

# UK COMMISSION STANDARD TERMS AND CONDITIONS OF THE INVESTORS IN PEOPLE LICENCE FOR DEVOLVED ADMINISTRATIONS – VERSION 3 (OCTOBER 2011)

## 1 DEFINITIONS

1.1 The following terms shall, unless the context otherwise requires, have the following meanings:

"Approved Programmes"	Shall mean those training and development programmes which have been approved by the UK Commission for delivery to Delegates.
"Branding Guidelines"	Shall mean the guidelines provided by the UK Commission (as are more particularly referenced in the Network Agreement, as amended from time to time) that govern the use of the IIP Materials in any promotional, marketing, advertising and/or branding context.
"Company/Department"	Shall mean the party so defined in the Licence.
"Customer"	Shall mean any person (including a Multinational Organisation) who (a) is actually receiving the Services from the Company (or the equivalent services from another Investors in People Centre) and/or (b) falls within one of the following categories as described more fully in Appendix 1 (the "Categories"): Prospect, Committed, Continuing Assessment, Recognised, Retaining Recognition or Converged.
"Customer Charter"	Shall mean UK Commission's customer charter as amended and from time to time in force.
"Delegate"	Shall mean anyone who attends an Investors in People approved training programme.
"Effective Date"	Shall mean the effective date as set out in Clause 3 of the Licence.
"Environmental Information Regulations - EIR"	Shall mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
"FOIA"	Shall mean the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 (as applicable).
"Force Majeure Event"	Shall mean the occurrence after the Effective Date of one or more of the following events and circumstances beyond the reasonable control of a party: (i) war, civil war, armed conflict, riot or terrorism; (ii) nuclear, chemical or biological contamination; (iii) acts of God, storm, flood, earthquake or lightning; (iv) failure of a utility or banking service or transport network; and/or (v) compliance with a legislation or Governmental order, rule, regulation, direction, action or inaction.
"Information"	Shall have the meaning given under section 84 of the Freedom of Information Act 2000.
"Investors in People"	Shall mean the Standard and any associated products or services which the UK Commission may from time to time develop, the concept of the Investors in People Centre.
"Investors in People Centre"	Shall mean an organisation, including the Company/Department, appointed by the UK Commission to provide the Investors in People framework.
"Investors in People framework"	Shall mean the national framework for effective employer investment in employees, which is managed by the UK Commission to help UK employing organisations improve their business performance by linking the training and development of their employees to business requirements.
"Investors in People International Centre"	Shall mean whoever is appointed and notified by the UK Commission from time to time.
"IIP Marks"	Shall mean all logos and other trade marks (either registered, unregistered

	and including applications for any such right) used in connection with Investors in People and all other written materials furnished to the Company/Department by the UK Commission during the Term.
"IIP Materials"	Shall mean, collectively, the IPRs, Materials, National Database, IIP Marks, Policy and Practice Guides and Investors in People framework.
"IIP Specialist"	Shall mean an individual who has been deemed competent by an Investors In People Centre and whose name appears on the Register of Specialists held by the relevant Investors in People Centre and on the National Database.
"IIP Centre Board Member"	Shall mean any individual elected by the Company/Department's shareholders/stakeholders to oversee the management of its Investors in People Centre.
"IPRs"	Shall mean all copyrights, patents, utility models, trade marks, service marks, design rights (whether registered or unregistered), database rights, semiconductor topography rights, proprietary information rights and all other similar proprietary rights as may exist anywhere in the world now or in the future and all applications for the same.
"Licence"	Shall mean the Licence entered into between the UK Commission and the Company/Department and all documents which are to be made part of the Licence, or are incorporated by express reference.
"Licence Fee"	Shall mean the applicable fee to be paid by the Company/Department to the UK Commission for the granting of the Licence, as set out in Clause 4 of the Licence.
"Licensed Year"	Shall mean each successive period of 12 calendar months from 1 April to 31 March, except that the final Licensed Year shall be deemed to be from the last 1 April within the Term up to the date of expiration or earlier termination of the Licence.
"Material(s)"	Shall mean any materials owned or developed by the UK Commission relating to the management, development or assessment of the Standard in any medium, including books, pamphlets and advertising, marketing and training materials.
"Multinational Organisation"	Shall mean an organisation that is based and operates in more than one country but which has more than 5% of its employees based in two or more countries.
"National Database"	Shall mean the listing of those individuals involved in Investors in People delivery held nationally by the UK Commission and including IIP Specialists
"Network Agreement"	Shall mean the network agreement to be entered into by all the Investors In People Centres, as amended and from time to time.
"Operational Standards"	Shall mean the outcomes to be achieved by the Company/Department when providing the Services to Customers and which are set out in the Licence (Investors in People Centre Network Agreement).
"Parties"	Shall mean, collectively, the Company/Department and the UK Commission.
"Partner"	Shall mean any organisation or body involved in the delivery of Investors in People.
"Policy and Practice Guides"	Shall mean the handbooks produced by the UK Commission which define services being delivered by the Investors in People Centre to Customers (as amended from time to time) and which provides guidance to IIP Specialists, and which are expressly incorporated into the terms of the Licence.
"Quality Review"	Shall mean the process undertaken by the UK Commission, in accordance with the provisions of Clause 7 of the Licence, for the UK Commission to ascertain at any time during the Term if the operation of the Investors in People Centre by the Company/Department is in accordance with the provisions of the Licence.
"Representative"	Shall mean a designated relationship manager of the relevant Party.
"Request for Information"	Shall mean a request for Information or an apparent request under the FOIA or the Environmental Information Regulations.
"Services"	Shall mean the services to be provided and performed by the Company/Department under the Licence.
"Standard"	Shall mean the Investors in People Standard.
"Statement of"	Shall mean the UK Commission's statement of quality requirements setting

