

TRANSNACIONALNA METODOLOGIJA  
ZA OBLIKOVANJE POLITIK GLEDE  
INVESTICIJ Z DRUŽBENIM UČINKOM  
V ALPSKEM PROSTORU



# TRANSNACIONALNA METODOLOGIJA ZA OBLIKOVANJE POLITIK GLEDE INVESTICIJ Z DRUŽBENIM UČINKOM V ALPSKEM PROSTORU



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# Interreg



## Alpine Space

### AlpSib

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# 1. UVOD

Projekt AlpSIB se je začel leta 2015. Pobudo zanj je dala je skupina posameznikov iz javnih in zasebnih organizacij, ki jih je pritegnil revolucionarni potencial in pametni mehanizem obveznic z družbenim učinkom (ODU, angl. SIB). V tistem času so v Peterboroughu (Velika Britanija) ravno vzpostavili prvo shemo ODU, nekaj shem ODU pa je bilo uvedenih tudi v kontinentalni Evropi in ZDA. Danes je vzpostavljenih že več kot 120 shem ODU (Social Finance Ltd, 2019) po vsem svetu, vendar je bil v letu 2015 novi finančni instrument na socialnem področju sprejet kot pomembna rešitev, ki so jo partnerji projekta AlpSIB želeli proučiti, da bi s tem izboljšali zmožnosti in usposobljenost vseh akterjev za njeno izvajanje.

Partnerji AlpSIB iz Avstrije, Francije, Nemčije, Italije in Slovenije so že od samega začetka prepoznali številne prednosti ODU kot instrumenta politike na socialnem področju, in sicer služi kot orodje za razvoj skupnosti, ki združuje javni, neprofitni sektor in finančni sektor za doseg istega cilja: izboljšanje družbenih učinkov. Potencial za inovacije je bil jasen: financiranje učinkov namesto rezultatov, izboljšanje izvedenih storitev ponudnikov z oceno učinka, pri čemer se podjetniški viri in znanje vlagateljev vključujejo na socialno področje. Poleg tega so nekateri partnerji AlpSIB že imeli izkušnjo z ODU – kot ponudniki socialnih storitev ali kot lokalni deležniki, npr. Eckertove šole (Eckert Schools International) in občina Augsburg, kjer se je med letoma 2013 in 2015 izvajal pilotni projekt

z nazivom *eleven SIB*. V letu 2015, torej ravno v času, ko so projektni partnerji pripravljali predlog projekta AlpSIB, sta sledila prva avstrijska shema ODU ter prvi razpis za obveznice z družbenim vplivom (contract á impact social), ki ga je izdala francoska vlada.

Jasno je bilo, da so ODU pridobivale zagon; partnerji na regionalni in lokalni ravni so bili pozvani, da se uskladijo z inovativnimi nacionalnimi politikami ali evropskimi trendi. V tistem času še ni bilo jasno, kako prenesti inovacije na regionalno in lokalno raven, in sicer pod različnimi pogoji, in kako vključiti lokalne in regionalne akterje (javne organe, investitorje in socialna podjetja/organizacije) v ta »prelomni proces« in ga spodbuditi s pomočjo njihovega prispevka; z eno besedo, kako oblikovati in razviti regionalno zmogljivost vodenja, upravljanja in merjenja družbenega učinka z novim instrumentom politike.

Projekt AlpSIB je bil zasnovan z namenom reševanja te težave: v skladu z osnovnim konceptom ODU je bil AlpSIB uveden za spodbujanje vzajemnega učenja med finančnim, javnim in neprofitnim sektorjem; med različnimi vladnimi ravni, od lokalnih do nacionalnih in vse do evropskih institucij; med tistimi, ki imajo strokovno znanje, tistimi, ki prinašajo vizijo, in tistimi, ki dnevno delajo s ciljnim skupinami. V skladu s tem namenom so projektne aktivnosti vodila tri načela.

**Spoznavanje:** v vseh regijah partnerjev projekta so razpravljali o potencialni ponudbi ODU z oblikovalci politik in ustreznimi javnimi organi, vodilnimi akterji ODU, ki določajo prednostne naloge na socialnem področju in usmerjajo celoten proces. Z njimi so bile podrobno proučene omejitve in priložnosti ODU, ki so zajete v petih dokumentih za posamezne partnerske države (Avstrija, Francija, Nemčija, Italija in Slovenija), ki

so služili nadaljnji diskusiji (angl. »discussion papers«), pri čemer se osredotočajo na poglede, stališča in vidike javne uprave posameznih držav v zvezi z uvedbo ODU; s tem predstavljajo prvi ključen rezultat, ki je osnova pričujočega dokumenta.

**Izmenjava** znanja, veščin in orodij, povezanih z ODU, s tretjim in finančnim sektorjem ter drugimi ustreznimi zainteresiranimi stranmi. To je pomenilo, da jih je bilo treba vključiti na lokalni ravni pri doseganju soglasja o ODU, ne da bi pri tem opustili kritično obravnavo, medtem ko so imeli možnosti povezovanja v mreže in usposabljanja. To je privedlo do več kot 20 dogodkov, ki se jih je udeležilo več sto ljudi. Obenem je bila oblikovana spletna platforma, da bi bili vsi instrumenti in informacije široko in lahko dostopni.

**Soustvarjanje** prihodnjih praks sklepanja pogodb z družbenim učinkom. Projektni naporji so bili usmerjeni v utiranje poti za uvedbo ODU v posameznih partnerskih regijah, začevši s ključnimi družbenimi vprašanji, kot so marginalizacija mladih in starejših, ter se usmerjali k rešitvam, ki so združljive z ODU. Ustanovljen je bil nadnacionalni svetovadni odbor izkušenih strokovnjakov, javnih uslužbencev, ponudnikov in investorjev z namenom povezovanja ugotovitev iz procesa »od spodaj navzgor« z osnovnim znanjem in prihodnjimi trendi na tem področju ter končne priprave »Skupne metodologije za izvajanje obveznic z družbenim učinkom na Območju Alp«.

Pričujoči dokument – Skupna metodologija – z razvitimi orodji in napotki predstavlja prizadevanja vseh, ki so vključeni v projekt AlpSIB, nuditi podporo tistim, ki so pripravljeni uvesti inovativne socialne politike in prakse pri analiziranju političnih in pravnih scenarijev, opredeljevanju težav, gradnji procesa in sistema vseh deležnikov. Dokument sam po sebi predstavlja »delo v teku«, ki ga bodo uporabniki najbrž izpopolnili, saj je to edini način za prenos inovacij.

