

Schedule 12 - ESF Requirements

A Evaluation Requirements

- 1 Because the Authority may fund this Contract using ESF monies, or use this Contract as match for contracts funded using ESF monies, the Contractor shall within four (4) weeks of expiry or termination of this Contract provide evaluation information to the Authority which:
 - (a) summarises the project, focusing on how it has helped to achieve the project objectives set out in the specification;
 - (b) is concise, being no more than one A4 page in length; and
 - (c) indicates whether the objectives have been fully achieved or only partly achieved and sets out any other relevant issues in this context.
- 2 The Contractor acknowledges the obligation the Authority has to evaluate all ESF projects by ESF priorities and to submit, within strict timescales, a final claim to the Managing Authority including an assessment of performance in each of the priorities.
- 3 The Contractor understands and shall comply with the regular ESF Management Information reporting obligations set out in Schedule 20 (Management Information). The Contractor acknowledges that the Authority depends on timely provision of this information in order to claim and receive ESF funds from the Managing Authority.

B Records

The Contractor and any Sub-contractors appointed by it shall maintain the Open Book Data and any other records referred to in clause E9.1, any documents and records referred to in the Specification and such other documents as the Authority may reasonably require throughout the period of this Contract; and the Contractor and any Sub-contractors appointed by it shall maintain such Open Book Data and other records and documents until at least the Records Retention End Date in accordance with clause E14.

C EU and National Requirements

- 4 The Contractor must comply with the relevant European Union (EU) Structural Fund Regulations as issued and updated from time to time by the EU, as well as any relevant guidance or requirements, including without limitation:
 - (a) the European Social Fund (ESF) Programme for England 2014-2020 National Eligibility Rules;
 - (b) Selection Criteria: 2014-2020 European Regional Development Fund and European Social Fund; and
 - (c) issued by the ESF Managing Authority and published on www.gov.uk/european-growth-funding.
- 5 The following Regulations set out in this section (d) are particularly relevant. Regulation (EU) No 1303/2013 of 17 December 2013 defines common principles, rules and standards for the implementation of the five European Structural and Investment Funds (ESIF): the European Regional Development Fund (ERDF), the

European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF) and replaces Council Regulation (EC) No 1083/2006.

- 6 Regulation (EU) No 1304/2013 of 17 December 2013 establishes the missions of the European Social Fund (ESF), including scope of its support, specific provisions and the types of expenditure eligible for assistance and replaces Council regulation (EC) 1081/2006.
- 7 Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.
- 8 Where applicable, Directive 2014/24/EU on public procurement, implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2015 (2015 No. 102) and any amendments or replacements.
- 9 European Community State Aid rules applicable at the date that the Aid is granted to the recipients of the Aid.
- 10 If there are areas of doubt, the interpretation of the Authority shall prevail.
- 11 The Authority acting in its capacity as ESF Co-Financing Organisation will publish DWP Generic Provider Guidance on ESF requirements via the GOV.UK website.
- 12 The Authority acting in its capacity as ESF Co-Financing Organisation will provide DWP specific Provider Guidance on ESF requirements to the Contractor.
- 13 The Authority acting in its capacity as Managing Authority will publish information and guidance on the England ESF Operational Programme 2014-2020 via the GOV.UK website (ESF pages).
- 14 The Contractor will:
 - (a) comply with all DWP Generic Provider Guidance on ESF requirements, DWP specific Provider Guidance on ESF requirements, European Union (EU) Structural Fund Regulations, State Aid requirements, public procurement requirements (where applicable) and ESF guidance and rules produced by the MA in performing its obligations under this Contract.
 - (b) ensure that the Sub-contractors from time to time are fully aware of, and procure that the Sub-contractors at all times comply with, all DWP Generic Provider Guidance on ESF requirements, DWP specific Provider Guidance on ESF requirements, European Union (EU) Structural Fund Regulations, State Aid requirements, public procurement requirements (where applicable) and ESF guidance and rules produced by the MA in performing its obligations under this Contract the requirements of the EU Structural Fund Regulations, procurement and State Aid requirements for ESF and match funding.
 - (c) repay any ESF expenditure that is deemed ineligible in accordance with EU law or the MA's guidance or National Eligibility Rules.
 - (d) seek to minimise and recover expenditure which is ineligible by virtue of EU law or the MA's guidance or National Eligibility Rules.

D Changes to Guidance and Rules

- 15 All amendments, variations or additions made to guidance or the National Eligibility Rules by the MA from time to time, for the distribution and / or payment of monies and / or administration of any ESF provision or programme will be notified to the Contractor via the GOV.UK website (ESF pages). Changes will be effective from the date they are placed on the website unless stated otherwise.