Quality Requirements"	out general and specific minimum requirements in respect of the Services as amended and from time to time in force.
"Term"	Shall mean the term of the Licence as set out in Clause 3 of the Licence.
"Jurisdiction"	Shall mean the geographical area as set out in Recital C of the Licence.
"Trainers"	Shall mean individuals who have been approved and are quality assured to deliver Approved Programmes to Delegates.
"UK Commission"	Shall mean the UK Commission for Employment and Skills Limited (Company Registration Number 6425800) whose registered office is at 3 Callflex Business Park, Golden Smithies Lane, Wath-Upon-Dearne, South Yorkshire S63 7ER.
"Work"	Shall mean any and all works including: (a) Literary, dramatic, musical and artistic works, sound recordings, films, broadcasts or cable programmes, typographical arrangements and designs; and (b) Computer programmes and databases and web based applications and content, which are created from time to time during the course of the Licence by the Company/Department or by or together with others at the Company/Department's request or on its behalf and where such works directly relate to or are created in respect of the performance of the Licence or any part of it.
"Working Days"	Shall mean a day from Monday to Friday (inclusive) when clearing banks are open for business in the United Kingdom.

- 1.2 References to the singular are deemed to include the plural and vice versa and references to any gender are deemed to include other gender.
- 1.3 The Schedules and Appendices form part of these Standard Terms and the Licence and any reference to the Licence shall include the Schedules and Appendices. References to any page, Clause, Sub-Clause, Condition, sub-Condition, table, paragraph, schedule or appendix is a reference to a page, condition, sub-condition, table, paragraph, Schedule or Appendix of and to the document in which they are incorporated.
- 1.4 A reference in a Schedule or an Appendix to a paragraph is to a paragraph of that Schedule or Appendix.
- 1.5 References to the Licence include any permitted variation, amendment or supplement to it, and references to another document include any permitted variation, amendment or supplement to that other document.
- 1.6 References to any enactment, order, regulation or other similar instrument, statute or statutory provisions mean the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted from time to time.
- 1.7 References to a person shall be construed as a reference to any natural person, firm, company corporation, government, state or agency of state or any association or partnership (whether or not having separate legal personality) of one or more of the foregoing.
- 1.8 References to a "party" or the "parties" shall mean (as the case may be) a party or the parties to the Licence and, unless the context otherwise requires, include any permitted successors and assignees of the party or parties (as appropriate);
- 1.9 The headings to Schedules, Appendices, Clauses and Sub-Clauses, Conditions and sub-Conditions and (where provided) paragraph headings and captions in the body of the Licence and these Standard Terms do not form part of it and are not to be used for its interpretation.

- 1.10 The meaning of words before “include”, “includes”, “including” or “included” is not to be limited by the words that follow that particular word.

## **2 INTELLECTUAL PROPERTY**

- 2.1 The Company/Department acknowledges that the UK Commission is the sole owner of any copyright and other IPRs of whatsoever nature in Investors in People and the IIP Materials unless the contrary is expressly stated and the Company/Department shall not claim any right title or interest in the same.
- 2.2 Subject to Condition 2.3 below, if any third party claims that the Company/Department’s authorised and lawful use of the IIP Materials in accordance with all the provisions of the Licence infringes the IPRs of that third party (“a Claim”) then the UK Commission will at its own expense and as the Company/Department’s sole and exclusive remedy in respect of such Claim either:
- 2.2.1 use all reasonable efforts to procure for the Company/Department’s benefit the right to continue to use any infringing element of the IIP Materials to which the Claim relates; or
  - 2.2.2 modify or replace any infringing element of the IIP Materials so that there is no further infringement.
- 2.3 If any third party makes a Claim against the Company/Department that gives rise to the provisions of Condition 2.2 above, the Company/Department shall:
- 2.3.1 give prompt written notice to the UK Commission of any Claim that gives or is likely to give rise to a liability under Condition 2.2 above, specifying in reasonable detail the nature of such Claim;
  - 2.3.2 make no admission of liability, agreement or compromise in relation to such Claim without the UK Commission’s prior written consent; and
  - 2.3.3 give the UK Commission and the UK Commission’s professional advisers reasonable access to the Company/Department’s premises and personnel and to any relevant assets, accounts, documents and records within the Company/Department’s power or control so as to enable the UK Commission and the UK Commission’s professional advisers to examine such premises, assets, accounts, documents and records for the purpose of assessing the merits of the Claim.
- 2.4 The data provided by the UK Commission regarding its business alliances, the customers of the Investors in People framework and other Investors in People products, Delegates and other potential ‘purchasers’ of Training and Development Programmes relating to the Investors in People framework, is the property of the UK Commission.
- 2.5 The Company/Department must not:
- 2.5.1 market, using this data, without the permission of the UK Commission; or
  - 2.5.2 make any use of this data after the Term.