Dokument je sestavljen iz naslednjih poglavij:

- 2. poglavje se osredotoča na trenutno stanje razvoja in izvajanja obveznic z družbenim učinkom v državah projektnih partnerjev.
- 3. poglavje služi kot priročnik pri načrtovanju izvedbe ODU. Razdeljeno je na sedem zaporednih podpoglavij, ki opisujejo posamezne korake zahtevanih postopkov.
- 4. poglavje izpostavlja trenutno stanje v Evropski uniji. Navaja obstoječe pobude in programe ter se konča s seznamom potreb za politične organe, razvitim med izvajanjem projekta.
- V 6. poglavju so predstavljeni nekateri modeli pogodb že izvedenih ODU.







## 2. OBVEZNICE Z DRUŽBENIM UČINKOM NA OBMOČJU ALP

### Uvodne pripombe

To poglavje je namenjeno širšemu pregledu trenutnih razmer ter prihodnjih ovir in priložnosti za obveznice z družbenim učinkom na Območju Alp. Vsebina je predvsem rezultat petih analitičnih dokumentov, namenjenih nadaljnji razpravi (angl. »discussion papers«), ki povzemajo ugotovitve posameznih uvodnih informativnih sestankov v državah projektnih partnerjev in razgovore z zainteresiranimi deležniki in strokovnjaki. Različni potencialni akterji – nacionalni in lokalni javni partnerji, zasebni investitorji, ponudniki socialnih storitev in znanstveniki – so razpravljali o ozadju in možnostih ODU v posameznih državah.

Če ni drugače navedeno, informacije o ODU v posameznih državah v tem poglavju temeljijo na spodaj navedenih dokumentih, ki so na razpolago na spletni strani projekta AlpSIB. Podrobnejše informacije o posameznih državah lahko najdete v:

- Corvo, Luigi; Pastore, Lavinia: The Challenge of Social Impact Bonds: The State of the Art of the Italian Context (2018).
- Kump Nataša, Kavaš Damjan, Črnigoj Matjaž: Challenges for Payment-for-Success Models in the Slovenian Welfare System (2018).
- Lanteri, Fabien; Kamenskaya, Anna, Martin, Annick: Social Impact Investing in France: Current Objectives, Demands and Barriers (2019).
- Scheuerle, Thomas; Nieveler, Anja: Implementing Social Impact Bonds in Germany. Challenges for Pay-for-Success Models in the German Welfare System (2017).

- Schneider, Nina: Potentials and Challenges for the Implementation of Social Impact Bonds in Austria (2017).

V 2. poglavju je poudarek na naslednjih temah:

- Politični okvir in pravni pogoji**, ki jih morajo deležniki upoštevati. Oblika oblasti in zakonodaja vsake države opredeljujeta predpogoje, možnost in izvajanje obstoječih in potencialnih ODU. Čeprav so vse sodelujoče države v projektu AlpSIB del Evropske unije in zato spadajo pod pristojnost EU, ima vsaka država članica svojo zakonodajo na področju socialnega varstva, področja pristojnosti in zakonodajo o javnih naročilih. Nacionalne in lokalne pravne omejitve lahko vplivajo na dejavnosti vseh sodelujočih partnerjev. Zato bodo v 2. poglavju opredeljene in proučene nacionalne posebnosti.
- NEET-i (mladi, ki niso zaposleni, se ne izobražujejo ali usposablajo) ter starejši**. V splošnem področja politike za ODU niso vnaprej določena, saj se politika socialnega varstva razlikuje od države do države in je odvisna od regije, časa in finančnega okvirja. Poglavje obravnava položaj mladih NEET (mladi, ki niso zaposleni, se ne izobražujejo ali usposablajo) in starejših v državah projektnih partnerjev, da bi opredelili potencialna področja politike za ODU.
- Poleg tega bo predstavljen **pregled ODU**, ki so že realizirane ali se še izvajajo.
- Možnosti in ovire v posameznih državah**. ODU ustvarjajo nova omrežja in združujejo organizacije za socialne storitve, javno upravo, vlagatelje, fundacije

in svetovalna podjetja. Zato se lahko vključeni deležniki razlikujejo od ene sheme ODU do druge in od države do države; njihova motivacija pa je odvisna tudi od posameznega konteksta. To poglavje je namenjeno tudi ugotavljanju možnosti in omejitev nacionalne zakonodaje ter potencialnih partnerjev.

- e) **Skupne priložnosti in izzivi** za izvajanje ODU na Območju Alp. Čeprav se avtorji prispevkov osredotočajo na posamezne države, je mogoče opredeliti nekatere skupne elemente – na primer merjenje učinkov ali motivacijo sodelujočih partnerjev.

## 2.1. Avstrija

### 2.1.1. Trenutno stanje

#### Politični sistem in socialna politika

Glede na to, da so za določeno področje politike lahko odgovorni različni javni partnerji, je treba pri razpravi o ODU upoštevati federativni (zvezni) značaj Avstrije. Poleg nacionalne zakonodaje ima devet zveznih dežel svoje podrejene zakonodajne in izvršilne organe. Preko zveznega sveta (Bundesrat) lahko zvezne dežele sprejemajo zakone na nacionalni ravni. Zvezne dežele so razdeljene na regije, ki so nadalje razdeljene na občine.

Avstrija sicer lahko opredelimo kot močno socialno državo, ki ponuja številne storitve za svoje prebivalstvo.

Zaradi njenega federativnega (zveznega) značaja so pristojnosti v zvezi s socialno politiko razporejene na državno raven (npr. socialno varstvo mladih, bolnišnice), na zvezno državno raven in na lokalno raven (npr. stanovanja, varstvo otrok) (Republik Österreich Parlament).

Poleg javnega sektorja storitve v imenu države nudijo tudi zasebne ali neprofitne organizacije. Vendar tudi v močni socialni državi, kot je npr. Avstrija, s standardnimi pobudami ni mogoče doseči vsakogar. Zato v Avstriji ODU obravnavajo kot zanimiv dodatni instrument poleg državnega posredovanja, ne pa kot alternativa storitvam, ki jih zagotavlja država.

#### Skupina NEET in starejši

V starostni skupini 15–24 let delež NEET-ov v Avstriji predstavlja približno 9,3 %, medtem ko je povprečje na ravni EU 15,3 % (Ledermaier and Mascherini, 2016: 11).

