Schedule 3
Special Conditions

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1 Equal Opportunities

1.1 THE CONTRACTOR will in providing the Services under this Contract to demonstrate that it has had regard to the duties placed on THE COUNCIL by the Learning and Skills Act 2000, (sections 13 and 14) Race Relations (Amendment) Act 2000 and the Disability Discrimination Act 1995. The Employment Equality (Religion or Belief) Regulations 2003 and The Employment Equality (Sexual Orientation) Regulations 2003 or any statutory re-enactment thereof or other statutory provisions relating to discrimination in employment or the provision of goods and services. Legislation, regulation and policy provide a framework within which THE COUNCIL will strive to deliver equality of opportunity for all learners, irrespective of their age, race, sex, religion, sexual orientation, whether or not they have a disability, learning difficulty or any other characteristic. The provision of the Services under the Contract should comply with the principles set out in THE COUNCIL’S National Equality and Diversity Strategy 2004/07. THE CONTRACTOR will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of THE CONTRACTOR and all subcontractors employed in the execution of the Contract.

1.2 THE CONTRACTOR shall ensure that equality of opportunity is built into all aspects of provision: and the business planning

- Publicity and marketing
- Recruitment and induction
- Information, advice and guidance
- Delivery and support
- Achievement and progression

1.3 The COUNCIL expects that THE CONTRACTOR will include in its Self-Assessment Report issues relating to Equality and Diversity, and set out in its Development Plan the key strategies it intends to undertake to further embed Equality and Diversity throughout its provision.

1.4 THE CONTRACTOR shall use analysis of data to inform future planning to improve the representation participation and success of underrepresented and discriminated groups and challenge gender stereotyping.

1.5 THE CONTRACTOR shall produce, on an annual basis, a statement outlining the support and facilities available for Learners with disabilities (disability statement) at each site at which the Services are provided. This statement will be published and made available to Learners and THE COUNCIL.
2 Retention of Documents

2.1 THE CONTRACTOR shall retain original invoices and management information returns and all other documents necessary to verify the Services provided by themselves or by its sub-contractors in relation to this Contract for 6 years after the termination of the Contract, save that where any of the Services are paid for using monies from the European Social Fund or any payments made under the Contract for the Services have been used as match-funding for a European Social Fund Co-Financing Project, THE CONTRACTOR will be required to retain documents until 31 December 2014.

3 Intellectual Property Rights

3.1 Definitions

“Background Intellectual Property”

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

“Confidential Information”

Includes all designs, drawings, data, specifications and all other technical business and similar information relating to the Services including all readable or computer or other machine readable data or material and any material relating to or comprising software which may be part of the provision of the Services;

“Foreground Intellectual Property”

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

“Intellectual Property”

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

(a) any renewals, revisions and extensions created or provided by the laws of any country;

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

“Work”

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

*Assignment to THE COUNCIL with licence back to THE CONTRACTOR*

3.2 Background Intellectual Property – Disclosure

THE CONTRACTOR will give full disclosure to THE COUNCIL of all Background Intellectual Property owned or licensed by it which is relevant to the Work.

3.3 Background Intellectual Property - Ownership

All of THE CONTRACTOR’S Background Intellectual Property is and will remain the exclusive property of THE CONTRACTOR (or, where applicable, the third party from whom its right to use the Background Intellectual property has derived).

3.4 Foreground Intellectual Property – Owned by THE COUNCIL

In consideration of THE COUNCIL making the payments set out in Schedule 2 to THE CONTRACTOR in connection with the Services THE CONTRACTOR hereby assigns (by way of a present assignment of future rights where applicable) all of its respective Foreground Intellectual Property to THE COUNCIL with full title guarantee.