## **3 IIP MATERIALS**

- 3.1 The Company/Department hereby agrees to use the IIP Materials in accordance with the branding guidelines and only for the purposes authorised in the Licence:
- 3.2 In respect of the Company/Department’s use of the IIP Materials (and the IPRs contained within the IIP Materials) the Company/Department:
- 3.2.1 undertakes that it will at all times comply with all design standards and other guides which the UK Commission may provide to the Company/Department, including the Branding Guidelines (as amended from time to time). The Company/Department will not remove or

deface any copyright or other notice appearing on any such material so furnished to the Company/Department;

- 3.2.2 shall not delete, alter, amend, edit or otherwise change any copyright or other intellectual property right identifications or notices included in the IIP Materials;
- 3.2.3 agrees that no copyright or other intellectual property right material comprised in the IIP Materials may be used in connection with the manufacture, distribution, promotion or marketing of any goods or services other than in respect of the Services;
- 3.2.4 shall not affix any trade mark or other mark to the IIP Materials or to any associated materials without the UK Commission's prior written consent, and the Company/Department shall not affix the trademarks or other marks provided in the IIP Materials to other of the Company/Department's goods or in respect of other of the Company/Department's services other than the Services provided that the Company/Department shall be entitled to dual brand the IIP Materials including the Company/Department's own brands, subject to the UK Commission's prior written consent, as to the form of such dual branding as outlined in the Branding Guidelines;
- 3.2.5 shall not at any time adopt or use or seek to register any trademarks or copyright identical to or nearly resembling any trademark, symbol or device which incorporates or is confusingly similar to, or takes a substantial part of, or is a simulation or colourable imitation of, any such trademark, symbol or device contained in the IIP Materials;
- 3.2.6 shall not use the IIP Materials or IPRs contained in the IIP Materials as part of the Company/Department's corporate name or trading name or the name of any entity associated with the Company/Department without the UK Commission's prior written consent; and
- 3.2.7 shall not at any time register or use the IIP Materials or IPRs contained in the IIP Materials in the Company/Department's own name as proprietor.

3.3 Nothing in the Licence shall serve to assign or otherwise transfer ownership and/or title or entitle the Company/Department to obtain or claim any right, title or interest in or to the IIP Materials except the rights of use as are specifically set out in the Licence. The Company/Department hereby acknowledges and agrees that the benefit of all such use shall at all times enure to the UK Commission (and the UK Commission's successors-in-title).

3.4 The Company/Department undertakes to produce sales literature (e.g. leaflets, presentations etc) to provide to Customers and advisers and assessors free-of-charge. The UK Commission will not be able to fund the production of this material and the Company/Department should ensure that its budget includes the cost of producing this material.

#### **4 WARRANTIES**

4.1 The parties hereby warrant to each other that they are not a party to any agreement, (whether of employment or otherwise) or understanding, which would in any way restrict or prohibit it from undertaking or performing any of their obligations under the Licence and both have the authority to enter into the Licence.

#### **5 RELATIONSHIP MANAGEMENT**

##### **Company/Department's Representative**

- 5.1 The Company/Department shall employ a representative at its normal place of business to act as the Company/Department's Representative in connection with the Services and generally with the Licence.
- 5.2 The Company/Department shall inform the UK Commission in writing of the identity of its representative and shall keep the UK Commission informed in writing of any change in the identity of the Company/Department's Representative.

### **Authority of Company/Department's Representative**

- 5.3 The Company/Department's Representative shall have full authority to act on the Company/Department's behalf for all purposes of the Licence. The UK Commission is entitled to treat any act of the Company/Department's Representative in connection with the Licence as being expressly authorised by the Company/Department, except when the Company/Department has notified the UK Commission in writing that such authority has been revoked or limited.

### **UK Commission's Representative**

- 5.4 The UK Commission is entitled to appoint a person as the UK Commission's Representative, who shall liaise with the Company/Department's Representative. The UK Commission shall keep the Company/Department informed in writing of any change in the identity of the UK Commission's Representative.

### **Authority of the UK Commission's Representative**

- 5.5 The UK Commission's Representative has full authority to act on the UK Commission's behalf for all purposes of the Licence. The Company/Department is entitled to treat any act of the UK Commission's Representative in connection with the Licence as being expressly authorised by the UK Commission, except where the UK Commission has notified the Company/Department that such authority has been revoked or limited.

### **Review Meetings**

- 5.6 Upon the commencement of the Licence, the Representatives may decide to meet ("Licence Review Meeting") on a regular basis to discuss:
- 5.6.1 proposed changes (if any) to the Services
  - 5.6.2 a general review of the Services;
  - 5.6.3 any problems with the supply and/or delivery of the Services: and
  - 5.6.4 any suggestions for improving the Services.

## **6 ASSIGNMENT AND SUB-CONTRACTING**

- 6.1 The Company/Department may use VAT registered sub-contractors to carry out the provision of Services and or Approved Programmes but the Company/Department is not relieved of any of its obligations under the Licence if it enters into a sub-contract for the performance of any part of the Services and or Approved Programmes. However it should do so only with prior notification given to the UK Commission.
- 6.2 The Company/Department shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are appropriately qualified and trained and possess relevant skill, care and diligence not least reflecting good industry practices in order to perform the Services and or Approved Programmes.
- 6.3 The Company/Department shall procure that all sub-contractors are subject to the same obligations of confidentiality as the Company/Department is under the Licence.
- 6.4 The Company/Department shall use its reasonable endeavours to procure that each of the sub-contracts into which the Company/Department (or any of its sub-contractors) enters in relation to the Services and or Approved Programmes contains provisions:
- 6.4.1 permitting (but not obliging) the UK Commission to step into the sub-contract in the place of the Company/Department (or its sub-contractor) if the Licence terminates;
  - 6.4.2 providing for termination of the sub-contract or the employment of the sub-contractor's

employee (as the case may be) in accordance with the provisions of Condition 18.1 and 18.2; and/or

6.4.3 indemnifying the Company/Department against any claim for termination of employment of an employee employed by the sub-contractor in delivering the Licence.