V skupini mladih v Avstriji, ki niso niti zaposleni niti v izobraževanju ali usposabljanju, prevladujejo kratkoročno brezposelni (31,3 %) in tisti, katerih položaj je posledica družinskih obveznosti (25,1 %). V primerjavi s povprečjem EU-28 je delež teh kategorij NEET-ov za 5 odstotnih točk boljši. Na tretjem mestu je delež NEET-ov zaradi bolezni ali invalidnosti s 13,2 %, kar je skoraj dvakrat toliko kot povprečje EU, ki znaša 7,1 %.

Stopnjo urbanizacije lahko povežemo s stopnjami NEET za mlade, ki živijo v mestih (Eurostat, 2017b). Običajno je visoka stopnja urbanizacije vzrok, da je delež NEET-ov v mestih nizek. Čeprav ima Avstrija veliko urbanih območij z mesti in predmestji, je ena od šestih držav članic z najvišjimi stopnjami NEET za tiste, ki živijo v mestih (Eurostat, 2017b). Pomembno za opredeljevanje ciljev učinkovite politike je, da je več kot polovica NEET-ov v Avstriji registrirana pri javnih zavodih za zaposlovanje.

Če pogledamo starejše v Avstriji, številke skoraj sovpadajo s povprečjem EU. Delež ljudi, starejših od 65 let, je le za 0,5 odstotne točke višji od povprečja EU; tudi tveganje revščine za osebe, starejše od 65 let, je s 14 % praktično enako povprečju skupine EU-14 (Bundesamt, 2016: 30). Čeprav je dohodek Avstrijcev, starih 65 let in več, precej višji kot v drugih državah EU, je tveganje revščine za to skupino enako povprečju EU-14 (Bundesamt, 2016: 37).

#### Obveznice z družbenim učinkom v Avstriji

Avstrijska vlada je pokazala veliko zanimanja za obveznice in naložbe z družbenim učinkom v svojem delovnem programu 2013–2018. Napovedala je, da namerava preko ODU spodbujati inovativne pristope, da bi se spopadla s trenutnimi izzivi v socialni politiki, odpravila vrzeli in okrepila socialno kohezijo v Avstriji z novimi pobudami (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, b.d.). Poleg tega je bil od septembra 2015 do avgusta 2018 v Zgornji Avstriji izveden pilotni projekt »Perspektive: Arbeit« (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, b.d.); glej tabelo 1.

PERSPEKTIVE:ARBEIT	DEŽELA ZGORNJA AVSTRIJA	9/2015 – 8/2018
<b>OBRAVNAVAN SOCIALNI PROBLEM</b> Izključitev in brezposelnost žensk, ki jih je prizadelo nasilje.	<b>CILJNA POPULACIJA</b> Ženske, ki zakonito prebivajo v Avstriji, so delovno sposobne in imajo veljavna delovna dovoljenja, ne prejemajo dohodka za dostojno življenje ali jim grozi izguba zaposlitve, in tiste, ki jih je prizadelo nasilje. V zadnjih 24 mesecih so morale biti v stiku z zatočiščem za ženske (varno hišo) ali Centrom za zaščito pred nasiljem v Žgornji Avstriji.	<b>INTERVENCIJA</b> Udeleženke projekta individualno podpirajo partnerji projekta; med izvajanjem programa jim je zagotovljena zaščita, zatočišče ter stabilno in stalno varstvo otrok.
<b>PROJEKTNi PARTNERJI</b> <i>Center za zaščito pred nasiljem Žgornja Avstrija (Gewaltsschutzzentrum Österreich)</i> in Varna hiša Linz (Frauenhaus Linz).	<b>POSREDNIK</b> <i>Juvat gemeinnützige GmbH</i> (neprofitna hčerinska družba fundacije Benckiser Foundation Future v Münchnu) deluje kot posrednik; njihova odgovornost je vključevala pogajanja o pogodbi, pridobivanje investorjev in operativnih partnerjev ter iskanje primerne partnerja za evalvacijo.	<b>INVESTITORJI</b> <i>ERSTE Foundation</i> <i>Scheuch Family Private Foundation</i> , preko 100 % hčerinske družbe <i>HIL-Foundation</i> <i>Schweighofer Privatstiftung Beteiligungsverwaltung GmbH</i> <i>Juvat gemeinnützige GmbH</i> .
<b>SODELUJOČI PARTNERJI</b> Dežela Zgornja Avstrija (Landesregierung Oberösterreich) in Avstrijsko zvezno ministrstvo za šolstvo in ženske zadeve (Bundesministerium für Bildung und Frauen).	<b>OCENJEVALCI</b> Revizijska družba <i>Ernst &amp; Young</i> (evaluator uspešnosti), <i>NPO &amp; SE Competence Center, WU Wien</i> (evaluator procesa), <i>Institute of Conflict Research (Institut za raziskovanje konfliktov)</i> (kontrolni evalvator)	<b>PARTNERJI JAVNEGA SEKTORJA</b> <i>Avstrijsko zvezno ministrstvo za delo, socialne zadeve in varstvo potrošnikov (Bundesministerium für Arbeit, Soziales und Konsumentenschutz)</i> .
<b>MAKS. POTENCIALNA IZGUBA</b> V celoti pokrito s strani investorjev → 100 %	<b>METRIKA ZA MERJENJE UČINKOV</b> Vnaprej določeno število žensk, ki bodo lahko obdržale službo ali se zaposlile vsaj za eno leto	<b>PRAG ZA POPLAČILO</b> 75 žensk, zaposlenih vsaj za eno leto, z delovnim časom najmanj 20 ur na teden.
<b>PREMIJA</b>	<b>POPLAČILA SAMO V PRIMERU POZITIVNIH UČINKOV NA KONCU PROJEKTA (GLEDE NA KONČNO EVALVACIJO)</b>	

Tabela 1: Perspektive Arbeit (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, b.d.)



## 2.1.2. Priložnosti in izzivi

Čeprav je stališče vlade glede obveznic z družbenim učinkom pozitivno, pa jih deležniki v Avstriji še vedno ne poznajo dobro. Prva ključna točka je zato komunikacija o ODU na splošno. Pomembno je ne le seznaniti stranke z obstojem tega instrumenta, temveč tudi zagotoviti podrobne informacije o možnih področjih politike, saj so deležniki na uvodnem informativnem srečanju poudarili strah pred erozijo socialne države zaradi privatizacije. ODU morajo biti jasno predstavljene kot dodatni instrument poleg intervencije države.