3.5 Foreground Intellectual Property Transfer – Effecting Transfer to THE COUNCIL

The Foreground Intellectual Property will be legally and beneficially owned by THE COUNCIL. THE CONTRACTOR will take any steps necessary to give effect to this Clause immediately upon being requested to do so by THE COUNCIL. THE CONTRACTOR agrees that it will at its own expense:

(a) do all acts and execute and swear all documents that are necessary or desirable to vest absolute legal and beneficial ownership of the Foreground Intellectual Property in THE COUNCIL or to perfect THE COUNCIL’S title thereto anywhere in the world;

(b) give to THE COUNCIL such assistance as THE COUNCIL may request in evidencing it’s title to such Foreground Intellectual Property anywhere in the world;
(c) do all such acts and things as may be necessary or desirable to obtain the grant of registrations in THE COUNCIL’S name for any Foreground Intellectual Property;

(d) grant (and procure from any necessary third parties the grant) to THE COUNCIL of a non-exclusive, irrevocable, worldwide, royalty-free licence (with the right to sub-licence others) of any of THE CONTRACTOR’S Background Intellectual Property that THE COUNCIL may reasonably require to be able fully to exploit, develop and commercialise the Foreground Intellectual Property.

3.6 The CONTRACTOR warrants that:

(a) **Expertise and Authority**

it has full power, authority and capability to carry out the actions contemplated under this Contract including the right to grant to THE COUNCIL the rights and licences under Clause 5.5(d), and that its entry into and performance under the terms of this Agreement will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party;

(b) **Background Intellectual Property**

without limitation to the foregoing, its Background Intellectual Property is its own unencumbered property, or if not, that it has the unencumbered right to enter into this Contract and fully comply with its obligations under it. It also warrants that its Background Intellectual Property does not, so far as it is aware, infringe any third party rights, and it will use all reasonable endeavours (including without limitation by conducting searches of all relevant public registers) to ensure that this is the case;

(c) **Foreground Intellectual Property**

it will ensure that the Foreground Intellectual Property will not infringe, the rights of any third party, and no third party has threatened or, so far as it is aware, is currently threatening proceedings in respect of such infringement, and none of its Background Intellectual Property is the subject of any actual or, so far as it is aware, threatened challenge or opposition or revocation proceedings;

(d) **No Licences or Assignments**

it has not granted and will not grant or purport to grant any licences, rights or assignments over or relating to the Foreground Intellectual Property or over or relating to any Intellectual Property relating or which may relate to the Work;
(e) **No Invalidation or Encumbrance**

it has not done nor will hereafter do or omit to do any act or thing whereby any Foreground Intellectual Property may be invalidated, encumbered or otherwise prejudicially affected or the due performance of this Contract hindered or prevented, or whereby the right to apply for registrations for any Intellectual Property in respect of the Work (or the conditions, requirements or circumstances affecting the validity of the grant of any such registration) may be jeopardised; and

(f) **Revocation of Registered Rights**

it knows of no facts whereby registered rights may not be obtained for any Foreground Intellectual Property or whereby any such registered rights may be revoked.

3.7 The COUNCIL hereby grants to THE CONTRACTOR a non-exclusive, irrevocable, worldwide, royalty-free licence (with the right to license others) of any of THE CONTRACTOR'S Foreground Intellectual Property which has been assigned to THE COUNCIL by THE CONTRACTOR pursuant to Condition 8.3.

4 **Disposal of Assets and Change of Use**

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

4.2 For the purposes of this section:

(a) ‘Asset’ shall mean any property, real or personal, tangible or intangible;

(b) an Asset shall be considered to have been financed by THE COUNCIL if it has been acquired wholly or partly with funds provided by THE COUNCIL

(c) the use of any Asset shall be considered to have changed if THE CONTRACTOR uses it for any purpose other than for the provision or connected with the provision of Services under the Contract;

(d) ‘the appropriate proportion thereof’ shall be the proportion represented by the amount of funding provided by THE COUNCIL to acquire, develop or improve an asset in relation to the entire price paid for its acquisition, or its market value when its development or improvement have been completed.