6.5 The Company/Department undertakes that it shall comply with all relevant requirements contained in or having effect under the legislation relating to trading schemes, including without limitation the Fair Trading Act 1973, as amended by the Trading Schemes Act 1996 and the Trading Schemes Regulations 1997.

## **7 PROMOTION**

7.1 The Company/Department shall during the Term be entitled to promote, market and advertise the Company/Department as a "Licensed Investors in People Centre".

## **8 CHARGES FOR SERVICES**

8.1 The Company/Department shall not exceed the nationally-agreed daily rate of £1000 for assessment unless otherwise approved by the UK Commission in writing.

## **9 CHANGES TO SERVICES**

9.1 If the UK Commission wishes to change the Services (in whole or in part) it will notify the Company/Department in writing of any such proposed changes. The UK Commission's written notification to the Company/Department will include:

9.1.1 details of the proposed change;

9.1.2 any time scales or deadlines by which the proposed change must be implemented; and

9.1.3 any other relevant information.

## **10 COMPETITIVENESS**

10.1 The Company/Department undertakes to provide and perform the Services solely to employers:

10.1.1 whose head office is in the Jurisdiction; and/or

10.1.2 who are wholly located within the Jurisdiction.

10.2 If the Company/Department receives a request to provide the Services to a Multinational Organisation the Company/Department hereby agrees, in the first instance, to refer such Multinational Organisation to the UK Commission (or to the applicable Investors in People International Centre if the UK Commission has notified the Company/Department of its details). If after such referral a Multinational Organisation still wishes the Company/Department to provide and perform the Services then the Company/Department shall be entitled to do so ALWAYS PROVIDED THAT the Company/Department has notified both the UK Commission and the applicable Investors in People International Centre in writing of this in advance. The Company/Department hereby agrees that, except as set out in this Condition 10.2 or otherwise agreed between the UK Commission and the Company/Department in writing in advance, the Company/Department shall not undertake any other international activities in respect of the Services.

10.3 Notwithstanding the provisions of Condition 10.2 the Company/Department hereby agrees it will not whether directly or indirectly solicit, procure the soliciting of or otherwise actively seek the custom of Customers belonging to another Investors in People Centre in the Jurisdiction or a Customer whose head office is outside the Jurisdiction or who is wholly located outside the Jurisdiction. For the avoidance of doubt, if the Company/Department operates a generic advertising campaign, it would not be in breach of this Condition 10.3. However, if the Company/Department undertakes direct marketing (direct mail, email, or telemarketing), the

Company/Department must exclude those Customers that belong to other Investors in People Centres. If the Company/Department is in breach of this Condition 10.3 the UK Commission shall be entitled to treat such breach as a material breach of the Licence entitling the UK Commission to terminate the Licence in accordance with Condition 18.2.3. This right shall be at UK Commission's sole election and is without prejudice to its other rights and remedies whether under the Licence or at law generally.

## **11 VALUE ADDED TAX**

- 11.1 All sums due to the UK Commission under the Licence are exclusive of VAT which shall be charged in addition to such sums and paid by the Company/Department upon receipt of a valid VAT invoice in respect of such sums.

## **12 AUDIT**

- 12.1 The UK Commission shall be entitled to inspect and examine the Company/Department's books and records to the extent that they relate to assessment and training activity conducted by the Company/Department during the Term, to confirm the accuracy of such assessment and review activity. Any such examination shall be made on reasonable written notice to the Company/Department and only conducted during usual business hours.

## **13 NO REPRESENTATIONS**

- 13.1 In providing and performing any of the Services under the Licence, the Company/Department will not make any representation, express or implied, that the UK Commission are in any way responsible for the Services provided by the Company/Department. The Company/Department agrees that its relationship shall be that of independent contractors and the Company/Department will accordingly not in any way purport to speak on the UK Commission's behalf or to pledge the UK Commission's credit or make any other commitment or representation on the UK Commission's behalf nor will the Company/Department claim to be authorised to carry out any activity or provide any service as a Investors in People Centre except in accordance with the terms set out in the Licence.

## **14 CONFIDENTIALITY**

- 14.1 Neither Party shall use, copy, adapt, alter, disclose or part with possession of any business, employee or customer information or data of the other which is disclosed or otherwise comes into its possession directly or indirectly as a result of the Licence, and which is of a confidential nature (including for the avoidance of doubt the existence and terms of the Licence) ("Confidential Information") except as strictly necessary to perform its obligations or exercise its rights hereunder or with the written consent of the other Party.
- 14.2 The obligation on both Parties set out in Condition 14.1 above shall not apply to Confidential Information:
- 14.2.1 which the receiving Party can prove was in the public domain at the date it was received or obtained; or
  - 14.2.2 which the receiving Party lawfully or properly obtains without obligation of confidentiality; or
  - 14.2.3 which comes into the public domain otherwise than through the default or negligence of the receiving Party; or
  - 14.2.4 which was independently developed by the receiving Party without reference to the Confidential Information of the other Party; or
  - 14.2.5 which, with the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) is disclosed to obtain or maintain any listing on any recognised stock exchange; or