E Financial Accountability

- 16 The Contractor must ensure compliance with the conditions set out in this Contract in particular they must:
- (a) establish effective procurement (if applicable), monitoring and financial systems, so that the cost of activities, and the results, outputs and indicators generated can be clearly identified and the reliability of profiled payments and handling of ESF can be ensured; this includes the establishment of appropriate document retention systems to ensure and evidence the requirements of the EU Structural Funds Regulations, State Aid and public procurement requirements (where applicable). The Contractor must retain and be in a position to provide all appropriate data as required by the regulations governing structural fund support. They must also ensure that such data is both accurate and reliable;
 - (b) apply appropriate terms and conditions to Sub-contracts to ensure that the Sub-contracts comply with all the terms of this Contract and associated guidance and National Eligibility Rules;
 - (c) immediately notify the Authority if any financial irregularity in the use of ESF is suspected and indicate the steps being taken in response. (Irregularity means: infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities by charging an unjustified item of expenditure to the Community budget); and
 - (d) make documents available and provide reasonable access for:
 - (i) inspection visits and scrutiny of files by, but not limited to, representatives of the Authority, the DWP Audit Authority, the MA, the Certifying Authority, Government Departments, the European Commission National Audit Office (NAO), the European Court of Auditors or European Commission;
 - (ii) external audits and reviews of activity and of financial, appraisal and monitoring systems; and
 - (iii) the Authority, the European Commission, the European Court of Auditors, NAO, DWP Audit Authority and other regulatory bodies as required by or on behalf of the Authority will have right of access to the Contractor and the Sub-contractors for audit and inspection purposes. Auditors may wish to visit the Contractor and the Sub-contractors to verify that participant results claimed have actually been achieved.

F Audit Arrangements

- 17 Without prejudice to any other provision of this Contract, the Contractor will ensure that all the documents relating to the Contract including without limitation its implementation and financing are retained until the Records Retention End Date, in order that these may be made available to the European Commission and European Court of Auditors upon request in accordance with Article 140 of Regulation 1303.
- 18 Further to clause E14, the Contractor shall make available all such documents if and when required to do so by the Authority, Secretary of State for Work and Pensions, the European Court of Auditors, the European Commission auditors, the National Audit Office (and also their respective auditors).
- 19 The Contractor shall keep such documents referred to in clause E14 and shall make such documents available either in the form of the originals or certified true copies of the originals or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only in accordance with guidance published by the ESF Managing Authority from time to time.
- 20 Where documents exist in electronic form only, the computer systems used shall meet accepted security standards. These standards will be provided by the Managing Authority. Documents and records must be maintained for the purpose of:
- (a) the examination and certification of the accounts of the Organisation referred to in paragraph 17 of this Schedule;
 - (b) any examination pursuant to the Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Organisation named at 1.2 above has used its resources; and
 - (c) any form of investigation or audit by the bodies referred to in paragraphs 17 and 18 of this Schedule.
- 21 The Authority, the ESF Managing Authority, the Certifying Authority and DWP Audit Authority acting on its own or others behalf and those acting on its behalf may examine such documents connected with European Structural Funds as may reasonably be required which are owned, held or otherwise in the control of the Contractor and the Sub-contractors, and to require the Sub-contractors to produce oral or written explanations as considered necessary for the purposes of that examination or that certification.
- 22 The Contractor shall provide (and shall require the Sub-contractors to provide) access to premises where the relevant documentation is held and all reasonable assistance (including the provision of onsite, photocopying, facsimile, and telecommunications facilities) at all times during the term of the Contract and for the period until the Records Retention End Date.

G Marketing and Publicity

- 23 The Contractor and the Sub-contractors must comply with the Authority's, the European Commission's and the ESF Managing Authority marketing and publicity requirements, as amended from time to time, specified in the England 2014-2020 European Structural and Investment Funds Growth Programme Branding and Publicity Requirements (for beneficiaries) published on Gov.uk. The Contractor shall

publicise EU funding from ESF to the Sub-contractors, the Participants and to the general public.

- 24 The Contractor shall ensure that sufficient publicity is given to all ESF supported activity so that Participants and the general public are made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF and to provision used as a match for ESF purposes. Upon request by the Authority, the Contractor shall provide a copy of its formal marketing and publicity plan clearly setting out the publicity arrangements used by the Contractor and its Sub-contractors (if any). Whether or not a copy of the foregoing plan is requested by the Authority, the Contractor shall retain copies of its plan (as revised from time to time) as part of the Contractor's record keeping obligations under this Contract.

H Cross Cutting Themes

- 25 The Contractor must comply with the EU and the ESF Managing Authority's requirements on gender equality, equal opportunities and sustainable development as specified in guidance and rules produced by the ESF Managing Authority for the 2014 - 2020 ESF Programme for England.

I Indemnity

- 26 The Contractor shall, within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times from and against:
- (a) all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority whether directly or indirectly in whole or in part by reason of any action and /or inaction of the Contractor in respect of its obligations under this Schedule 12; and
 - (b) all claims, demands, actions, costs (including legal costs and disbursements) and losses howsoever incurred resulting from any liabilities imposed on the Authority by the Managing Authority, the European Court of Auditors, the European Commission auditors or any successor or substitute person which may include any clawback of monies, repayment of funds or fines as a result of or related to verification of the eligibility of Participants by the Contractor and/or failure by the Contractor to comply with or causing the Authority to comply with any of the ESF requirements.