Kot navaja Nina Schneider, so delavnice in opravljeni intervjuji opredelili nekatere izzive in možnosti za ODU. Čeprav ima Avstrija močan sistem socialnega varstva, s standardnimi programi ni mogoče doseči vsakogar. Po eni strani se zdi, da so ODU obetaven nov pristop za nekatera področja politike, saj imajo potencial, da dosežejo te ljudi. Po drugi strani pa pravni okvir in administrativne ovire omejujejo izvajanje ODU. Poleg tega so bili omenjeni izzivi v zvezi s procesom, na primer, kako meriti uspeh.

Politični sistem in dolgoletna socialna država sta prav tako zasidrana v avstrijski zakonodaji. Zato je v zvezi s pravnim okvirom za ODU mogoče ugotoviti nekatere ovire in odprta vprašanja.

- a) Subvencije v primerjavi z javnimi naročili (Förderungen vs. Beschaffung/Vergabe): ker opredeljevanje ciljev v okviru subvencij ni dovoljeno, lahko ODU sodijo le v kategorijo javnih naročil.
- b) Predpisi o postopku javnega naročanja izključujejo ponudnike socialnih storitev iz postopka odločanja za sklepanje pogodb med javnim sektorjem in zasebnimi vlagatelji. Poleg tega predpisi vplivajo na pogodbo med javnim sektorjem in posrednikom ter na pogodbo med zasebnim sektorjem in posrednikom. Vse to vpliva na to, kako je ODU zasnovana, saj bi bilo sodelovanje s ponudniki storitev v zgodnji fazi postopka odločanja bistveno, zlasti pri usmerjanju na novo področje politike. Vključevanje ponudnikov socialnih storitev od samega začetka procesa zagotavlja dosegljive cilje, realni časovni okvir ter jasno in razumno opredelitev ciljev. Izbira posrednika je še en ključni dejavnik pri oblikovanju razumnih ciljev.
- c) Druga pravna ovira je avstrijski zakon o zasebnih fundacijah, ki fundacijam prepoveduje ustvarjanje dobička in jih zavezuje, da sledijo naložbeni

strategiji, ki je netvegana. Ker ODU vlagateljem v primeru izpolnjevanja zastavljenih ciljev ponujajo dobiček, obenem pa predstavljajo naložbe z visokim tveganjem, so tako naložbe s strani fundacij ovirane z dveh strani.

- d) Avstrija ima stroge predpise o uporabi javnega denarja. Vrste storitev, ki jih je mogoče izvajati za reševanje določenega družbenega problema, so običajno zelo jasno navedene, kar ponudnikom socialnih storitev otežuje prilagajanje storitev glede na individualne potrebe.

Na javni sistemski ravni je potrebna vzpostavitev političnega in pravnega okvira, ki spodbuja ODU ali vsaj preizkušanje ODU. Kot se je izkazalo v preteklosti, so bili v nasprotnem primeru stroški izvajanja previsoki, da bi pritegnili nadaljnje ODU.

Priprava pogodbe za obveznice z družbenim učinkom je še vedno precej zapletena zaradi pravnih omejitev, pa tudi zato, ker so ODU relativno neznane in predstavljajo nov način financiranja. Razen enega pilotnega projekta doslej v Avstriji ni bilo izvedenih ODU. Takšno pomanjkanje izkušenj med drugim predstavlja veliko administrativno breme za vzpostavitev sheme ODU. Poleg tega je pridobitev financiranja in ustreznih partnerjev težka naloga. Zaradi pomanjkanja standardizacije in neizkušenosti potencialnih akterjev ODU trenutno predstavljajo drag instrument.

Poleg različnih zakonskih omejitev, kot so zakon o subvencijah v primerjavi z javnimi naročili, predpisi o javnih naročilih, zakon o fundacijah in predpisi o uporabi javnega denarja, je uvodni informativni sestanek v Avstriji izpostavil še en izziv za državo oz. vključeno lokalno upravo. Za ODU je namreč nujno, da javni partner rezervira sredstva in določeno premijo – pri tem ni jasno, kaj se zgodi z denarjem v primeru neuspeha.

Glede ciljev zainteresiranih strani analitični dokument za nadaljnjo razpravo omenja izzive in priložnosti.

Med drugim so ODU privlačne za javne partnerje, ker lahko privedejo do prihranka stroškov za državo. Poleg tega lahko javni sektor preizkusi nove pristope in plača samo v primeru uspeha oz. doseganja zastavljenih ciljev. Zaradi neizkušenosti akterjev in pomanjkanja standardizacije so ODU v Avstriji sorazmerno drag instrument. Zato ODU zahtevajo intenzivno osebno zavezanost deležnikov in institucij.

Izvajalcem socialnih storitev ODU zagotavljajo možnost



za novo pridobitev sredstev. Zato se ODU obravnavajo kot zanimiv dodatni pristop poleg klasične državne regulacije. Poleg tega lahko povečajo prožnost sistema socialnega varstva in pomagajo vključiti nove ciljne skupine, saj nimajo določenih smernic o tem, kaj je mogoče storiti s sredstvi, v nasprotju z javnim denarjem, kjer imajo ponudniki storitev stroge zahteve glede tega, za kaj je denar mogoče uporabiti, kar pomeni, da vsebine socialnih storitev ni mogoče enostavno prilagoditi.

Na organizacijski ravni iskanje vlagateljev in deležnikov v Avstriji predstavlja izziv. Ker so ODU precej nov instrument, partnerji nimajo izkušenj in morajo biti pripravljeni na kampanjo za ODU. ODU je treba predstaviti potencialnim vlagateljem kot privlačno alternativo bolj tradicionalnim programom in načinom, saj v primeru uspeha oz. izpolnjevanja ciljev zagotavljajo možnost pridobivanja in/ali reinvestiranja denarja v drug projekt. Vnaprej predviden, poseben sklad, kjer bi zasebni investitorji, fundacije ali podjetja lahko vlagali v sklad, ki bi vlagal v ODU, bi lahko olajšal postopek iskanja vlagateljev. Po eni strani bi tako lahko sodelovalo več potencialnih financerjev, tudi tistih z manjšimi zneski. Po drugi strani pa posameznim vlagateljem ne bi bilo treba porabiti časa za podrobno obravnavo ODU, a obenem bi lahko še vedno vlagali vanje.

Če povzamemo, lahko ugotovimo, da so obveznice z družbenim učinkom obetavna nova priložnost za programe socialnega varstva v Avstriji, vendar bi bilo treba za dokončno presojo še bolj detajlno proučiti to področje.