- 14.2.6 is requested to be disclosed by a court, regulator or a body having similar authority over the receiving Party provided that where permitted by such body the other party is given prompt notice thereof; or
  - 14.2.7 where disclosure of Confidential Information is a requirement of the FOIA or Environmental Information Regulations; or
  - 14.2.8 which is requested to be disclosed by one Party or on its behalf to its auditors (whether internal or external) and other third party professional advisors who have the right to require that Party to supply the relevant information always provided that the same have entered into a confidentiality agreement with the Party seeking disclosure before such approved disclosure takes place.
- 14.3 The Company/Department agrees to indemnify and keep indemnified the UK Commission from and against all costs, claims, demands, liabilities, expenses, damages or losses (including consequential losses and loss of profit, and all reasonable legal and other professional costs and expenses) arising out of or in connection with a breach by the Company/Department of its obligations under this Condition 14.

## **15 FORCE MAJEURE**

- 15.1 Subject to compliance with Condition 15.2, neither Party shall be in default of its obligations under the Licence or liable to the other to the extent that it is unable to perform all or any of its obligations under the Licence because of the occurrence of a Force Majeure Event.
- 15.2 If either Party seeks to rely on this Condition 15 it shall:
- 15.2.1 immediately give a notice to the other Party providing details of the act or matter that it claims has put performance beyond its control;
  - 15.2.2 use all reasonable endeavours to minimise the effect of the Force Majeure Event on its performance; and
  - 15.2.3 immediately after the end of the Force Majeure Event, notify the other Party that it has ended and resume full performance.
- 15.3 It is expressly agreed that a failure by either Party to perform or a delay by either Party in performing its obligations under the Licence which results from a failure or delay in performing its obligations by a person with whom the Party has entered into any agreement, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to a Force Majeure Event only if the person is itself prevented from or delayed in performing those obligations because of a Force Majeure Event.
- 15.4 If the Party giving notice is the Company/Department and the Force Majeure Event continues for more than three months from the giving of the notice under Condition 15.2.1, the UK Commission may terminate the Licence with immediate effect by notice in writing at any time.

## **16 DATA PROTECTION**

- 16.1 For the purposes of the Data Protection Act 1998 (the "Act"), the Parties hereby agree and acknowledge they are Data Controllers in common.
- 16.2 Each Party warrants to the other Party that it shall fully comply with all of its obligations applicable under the Act which shall include, in respect of the Company/Department, the obligation to notify Customers that their personal data will be provided to the UK Commission for purposes connected with Investors in People and the obligation to keep personal data of such individuals accurate and up to date.
- 16.3 To the extent that the Company/Department, as part of the Services under the Licence, processes personal data as a Data Processor on behalf of the UK Commission as Data Controller, it shall:

- 16.3.1 only carry out processing on the UK Commission's instructions (which may be specific instructions or instructions of a general nature as set out in the Licence or as otherwise notified by the UK Commission to the Company/Department during the Term);
  - 16.3.2 devise appropriate systems and procedures to ensure that any personal data which it processes in the course of the Services are adequate, relevant, not excessive, accurate and, where necessary, kept up to date, and not retained for longer than is necessary;
  - 16.3.3 include in any agreement with sub-contractors who will process personal data directly or indirectly on the other Party's behalf, provisions in favour of the UK Commission which are equivalent to those in this Condition;
  - 16.3.4 implement appropriate technical and organizational measures to protect personal data against unauthorised or unlawful processing and accidental destruction or loss;
  - 16.3.5 at no additional cost, promptly provide such information and co-operation to the UK Commission as the UK Commission may reasonably require to allow it to comply with the rights of data subjects, including subject access rights, or with information notices served by the Information Commissioner.
- 16.4 The Company/Department shall not perform its obligations under the Licence in such a way as to cause the UK Commission to breach any of its applicable obligations under the Act.
- 16.5 For the purposes of this Condition "Data Controller", "Data Processor", "data subject", "personal data" and "processing" shall have the meanings ascribed to them in the Act.

## **17 FREEDOM OF INFORMATION ACT**

- 17.1 The Company/Department acknowledges that the UK Commission is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and cooperate with the UK Commission to enable the UK Commission to comply with its Information disclosure obligations.
- 17.2 The UK Commission shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Licence or any other agreement whether the Information is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations.
- 17.3 If the Company/Department receives a Request for Information it will inform the UK Commission of such request before responding and will, if requested, provide the UK Commission with details of its response.
- 17.4 The Company/Department acknowledges that (notwithstanding the provisions of this Condition 17) the UK Commission may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Company/Department or the Services:
- 17.4.1 in certain circumstances without consulting the Company/Department; or
  - 17.4.2 following consultation with the Company/Department and having taken their views into account; provided always that where Condition 17.4.1 applies the UK Commission shall take reasonable steps, where appropriate, to give the Company/Department advanced notice, or failing that, to draw the disclosure to the Company/Department's attention after any such disclosure.