4.3 THE CONTRACTOR shall ensure that any Asset financed by THE COUNCIL is adequately insured.
4.4 THE CONTRACTOR shall inform THE COUNCIL if it proposes to dispose of, or change the use of, any Asset that has been financed by THE COUNCIL.

4.5 THE CONTRACTOR shall not dispose of any Asset financed by monies provided by THE COUNCIL unless it has first obtained the written consent of THE COUNCIL to such a disposal.

4.6 Where THE CONTRACTOR disposes of the Asset it shall pay to THE COUNCIL whichever is the greater either the amount of funding provided by THE COUNCIL in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to THE COUNCIL unless otherwise agreed with THE COUNCIL.

4.7 If THE CONTRACTOR changes the use of any such Asset it will be treated as a disposal and THE CONTRACTOR shall make a payment to THE COUNCIL in accordance with clause 6.5 above.

4.8 In the event of THE CONTRACTOR being taken over, merging or going into liquidation, all Assets financed by THE COUNCIL, or the equivalent portion of their market value, will become the property of THE COUNCIL.

4.9 The provisions of this clause shall apply during the continuance of this Contract and after its termination howsoever arising. THE COUNCIL shall reserve the right to decide when its interest in Assets financed by THE COUNCIL under the terms of THE CONTRACT shall cease.

5 Data Collection

5.1 THE CONTRACTOR must supply to THE COUNCIL data on each individual Learner, in accordance with the data collections framework set out in the ‘Specification of the Individualised Learner Record For 2005/06’ as amended and updated which is published on THE COUNCIL’S website (www.lsc.gov.uk) and in accordance with the ‘Provider Support Manual 2005/06’ as amended and updated.

5.2 THE CONTRACTOR must supply THE COUNCIL with data in accordance with the following:

5.2.1 in line with agreed audit arrangements;

5.2.2 in adherence with the data protection act

5.2.3 to support payments received on profile;

5.2.4 to enable reconciliation to take place; and

5.2.5 to support the contract management and allocation processes.
5.3 THE CONTRACTOR shall transmit data for each part of the Service specified in Schedule 1 to THE COUNCIL in one of the following ways:

5.3.1 data is entered online using the provider online system specified by THE COUNCIL; or

5.3.2 data is sent to THE COUNCIL electronically in a batch file specified by THE COUNCIL (provider batch).

5.4 THE CONTRACTOR must agree with THE COUNCIL the data transmission method to be used for each part of the Service. THE CONTRACTOR will not change from one method to another unless agreed in writing by THE COUNCIL. THE COUNCIL reserves the right to require THE CONTRACTOR to move to another form of data transmission.

5.5 Data collected must be transmitted to THE COUNCIL through THE COUNCIL'S web portal http://providers.lsc.gov.uk. Access to THE COUNCIL’S web portal is restricted and THE CONTRACTOR agrees to comply with the conditions of use regarding the supply of data to THE COUNCIL set out in this Clause 5 and in ‘Specification of the Individualised Learner Record For 2005/06 and Provider Support Manual 2005/06’ and subsequent editions.

5.6 In circumstances where no data has been added or updated for a given collection period THE CONTRACTOR must inform THE COUNCIL of a ‘Nil Return’ through THE COUNCIL’S web portal.

5.7 THE CONTRACTOR must ensure that data is received by THE COUNCIL by the 10th working day following the last day of the month.

5.8 Where THE COUNCIL is concerned about the quality of the data, including the completeness or accuracy of the data, provided by THE CONTRACTOR, THE COUNCIL may require THE CONTRACTOR to supply data more frequently for such period as THE COUNCIL shall require.

5.9. THE COUNCIL reserves the right to require THE CONTRACTOR, at its own cost, to carry out such work as THE COUNCIL deems necessary to improve the quality of data.

5.10 THE COUNCIL reserves the right to suspend payments to THE CONTRACTOR under the Contract where data quality gives rise to concern about the accuracy of the data provided by THE CONTRACTOR.