## 2.2. Francija

### 2.2.1. Trenutno stanje

#### Politični sistem in socialna politika

Socialna politika je v Franciji odgovornost države in temelji na sistemu javnega zavarovanja (Sécurité sociale). Na lokalni ravni ima več javnih institucij svoje pristojnosti, ki jim jih je poverila država. Francija je razdeljena na 101 departmajev in 18 regij, ki imajo tudi različne pristojnosti v zvezi s socialnimi vprašanji; regija je zadolžena za področje zaposlovanja in usposabljanja, departma pa je pristojen za socialno varstvo. Poleg tega imajo občine minimalne obveznosti v zvezi s starejšimi,

vendar se lahko same odločijo, da bodo vložile več sredstev v teritorialno organizacijo zdravstvenih/oskrbnih storitev, kot je npr. gradnja oskrbnih domov.

Socialno varstvo v Franciji temelji na načelu solidarnosti. Vključuje sisteme obveznega javnega socialnega zavarovanja s socialno varnostjo, pokojninske sheme, sheme delodajalcev javnega sektorja in zavarovanje za primer brezposelnosti. Socialna pomoč državnih ali nepridobitnih ustanov za starejše, družine, stanovanja, brezposelne in revne ljudi je tudi del socialne zaščite v Franciji. Obstaja tudi zasebna dopolnilna zavarovalna shema, od leta 2016 pa imajo podjetja obveznost, da ponudijo dopolnilno zavarovanje podjetij in zagotovijo vsaj polovico sredstev za to zavarovanje.

Francoska socialna politika vključuje vse ciljne skupine. V preteklih letih so si začeli čedalje bolj prizadevati za starejše. Francoska socialna politika je trenutno v fazi reforme z namenom odzivanja na naraščajoče potrebe prebivalstva ob hkratnem zmanjšanju javnih naložb.

#### Skupina NEET in starejši

Približno 900.000 mladih v Franciji zapusti šolo brez zaključnega spričevala ali diplome (Noneets). Kljub temu je delež NEET v Franciji 13,5 % in s tem celo nekoliko nižji od povprečja EU, ki znaša 15,3 %.

Čeprav je stopnja ponovnega vstopa v izobraževanje ali na trg dela (12,2 %) skoraj dvakrat tolikšna kot povprečje EU (6,4 %), dve največji skupini znotraj NEET v Franciji predstavljajo kratkoročno (29,8 %) in dolgotrajno brezposelni (20,1 %). Zdi se, da so intervencije v skupini NEET zaradi družinskih obveznosti prav tako boljše, saj ima ta skupina le 13,4 % delež, kar je precej manj v primerjavi z EU-28 (20,3 %) (Ledermaier and Mascherini, 2016: 36).

Z vidika spola je presenetljivo, da četrtna žensk NEET v Franciji pripada kratkoročno brezposelnim (25,7 %), drugi veliki delež žensk NEET pa pripada tej skupini zaradi družinskih obveznosti. Toda glede na izsledke študij je tveganje, da pristanejo v skupini NEET, večje pri moških. Na splošno je tveganje, da bodo sodili v skupino NEET, večje za mlade Francoze/Francozinje, ki imajo le osnovnošolsko izobrazbo, in tudi za tiste z boleznijo ali invalidnostjo.

Zelo zanimivo je tudi, da socialna izključenost ogroža le majhen delež mladih brezposelnih Francozov. Razlog za to je lahko, da skoraj četrtna vseh NEET v Franciji prejema finančno pomoč.

Delež starejših, tj. ljudi, starejših od 60 let, je leta 2014 znašal 24,4 %. Ta delež naj bi se do leta 2050 povečal na 33 % (INSEE – L'Institut national de la statistique et des études économiques, 2018)).

Francija je socialna država z zelo stabilnim pokojninskim sistemom, ki je razdeljen na dva segmenta: »Régime de base« ali osnovni sistem plačuje približno 50 % dohodka nazaj upokojencem. Dopolnjuje ga dodatni sistem, ki se imenuje »rétraite complémentaire« ali dopolnilna pokojnina. Ta močan pokojninski sistem omogoča zaposlenim, ki so 40 let delali za dohodek, ki je bil višji od minimalne plače, da

od leta 2008 prejemajo pokojnino v višini približno 85 % svojega dohodka (Stöger, 2011: 16). Zato imajo starejši v Franciji visoke prihodke in visoko stopnjo blaginje.

### Obveznice z družbenim učinkom v Franciji

Leta 2016 je francoska vlada objavila prvi razpis za zbiranje predlogov, ki bi bili financirani s pomočjo ODU (poimenovane »Contrats à Impact Social«). S pomočjo razpisa je bilo izbranih trinajst projektov, deset je že razdelanih ali so še v pripravi, štirje pa so bili podpisani do začetka leta 2019.

ADIE: MIKROKREDITI, PRILAGOJENI PODEŽELSKEMU OKOLJU - SPREJETO IN V IZVAJANJU -	FRANCIJA: ALPE, PIRENEJI IN BURGUNDIJA	1/2017–2022
<b>OBRAVNAVAN SOCIALNI PROBLEM</b>	<b>CILJNA POPULACIJA</b>	<b>INTERVENCIJA</b>
Zapuščanje podeželja zaradi brezposelnosti.	Podeželski prebivalci, ki imajo negotovo zaposlitev (prekarna dela), brezposelni in brez dostopa do finančnih ustanov, ki želijo zagnati majhno podjetje, da bi si ustvarili lastno zaposlitev.	Omogočiti dostop do storitev agencije za mikrokredite (Adie) za prebivalce, ki živijo na izoliranih območjih, daleč od njenih pisarn. Dve vrsti ukrepov: ocena zahtevkov za financiranje na daljavo in podporne storitve na lokaciji.
<b>PROJEKTNi PARTNERJI</b>	<b>POSREDNIK</b>	<b>INVESTITORJI</b>
Association pour le Droit à l'Initiative Economique (ADIE).	BNP Paribas	BNP Paribas, Caisse des Dépôts, Agésica, Mobiliz Invest, Fondation Avril.
<b>SODELUJOČI PARTNERJI</b>	<b>OCENJEVALEC (EVALVATOR)</b>	<b>PARTNERJI JAVNEGA SEKTORJA</b>
	KPMG.	Ministrstvo za gospodarstvo in finance; trajanje od januarja 2017, sofinanciranje s strani Ministrstva za ekološko tranzicijo in solidarnost.
<b>MAKS. POTENCIALNA IZGUBA</b>	<b>METRIKA ZA MERJENJE UČINKOV</b>	<b>PRAG ZA POPLAČILO</b>
1,3 milijona EUR.	Število finančno izključenih oseb, ki so dobile dostop do financiranja (cilj: 500). Število oseb, ki so trajno reintegrirane oz. vključene 3 leta po financiranju (cilj: 320).	Povračilo za vsakega upravičenca glede na določen prag. Na primer, če je doseženih 30 % ciljev, bo 30 % povrnjenih od X % dalje.
<b>PREMIJA</b>	<b>POSTOPNO ODPLAČEVANJE, DOKLER SE NE DOSEŽEJO CILJI.</b>	
Več kot 320 oseb je trajno reintegriranih oz. vključenih.		

