to pay all claims no later than 30 working days after the receipt of an eligible invoice. If any problems arise, the Company should contact the UK Commission's Contract Manager or, in their absence, the UK Commission's Contracting and Procurement Manager. In the event of an unsatisfactory response from either the UK Commission's Contract Manager or the Procurement Manager, please contact the Head of Financial Control. The UK Commission aims to reply to complaints within 10 working days. The UK Commission shall not be responsible for any delay in payment caused by incomplete, illegible or misposted invoices.
- 5.7. In order to assist the timely payment of claims using BACS transfer, the Company shall (unless previously completed) complete the attached Schedule 3 and return it to the UK Commission Contracting and Procurement Manager together with a signed copy of this contract.
- 5.8. Any overpayment must be repaid to the UK Commission immediately on receipt of the first demand in writing from the UK Commission, or upon the Company becoming aware that there has been an overpayment, whichever first occurs.
- 5.9. Where, following payment of an invoice, monitoring by the UK Commission or its representatives reveals that the Activities have not been delivered in accordance with the Contract; the UK Commission reserves the right to either demand immediate repayment or to withhold an appropriate sum from the next payment due to the Company until the Activities are delivered.
- 5.10. The Company shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice is, in the UK Commission's reasonable opinion, excessive having due regard to the purpose for which it was incurred, the UK Commission shall only be liable to reimburse so much of the expenditure as, in the UK Commission's reasonable opinion after consultation with the Company, would reasonably have been required for that purpose.

## **6. END OF CONTRACT ACTION**

- 6.1. If this Contract is terminated by the UK Commission due to the Company's insolvency or default at any time before completion of the Activities, the UK Commission shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Company before the date of termination.

- 6.2. On completion of the Activities or on termination of this Contract, the Company shall promptly draw up a final invoice, which shall cover all relevant outstanding expenditure. The UK Commission shall not be obliged to pay the final invoice until the Company has carried out all the elements of the Activities specified in Schedule 1 up to the point of completion or termination. The Company shall submit such final invoices within the time specified in paragraph 1.1.
- 6.3. The Company shall be responsible for ensuring that the invoice covers all outstanding amounts which may be claimed from the UK Commission. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the UK Commission all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the UK Commission shall have no further liability to make reimbursement of any kind.

## 7. RECOVERY OF SUMS DUE

- 7.1. Whenever any sum of money shall be recoverable from or payable by the Company to the UK Commission, the UK Commission may deduct the same from any sum then due to the Company or which at any time thereafter may become due to the Company either under this Contract or under any other contract with the UK Commission or with any other Commission or Agency of Her Majesty's Government.

## 8. TRAVEL, SUBSISTENCE AND INCIDENTAL EXPENSES

- 8.1. Travel, accommodation, subsistence or other incidental expense claimed for the duration of this contract will be paid in accordance with the relevant aspects of the UK Commission Expenses Policy, a copy of which can be provided upon request. Key elements of the UK Commissions' Expenses policy are as follows:

### 8.1.1. Mileage Allowance

The mileage allowance payable is not dependant on the car engine size. A flat rate allowance is payable. Allowances are as follows:

- Car: £0.40 per mile up to 10,000 miles
- Motor Cycle: £0.24 per mile.

Any mileage allowance requirements exceeding 10,000 miles are not anticipated although, in this event, the rate applicable will be half those stated above and will need to be agreed with the UK Commission in advance.

All journeys over 100 miles shall be undertaken with public transport, unless otherwise agreed in advance.

### 8.1.2. Rail/Air Travel

Class requirements – all travel is to be booked as standard class and booked in advance to achieve the most cost effective travel costs. All exceptions to this requirement must be agreed in advance, by the UK Commission.

### 8.1.3. Subsistence Allowances

Location	Hotel (B&B)	Lunch	Dinner
London	£140	£7.50	£25.00
Belfast, Birmingham, Cardiff, Edinburgh, Glasgow, Manchester	£120	£7.50	£25.00
All other UK locations	£100	£7.50	£25.00

Subsistence rates above include VAT, beverages (alcohol may not be claimed) and any tip (provided a receipt is obtained)

- 8.2. Any claims that do not comply with Clause 8.1 above shall not be recoverable by the Company, unless agreed in advance between the UK Commission Contract Manager and the Company.
- 8.3. Where travel and subsistence is claimed, all claims must be accompanied by receipts to cover the total amount claimed.
- 8.4. Expenses will not exceed a value of £XXX including VAT, without the prior written consent of the UK Commission Contract Manager.

**End of Schedule 2**