## **18 TERMINATION**

- 18.1 The UK Commission shall be entitled to terminate the Licence for any reason upon giving the Company/Department at least 90 days prior written notice.
- 18.2 Either Party shall be entitled to terminate the Licence immediately on written notice if the other:

- 18.2.1 is in breach of any of its obligations under the Licence and such breach has not been remedied, if capable of remedy, within thirty (30) days of the date of notification of the breach by the non-defaulting Party; or
- 18.2.2 where there is a breach by either Party of any provision of the Licence which expressly entitles the Party not in default to terminate the Licence. [; or
- 18.2.3 has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or if becomes subject to an administrative order or enters into any voluntary agreement with its creditors or ceases or threatens to cease to carry on business; or][**Note: only relevant for Scotland**]

## **19 CONSEQUENCES OF TERMINATION**

- 19.1 During any period between the UK Commission issuing a termination notice and the termination of the Licence or, in all other circumstances, during the three (3) month period prior to expiry of the Licence, the Company/Department shall continue to provide the Services without any material changes without the prior permission of the UK Commission.
- 19.2 Upon termination for whatever reason of the Licence:
- 19.2.1 the Company/Department will immediately cease to operate as, or advertise, market or promote the Company/Department as an Investors in People Centre, cease to issue or publish all promotional and other advertising matter which suggests that the Company/Department is entitled to supply the Services, cease delivering or otherwise using the Approved Programmes and the Company/Department will cease to provide and/or perform the Services;
- 19.2.2 the Company/Department will provide the UK Commission with such assistance as the UK Commission may reasonably require to migrate the Services provided under the Licence as at the date of termination of the Licence to a replacement service provider in accordance with the Services Migration Plan set out in Condition 20 below;
- 19.2.3 the Company/Department shall return all IIP Materials and copies of the Frameworks, IIP Marks and/or IPRs in whatever form to the UK Commission, or (at the UK Commission's request) destroy the same and confirm such destruction in writing; and
- 19.2.4 the Company/Department shall cease all further use of IIP Materials including amending any corporate name or domain name which includes the IIP Marks (including, for the avoidance of doubt, the corporate or trading name) and shall provide confirmation in writing to the UK Commission that the Company/Department has taken all appropriate steps to ensure that no further use of such rights will be made.
- 19.3 In the event of termination of the Licence by the UK Commission further to Condition 18.1 the UK Commission shall refund to the Company/Department the Licence Fee paid prior to the date of such termination for the then current Licensed Year on a pro rata basis. Thereafter, but only in respect of the termination of the Licence as set out in this Condition 19.3, no further Licence Fees shall be payable by the Company/Department to the UK Commission.
- 19.4 The termination of the Licence (however caused) shall be without prejudice to any other rights or remedies which either party may be entitled to under the Licence or at law, and shall not affect any accrued rights or liabilities which either party may then have.
- 19.5 The following Conditions shall survive the termination or expiry of the Licence, howsoever caused: Conditions 1, 2, 3, 13, 14, 16, 17, 19, 20, 21 22 and 23 (inclusive).

## **20 MIGRATION OF SERVICES UPON TERMINATION TO A REPLACEMENT OR SUCCESSOR LICENSEE**

- 20.1 At least 3 months prior to the expiry of the Licence or, where terminated by one party, upon that party giving notice to the other of its intention to terminate the Licence in accordance with Condition 18 above, the Parties shall meet in good faith to discuss and agree a services migration plan to ensure a smooth and seamless hand-over of the Services to the successor licensee or potential successor licensee, and each Party shall commit such resources as are reasonably required to implement such services migration plan.
- 20.2 The Company/Department shall provide all reasonable assistance to the UK Commission, the successor licensee or potential successor licensee, if requested, to the extent necessary to implement the services migration plan and/or effect an orderly assumption by a successor licensee of the Services.
- 20.3 On reasonable notice, the Company/Department shall provide the UK Commission, the successor licensee or potential successor licensee with all such material and/or information as the UK Commission, successor licensee or potential successor licensee (as appropriate) shall reasonably require in connection with the Company/Department's provision of the Services under the Licence, in order to facilitate the migration of the Services to the UK Commission or a successor licensee including all personal data (whether in electronic or hard form), databases and documents relating to Customers to whom the Company/Department has provided the Services, assessments undertaken by the Company/Department and/or assessors in providing such Services to Customers and all written material relating to such assessments and/or assessors. For the avoidance of doubt, the Company/Department hereby agrees that the disclosure of information (including any personal data) relating to sub-contractors, assessors, service providers, prospects and Customers (including the respective employees or contacts of such entities) to a person that the UK Commission designates in writing as a successor licensee, shall be reasonably required in order to facilitate the migration of the Services.
- 20.4 Subject to the UK Commission's prior written agreement, the UK Commission shall reimburse the Company/Department for such assistance at rates either then prevailing for others of the Company/Department's customers for the same or similar services or as otherwise agreed between the Parties in writing in advance.

## **21 LIMITATION OF LIABILITY**

- 21.1 This Condition sets out the entire liability of the Parties to each other in relation to the subject matter of the Licence, whether in contract, tort (or deceit) or otherwise (including liability for any negligent act or omissions).
- 21.2 Neither Party shall have any other obligation, duty or liability to the other Party whatsoever in contract, tort (or deceit) or otherwise (including liability for any negligent act or omissions) except as set out in, and relating to the subject matter of, the Licence.
- 21.3 Neither Party shall exclude or limit any liability to each other for:
- 21.3.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of itself, its servants, agents or sub-contractors; or
  - 21.3.2 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982. Save as set out in this Condition 21.3.2 all other implied terms, warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law excluded from the Licence; or
  - 21.3.3 fraud or fraudulent misrepresentation.
- 21.4 Except as provided in Condition 21.3, and except in respect of claims made pursuant to Conditions 14.3 and 16.4, neither Party shall be liable to the other Party for other losses arising under or in connection with the Licence, whether in contract, tort, (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise

for any loss of business contracts, profits, anticipated savings, goodwill, or revenue or for any indirect or consequential loss whatsoever incurred, whether or not either Party has been advised in advance of the possibility of any such loss