**Tabela 2:** Mikrokrediti, prilagojeni podeželskemu okolju (Aide, 2018). Dodatne informacije je priskrbel Maha Keramane.

IMPACT CREATION (USTVARJANJE UČINKA) - V TEKU -	FRANCIJA	2016–2020
<b>OBRAVNAVAN SOCIALNI PROBLEM</b>	<b>CILJNA POPULACIJA</b>	<b>INTERVENCIJA</b>
Gospodarski razvoj prednostnih območij (quartiers Politique de la Ville) z namenom zmanjšanja razlik v razvoju v prikrajšanih okrožjih v primerjavi z drugimi okrožji v mestih.	5,5 milijona državljanov, ki živijo v 1500 prednostnih območjih.	Z ustvarjanjem 300 trgovin na prednostnih območjih se lahko usposobi 350 ljudi in ustvari skoraj 2000 novih delovnih mest.
<b>PROJEKTNi PARTNERJI</b>	<b>POSREDNIK</b>	<b>INVESTITORJI</b>
<ul style="list-style-type: none"> <li>• CNAM (Nacionalni center za izobraževanje na daljavo)</li> <li>• Epareca (nacionalna javna ustanova za razvoj in prestrukturiranje poslovnih in obrtnih prostorov v prednostnih območjih)</li> <li>• ESH (Zveza socialnih podjetij za področje stanovanjske problematike)</li> <li>• Agencija za podjetnike v Franciji</li> <li>• Francoska zveza za franšizing</li> <li>• Franšizni observatorij</li> </ul>	Ni posrednika (Impact Partenaire ima vlogo investitorja, operaterja in posrednika).	<ul style="list-style-type: none"> <li>• Impact Partenaires (investicijska družba s socialnim pooblastilom)</li> <li>• Evropski investicijski skladi</li> <li>• Française des jeux</li> <li>• BPI Francija</li> <li>• Regionalna oblast Ile de France (Regija Pariz)</li> <li>• BNP Paribas</li> <li>• Revital Emploi</li> </ul>
<b>SODELUJOČI PARTNERJI</b>	<b>OCENJEVALEC (EVALVATOR)</b>	<b>PARTNERJI JAVNEGA SEKTORJA</b>
<b>Nacionalni dajalci franšize</b> <i>Basilic &amp; Co, Burger King, Carrefour Proximité, Class'croutes, courte paille, emova, Firmin, Glastint, les Fournils de France, Mail Boxes, Nachos, OCP-Pharmactiv, Pitaya Pizza Hut, Provallance, Secuola, Speed burger, Speedy.</i>		Ministrstvo za gospodarstvo in finance; Ministrstvo za urbano politiko; Regionalna oblast regije Ile de France.
<b>MAKS. POTENCIALNA IZGUBA</b>	<b>METRIKA ZA MERJENJE UČINKOV</b>	<b>PRAG ZA POPLAČILO</b>
	Število ustvarjenih trgovin.	300 trgovin na prednostnih območjih. 2000 delovnih mest.
<b>PREMIJA</b>	<b>POPLAČILA SAMO V PRIMERU POZITIVNIH UČINKOV NA KONCU PROJEKTA (GLEDE NA KONČNO EVALVACIJO).</b>	

Tabela 3: Impact création (Ustvarjanje učinka) (Impact Partenaires, 2018). Dodatne informacije je priskrbel Maha Keramane.

WIMOOV - SPREJETO IN V IZVAJANJU -	FRANCIJA	2018–2019
<b>OBRAVNAVAN SOCIALNI PROBLEM</b> <p>Pomanjkanje mobilnosti, opredeljeno kot nezmožnost gibanja v prostoru, prizadene vse starosti in sloje družbe: mladostniki, ki živijo na območjih z nizko gostoto prebivalstva, starajoči se ljudje brez avtonomije gibanja, skromni, od avtomobila odvisni dohodki, osebe s fizičnimi omejitvami in okvarami, ki so sposobni za delo, so glavne teme.</p> <p>Mobilnost je zato ključni dejavnik socialnega vključevanja prebivalstva in gospodarskega razvoja območij.</p>	<b>CILJNA POPULACIJA</b> <p>10.000 ljudi s težavami na področju mobilnosti v povezavi z zaposlitvijo (brez voznškega dovoljenja, podeželje, fizične ovire itd.).</p>	<b>INTERVENCIJA</b> <p>Izboljšanje dostopa do zaposlitve in usposabljanje skozi mobilnost:</p> <p>na inovativen način okrepiti podporni proces, tako da se na eni strani predlaga nov način dostopa do podpore (test mobilnosti, ki bo omogočil identifikacijo tipičnih profilov v zvezi z mobilnostjo in usmerjenost k najprimernejši rešitvi za vsak profil) in na drugi strani s prilagajanjem poti preko treh komplementarnih vmesnikov: fizičnega, telefonskega in digitalnega.</p>
<b>PROJEKTNI PARTNERJI</b>	<b>POSREDNIK</b> <p>BNP Paribas.</p>	<b>INVESTITORJI</b> <p>BNP Paribas, Caisse des Dépôts et Consignations, Aviva Impact Investing, Ecofi Investissements.</p>
<b>SODELUJOČI PARTNERJI</b>	<b>OCENJEVALEC (EVALVATOR)</b> <p>KiMSO.</p>	<b>PARTNERJI JAVNEGA SEKTORJA</b> <p>Ministrstvo za zaposlovanje, Ministrstvo za ekološko tranzicijo in solidarnost ter Ministrstvo za gospodarstvo in finance.</p>
<b>MAKS. POTENCIALNA IZGUBA</b> <p>682 tisoč EUR.</p>	<b>METRIKA ZA MERJENJE UČINKOV</b> <ul style="list-style-type: none"> <li>• 10.000 testov mobilnosti za upravičence, z določenim minimalnim številom za mlade</li> <li>• 70 % upravičencev bo imelo prilagojen akcijski načrt</li> <li>• Najmanj 17 % testov mobilnosti morajo opraviti Wimoovovi pooblaščenici (stopnja vpisa).</li> </ul>	<b>PRAG ZA POPLAČILO</b> <p>Proporcionalno poplačilo ob doseganju ciljev nad opredeljenimi pragovi.</p>
<b>PREMIJA</b> <p>Če je prvi cilj dosežen in je stopnja doseganja drugega cilja 80 %, se premija plača.</p>	<b>POSTOPNO ODPLAČEVANJE, DOKLER SE NE DOSEŽEJO CILJI.</b>	

Tabela 4: Wimoov (Wimoov, 2018). Dodatne informacije je priskrbel Maha Keramane.