5.11 Failure to transmit complete and accurate data to THE COUNCIL in accordance with Clause 5.7 above will constitute a Serious Breach of Contract in accordance with Clause 18 of the General Terms and Conditions of the Contract.

6 Specific Learner Incident Reporting Requirements
6.1 THE CONTRACTOR shall inform THE COUNCIL of injuries and diseases to Learners within the scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995 and fatal road traffic accidents. This shall be done by:

6.1.1 in the case of fatal accidents and ‘major injuries’ (as defined in RIDDOR) - informing THE COUNCIL by telephone or fax immediately THE CONTRACTOR becomes aware of the event; and

6.1.2 all RIDDOR events - sending to THE COUNCIL a completed Learner Incident Record Form within 10 days of THE CONTRACTOR becoming aware of the event.

6.2 THE CONTRACTOR shall investigate or assess the circumstances of all learner incidents within the scope of RIDDOR and follow HSE guidance ‘Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals’ (HSG245) ISBN 0717628272. THE CONTRACTOR shall only use persons competent to investigate/assess learner incidents with a view to identifying the causes of any incident and lessons to be learned.

6.3 THE CONTRACTOR shall also monitor, and act on, any other harm to learners to the extent that THE CONTRACTOR could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) other incidents that cause absence from learning, any loss to the Learner of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.

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

7 Learner Health, Safety and Welfare

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

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

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

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

7.2.3 where part of the learning takes place in an environment outside the direct control of THE CONTRACTOR, for example, with another employer, THE CONTRACTOR shall make an informed judgement about health and safety suitability prior to learning being delivered with that employer/in that environment. To be suitable employers and environments shall at least meet THE COUNCIL’S health and safety procurement standard\(^1\) for learner health and safety. THE CONTRACTOR shall periodically review suitability as an integral part of the quality of the learning being delivered.

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

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

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

7.2.7 ensure Learners receive effective and timely information, instruction and training and effective supervision based on an assessment of risk. In the case of Learners below the minimum school leaving age, Learners under 18 and/or Learners with special needs, the environment in which the learning is delivered should be such that risks have been reduced to the lowest level practicable;

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\(^1\) The procurement standards are available on the LSC internet and The Good Practice Toolkit for Learner Health and Safety websites
7.2.8 ensure that Learners health and safety understanding and practical capabilities are periodically assessed based on an assessment of risk.

7.3 In working with other organisations/bodies, THE CONTRACTOR shall make arrangements to co-ordinate and co-operate effectively for reasons of Learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.

7.4 THE CONTRACTOR shall adopt recruitment processes that comply with the law and will ensure that young and vulnerable Learners are protected. THE CONTRACTOR will register with the Criminal Records Bureau where their employees may have regular contact with Learners under 18 or other vulnerable Learners and ensure that the appropriate checks are made to ensure that employment that involves regular contact with young people under the age of 18 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 Skills and the Department of Health.

7.5 THE CONTRACTOR shall, in circumstances where it sub-contracts the management and/or delivery of the Services under this Contract, ensure that all the Clauses in respect of Specific Learner Incident Reporting Requirements and Learner Health Safety and Welfare are included in its contract with sub-contractors.

8 Feedback and Complaints

8.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services shall rest with THE CONTRACTOR. THE CONTRACTOR shall have procedures in place, which are acceptable to THE COUNCIL, to gather and act upon feedback and complaints from Learners and/or their representatives and employers and the wider community.

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

8.3 THE CONTRACTOR shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by THE COUNCIL. THE CONTRACTOR shall notify THE COUNCIL of all cases that cannot be so resolved.

8.4 THE COUNCIL will review the actions taken, and may require further action of THE CONTRACTOR. THE COUNCIL reserves the right to carry out any other enquiries it deems necessary in order to effect a satisfactory conclusion of the complaint.
9 Branding and logos

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

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

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

9.2 All the terms of this Clause 9 shall also apply to THE CONTRACTOR'S sub-contractors in carrying out its responsibilities under this Contract.