- 21.5 Except as provided in Condition 21.3, and subject to Condition 21.6 below in respect of claims made pursuant to Condition 14.3 and 16.4, the total aggregate liability in contract, tort, (or deceit) or otherwise (including liability for any negligent act or omissions) for direct loss or damages arising out of breach of the Licence or for any other liability arising out of either Party's performance of its obligations under the Licence shall be limited to one hundred and fifty percent (150%) of the Licence Fee paid by the Company/Department in the twelve (12) month period to the date in which the breach occurred (as determined at the date when the liability arose).
- 21.6 The parties hereby agree that the liability of the Party providing the indemnity under Conditions 14.3 and 16.4 shall be limited to claims which are either the subject of a final judgement of a court of competent jurisdiction or a settlement reached with the indemnifying Party's prior written consent (such consent not to be unreasonably withheld or delayed).

## **22 DISPUTE AND ESCALATION PROCEDURE**

- 22.1 In the event of any dispute arising under the Licence, the following escalation procedure shall be immediately instigated by either Party with a view to prompt resolution.
- 22.2 The Parties shall each appoint a project manager who shall discuss and seek resolution within ten (10) Working Days of a referral being made by either Party.
- 22.3 If no resolution is reached, the dispute will immediately be escalated to the respective senior managers of the Parties for resolution within ten (10) Working Days of such referral.
- 22.4 If the Parties are unable to resolve the dispute in accordance with Conditions 22.2 and 22.3 then, without prejudice to any other rights or remedies which the Parties may have, the matter will be referred, upon acceptance by both Parties, to a jointly appointed independent third party with expertise in the relevant field to resolve the dispute.
- 22.5 If the Parties are unable to agree an independent third party on the application of either Party, such independent third party shall be appointed by the President for the time being of The Law Society of England and Wales.
- 22.6 The expert agreed or appointed pursuant to this Condition shall act as an expert and not an arbitrator and the expert's decision shall be final and binding on both Parties except in the case of manifest error.
- 22.7 The costs and expenses of any expert agreed or appointed shall be borne by such of the Parties and in such proportions as the expert may determine, failing which the costs shall be borne equally by both Parties.
- 22.8 Notwithstanding the referral of a dispute under this Condition both parties shall continue to perform their obligations under the Licence.
- 22.9 Nothing in this Condition 22 shall prevent any Party from commencing any action in any court of competent jurisdiction in relation to any dispute, or from taking any other action where necessary to protect or preserve any right of action it may have, but such proceedings shall be stayed to enable the provisions of this Condition 22 to be carried out.

## **23 GENERAL**

- 23.1 The Licence shall not be amended except with the prior written approval of an authorised signatory of each of the Parties.
- 23.2 No failure, delay or indulgence on the part of either Party in exercising any of its rights under or in connection with the Licence shall operate as a waiver of such right. No single or partial

exercise of any such right shall preclude any other or further exercise of such right.

- 23.3 All notices, approvals and other communications to be given under the Licence shall be in writing and shall be sent by first class post or facsimile (such facsimile notice to be confirmed by letter posted first class within twenty four hours of the transmission of the relevant facsimile) to the address of the other Party set out at the commencement of the Licence (or to such other address as the relevant Party may notify to the other under the provisions of this sub-condition).
- 23.4 Neither Party may assign or transfer the Licence without the prior written consent of the other Party.
- 23.5 The Licence together with the Standard Terms, the Network Agreement, the Customer Charter and Statement of Quality Requirements and the Policy and Practice Guides published by the UK Commission from time to time supersedes all prior agreements and undertakings between the Parties (save for any fraudulent misrepresentations) and constitutes the entire agreement between the Parties relating to the subject matter of the Licence. No addition to or modification of any provision of the Licence shall be binding upon the Parties unless made by a written instrument signed by a duly authorised representative of each of the Parties. If there is conflict between this Licence (including the Schedules) and any of the Standard Terms, the Network Agreement, the Customer Charter and Statement of Quality Requirements and the Policy and Practice Guides published by the UK Commission from time to time, the Licence (including the Schedules) will take precedence.
- 23.6 Unless expressly provided in the Licence, no term of the Licence is enforceable pursuant to the Agreements (Rights of Third Parties) Act 1999 by any person who is not a party to it, and the Parties to the Licence may terminate or vary any of the terms without the consent of any third party.
- 23.7 The Licence shall be governed by and construed in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts.
- 23.8 If any provision of the Licence is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Licence had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Licence, the Parties shall immediately commence good faith negotiation to remedy such invalidation.

## Appendix 1

### CATEGORIES

The following table provides a definition of those persons falling within the Categories and therefore to be regarded as Customers belonging to an Investors in People Centre. Those Categories with a “Yes” in the final column are Customers and those with a “No” are not.