<b>MOBILNA KRAVATA SOLIDARNOSTI (CRAVATE SOLIDAIRE) - SPREJETO IN V IZVAJANJU -</b>	<b>FRANCIJA, REGIJA ILE-DE-FRANCE</b>	<b>2018</b>
<b>OBRAVNAVAN SOCIALNI PROBLEM</b>	<b>CILJNA POPULACIJA</b>	<b>INTERVENCIJA</b>
Podpora mladim pri iskanju zaposlitve z nudenjem ustreznih oblačil in svetovanjem iskalcem zaposlitve z namenom izboljšanja njihove uspešnosti pri razgovorih za zaposlitev.	900 mladih brezposelnih, ki ne živijo v pariškem predmestju.	<p>Pomagati brezposelnim osebam pri pripravi na razgovor za delo in jim zagotoviti ustrezno oblačilo.</p> <p>Ustvariti prilagodljivo avtobusno prevozno storitev, ki bo omogočala izvajanje naslednjih dejavnosti:</p> <ul style="list-style-type: none"> <li>• Storitve za manj mobilne osebe.</li> <li>• Zagotoviti inovativno in konkretno rešitev v povezavi z dogodki, ki so namenjeni iskalcem zaposlitve, z namenom povečati število obiskovalcev teh dogodkov.</li> <li>• Aktivirati novo skupnost prostovoljcev, ki se spopadajo s podobnimi izzivi mobilnosti.</li> </ul> <p>Avtobus združenja bo deloval v dveh zapostavljenih soseskah na širšem območju Pariza.</p>
<b>PROJEKTNI PARTNERJI</b>	<b>POSREDNIK</b>	<b>INVESTITORJI</b>
Partnerji KEA.	BNP Paribas.	Caisse des Dépôts et Consignations, MAIF Investissement social et solidaire, INCO Investissement, Aviva Impact Investing France.
<b>SODELUJOČI PARTNERJI</b>	<b>OCENJEVALEC (EVALVATOR)</b>	<b>PARTNERSKI JAVNI SEKTOR</b>
	KiMSO.	Ministrstvo za zaposlovanje, Ministrstvo za ekološko tranzicijo in solidarnost ter Ministrstvo za gospodarstvo in finance.
<b>MAKS. POTENCIALNA IZGUBA</b>	<b>METRIKA ZA MERJENJE UČINKOV</b>	<b>PRAG ZA POPLAČILO</b>
405 tisoč EUR.	900 spremljanih ljudi 140 vključenih oseb + 3 točke pozitivnega učinka.	Proporcionalno poplačilo ob doseganju rezultatov nad določenimi pragovi.
<b>PREMIJA</b>	<b>POSTOPNO ODPLAČEVANJE, DOKLER SE NE DOSEŽEJO CILJI.</b>	
Ko je stopnja zaposlitev višja od dogovorjenega cilja.		

Tabela 5: La cravate solidaire (La Cravate Solidaire, 2018). Dodatne informacije je priskrbel Maha Keramane.

NOVA SOLIDARNOST PROTI BREZPOSELNOSTI - V TEKU -	FRANCIJA	2019–2023
<b>OBRAVNAVAN SOCIALNI PROBLEM</b>	<b>CILJNA POPULACIJA</b>	<b>INTERVENCIJA</b>
Boj proti brezposelnosti in socialni izključenosti	Dolgotrajno brezposelni	2 vrsti intervencije: <ul style="list-style-type: none"> <li>• Uvedba VAE (potrjevanje kvalifikacij na podlagi delovnih izkušenj) in pomoč upravičencem preko procesa VAE</li> <li>• Podpora dolgotrajno brezposelnim po ponovni zaposlitvi, s čimer se jim zagotovi optimalen prehod</li> </ul>
<b>PROJEKTNI PARTNERJI</b>	<b>POSREDNIK</b>	<b>INVESTITORJI</b>
VAE les 2 Rives (organizacija, ki prilagaja akreditirano metodologijo za po meri prilagojeno podporo pri pridobivanju potrdila za izkušnje pri prijavi na delo)	BNP Paribas in PMO by Co-Conseil	BNP Paribas, Caisse des dépôts et Consignations, Fondation Caritas, Le chant des étoiles (Družinski sklad za podporo proti izključevanju ranljivih oseb)
<b>SODELUJOČI PARTNERJI</b>	<b>OCENJEVALEC (EVALVATOR)</b>	<b>PARTNERJI JAVNEGA SEKTORJA</b>
	KiMSO	Ministrstvo za zaposlovanje, Ministrstvo za ekološko tranzicijo in solidarnost ter Ministrstvo za gospodarstvo in finance
<b>MAKS. POTENCIALNA IZGUBA</b>	<b>METRIKA ZA MERJENJE UČINKOV</b>	<b>PRAG ZA POPLAČILA</b>
460 tisoč EUR	3825 upravičencev, usmerjenih bodisi v proces VAE (cilj: X vpisov v VAE in Y zaključenih), ali v proces podpore ob ponovni zaposlitvi (cilj: zmanjšati stopnjo osipa za X točk)	
<b>PREMIJA</b>	<b>POSTOPNO ODPLAČEVANJE, DOKLER SE NE DOSEŽEJO CILJI</b>	
Ko število upravičencev, ki so seznanjeni z VAE, in število podprtih upravičencev s ponovno zaposlitvijo presegata dogovorjene cilje		

**Tabela 6:** Solidarnost za zaposlitev (Solidarités Nouvelles face au Chômage, 2018). Dodatne informacije je priskrbel Maha Keramane.