ID State on CRM Customer Journey	Category title on CRM Customer Journey	State description on CRM Customer Journey	Customer Y/N
1	Lead	<p>A lead is an organisation that has expressed an interest in Investors in People but has not been qualified by an Investors in People Centre. The organisation could be identified as:</p> <p>(a) a referral - from a skills Broker; an SSC or other brokers;</p> <p>(b) by the UK Commission through its website(s); information line or marketing and promotional activity;</p> <p>(c) marketing and promotional activity; or</p> <p>(d) by an Investors in People Centre itself.</p> <p>All leads must be monitored and recorded when they move to the next state, or when and why they become ‘Not Interested’.</p> <p>It is probable that a lead will have a basic ‘awareness’ but very little understanding of Investors in People.</p>	No
2	Prospect	<p>A prospect is the first stage that an organisation becomes a Customer and is owned by a particular Investors in People Centre. A lead converts (“has been qualified”) and becomes a prospect where there is:</p> <p>(a) Written confirmation (email or letter) either from an Investors in People Centre or the organisation saying a meeting has been organised to discuss them doing Investors in People.</p> <p>(b) An agreement in writing to attend or booking by an organisation for a free or paid-for workshop about Investors in People.</p> <p>(c) Registration on an Investors in People tool by an organisation where the Investors in People Centre has driven them to the tool via a specific weblink/URL.</p> <p>The organisation will be interested in moving forward but not yet ready to commit.</p> <p>An organisation shall be classified as a prospect for 6 months (as per the Event Timeout Periods table). After this 6 month period expires then other relevant Investors in People Centres (i.e. the customer organisation sits within the jurisdiction as detailed in their licence) can approach the organisation to gain as their customer.</p> <p>Centres need to monitor where the prospect came from although it will often be from a lead. Reasons why organisations drop out must be recorded.</p>	Yes
3	Not Interested	<p>An organisation that was in either a lead or prospect state will move to “not interested” if the organisation no longer wants to move forward on the customer journey.</p> <p>The reason for organisation not being interested needs to be recorded together with actions taken to avert the organisation walking away</p>	No

4	Committed	An organisation becomes committed when it has developed an action plan and/or strategy which define how it is going to implement Investors in People. It is possible that an organisation may become committed without being a lead or prospect. It is quite probable that a number of organisations will jump straight from lead to commitment.	Yes
5	Continuing Assessment	Continuing assessment is when a committed organisation has been assessed but does not meet all of the requirements to attain the Standard. The organisation develops an action plan to demonstrate how it will address development areas.	Yes
6	De-Committed	An organisation that made a commitment but does not want an assessment. The reason for drop-out needs to be recorded together with actions taken to avert drop-out.	No
7	Recognised	An organisation is recognised when it has demonstrated through a successful assessment that it fully meets all the principles, indicators and evidence requirements of the Investors in People Standard. A review should take place at least every 3 years although this may be more frequent. There are different forms of review such as 'Standard', 'Profile', 'Internal' and 'Rolling'. The type of review needs to be recorded.	Yes
8	Retaining Recognition	Retaining recognition is when a recognised organisation is found at review not to be meeting all the indicators of the Standard. The organisation needs to develop an action plan to demonstrate how it will address development areas.	Yes
9	De-Recognised	An organisation is derecognised when they are no longer working towards an assessment because they no longer meet the requirements of the Investors in People Standard and do not wish to continue with the IIP process. Alternatively, an organisation might choose not to undertake an assessment and all remedial action taken to address the situation has failed.  The reason for de-recognition needs to be recorded as well as actions taken to avert de-recognition.	No
10	Converged	A convergence takes place when an organisation, whether committed, in a continuous assessment, recognised or retaining recognition state, merges with a larger organisation that is recognised or joins with a number of other parts of an organisation to undertake a 'corporate assessment'. It can also be that an organisation moves from one Investors in People Centre to another. For both reasons the employees are still covered by IIP but the entity that holds those employees has changed in some way. The converged status is also used when there has been a successful or unsuccessful rolling review event. This means that the overall status of the account is not affected but the assessment record is captured.	Yes
11	Recognition Revoked	Under extreme circumstances, the UK Commission may need to unilaterally withdraw recognition status from an organisation.	No



## Lapse Timings

Lapse timings for each of these categories are set out below and are on page 9 of the Technical Requirements document. From time to time it may be necessary for the UK Commission to amend the timeout / customer journey details, following which changes to the delivery centre CRM systems and data instance may be required.

### Event Timeout Periods

ID	State Title	Months	Years
1	Lead	12	1
2	Prospect	6	0.5
3	Not Interested	0	0
4	Committed	39	3.25
5	Continuing Assessment	12	1
6	De-Committed	0	0
7	Recognised	42	3.5
8	Retaining Recognition	24	2
9	De-recognised	0	0
10	Converged	0	0
11	Recognition revoked	0	0

### Note on Extensions

There are five customer journey states where extensions can take place and these fall into categories:

1. Permission required from the UK Commission

Following written approval by the UK Commission for Employment and Skills, extensions (over and above the event timeout periods detailed previously) can on occasion be granted for Commitments, Continued Assessments, Recognitions and Retaining Recognitions. This is implemented on the IIP Centres CRM/MIS system by updating the assessment due date (as this is what UK Commission for Employment and Skills intends to use to calculate the timeout date).

Customers can not “remain” in Retaining Recognition state and will become de-recognised normally after the elapsed period specified in the above table, however under some extenuating circumstances the timeout may be extended once, by additional 12 months.

It should be noted that when an extension is granted the next review due date should be 36 months from the review due date and NOT actual project date (e.g. if you had a recognition that you extended for 2 months and then reviewed after those two months the next review due would be due in 34 months and NOT 36)