ARTICLE 1 - V ZAKLJUČEVANJU -	FRANCIJA	2018–2022
<b>OBRAVNAVAN SOCIALNI PROBLEM</b>	<b>CILJNA POPULACIJA</b>	<b>INTERVENCIJA</b>
Prekinitev šolanja dijakov in študentov v kmetijskem izobraževanju	1130 dijakov od srednje šole dalje (classe 1ère) do prve stopnje visokošolskega izobraževanja (BTS) na področju kmetijskega izobraževanja	Zmanjšati prekinitve šolanja, izboljšati nadaljnje izobraževanje in poklicno vključevanje dijakov/študentov.  Boj proti prekinitvi šolanja v kmetijskih izobraževalnih ustanovah in spodbujanje talentiranih iz delavskega razreda za uspešen prehod skozi selektivne kanale visokošolskega izobraževanja
<b>PROJEKTNI PARTNERJI</b>	<b>POSREDNIK</b>	<b>INVESTITORJI</b>
	BNP Paribas in Citizen Capital	BNP Paribas, Caisse des Dépôts et Consignations, Evropski investicijski sklad
<b>SODELUJOČI PARTNERJI</b>	<b>OCENJEVALEC (EVALVATOR)</b>	<b>PARTNERJI JAVNEGA SEKTORJA</b>
	KiMSO	Ministrstvo za gospodarstvo in finance, Ministrstvo za ekološko tranzicijo, Ministrstvo za kmetijstvo in Fundacija Emmanuel Faber
<b>MAKS. POTENCIALNA IZGUBA</b>	<b>METRIKA ZA MERJENJE UČINKOV</b>	<b>PRAG ZA POPLAČILA</b>
870 tisoč EUR	X delavnic, +Y točk za stopnjo ohranitve šolanja, Z vključenih mentorjev, +N točk za vztrajanje pri šolanju	Proporcionalno poplačilo ob doseganju ciljev nad določenimi pragovi
<b>PREMIJA</b>	<b>POSTOPNO ODPLAČEVANJE, DOKLER SE NE DOSEŽEJO CILJI</b>	
Ko ohranitev šolanja in vztrajnost presežeta dogovorjene cilje		

Tabela 7: Article 1 (Ministère de l'agriculture et de l'alimentation, 2017). Dodatne informacije je priskrbel Maha Keramane.

## 2.2.2. Priložnosti in izzivi

Francoski analitični dokument za nadaljnjo razpravo opredeljuje težave pri ocenjevanju družbenega učinka. Njegova osnova je študija z nazivom »Izkušnje pri vrednotenju družbenega učinka«, ki jo je leta 2017 izvedla agencija Phare za neprofitno organizacijo Avise (Phare, 2017). Ugotovili so pet ovir za ocenjevanje družbenih učinkov, ki je pomemben del procesa ODU:

- a) Strateške ovire: pomanjkanje sredstev za izvedbo merjenja družbenega učinka.
- b) Politične ovire: družbeni učinek se pogosto razume kot orodje za upravljanje uspešnosti, ki lahko povzroči težave pri kvantifikaciji učinka intervencij oz. ukrepov.
- c) Ovire zaradi znanja: zasnova ocenjevanja družbenih učinkov je nova, zato je ocena rezultatov lahko tudi rezultat pomanjkanja znanja.
- d) Tehnične ovire: zbiranje in analiza podatkov ter interpretacija rezultatov so oteženi, ker tako metrika za merjenje učinkov kot tudi, kaj je treba meriti, pogosto nista popolnoma jasni.
- e) Organizacijske ovire: notranji odpor deležnikov proti merjenju lahko povzroči težave.

Centralizirani politični sistem v Franciji ponuja izzive in priložnosti za ODU v Franciji:

- a) Po eni strani centralizirani sistem omogoča izvedbo ODU v večjem obsegu z večjimi ponudniki, ki so zastopani na celotnem območju, ministrstva pa poplačajo projekte. Dejansko je bil nacionalni razpis za zbiranje predlogov za izbiro in poplačilo ODU lansiran z nacionalne ravni.
- b) Po drugi strani pa ne spodbuja pristopov od spodaj navzgor z lokalnih ravni, saj je težko pritegniti ministrstva ali vlagatelje, da sodelujejo pri reševanju lokalnih vprašanj.

Rešitev bi lahko iskali v razvoju nacionalne ODU za naslavljanje lokalnih problemov z nacionalnim usklajevanjem, s čimer bi zagotovili zadosten finančni obseg sredstev, in na več pilotnih področjih, s čimer bi z lokalnimi ponudniki storitev zagotovili konkretne in po meri prilagojene ukrepe za reševanje lokalnih problemov.

Javna uprava je pri obravnavi socialnih in/ali zdravstvenih problemov naravna zavora za inštrument ODU, še toliko bolj na centralni ravni. Razvoj ODU

na lokalni ravni bi lahko pospešil ta proces, vendar finančni obseg sredstev verjetno ne zadostuje za tovrstno pogodbo. Zato bi lahko nacionalno usklajevanje več lokalnih projektov v okviru »krovnega ODU« omogočilo po meri prilagojen in hitrejši odziv na socialna in zdravstvena vprašanja.

## 2.3. Nemčija

### 2.3.1. Trenutno stanje

#### Politični sistem in socialna politika

Kar zadeva zakonodajo v Nemčiji, je potrebno upoštevati zvezni sistem s 16 zveznimi deželami. Odločitve o socialni politiki se namreč ne sprejemajo izključno znotraj nacionalne vlade, temveč se sprejemajo tudi na ravni dežel ali celo na lokalni ravni. Zvezne dežele imajo številne pomembne pristojnosti. Na primer, odločajo o družinski in zdravstveni politiki ter izobraževanju. Politike se lahko oblikujejo tudi na lokalni ravni, kot so npr. socialne storitve ali stanovanjska politika.

Zaradi takšne razmejitve pristojnosti pri oblikovanju socialne zakonodaje je pravni okvir v Nemčiji zelo zapleten. Pri izvajanju ODU je treba vnaprej pojasniti številne nejasnosti glede obstoječih zakonov in obveznosti posameznih akterjev (glej poglavje 2.2.4).

Čeprav je Nemčija socialna država, standardni ukrepi socialne varnosti, izobraževanje in vajeniški sistem nekatere ljudi težko ali celo ne dosežejo. Ti ljudje so lahko iz različnih okolij, vključno z družinami in otroki, mladoletniki, marginaliziranimi osebami ali tistimi, ki potrebujejo oskrbo, pa tudi tistimi s psihičnimi motnjami. Za te upravičence so lahko ODU pomemben dodatek tradicionalni državni socialni politiki.

#### Skupina NEET in starejši

Identificirati je mogoče več področij politike, ki se nanašajo na NEET in starejše (za podrobnejše informacije glej poglavje X). Na primer, več kot 550.000 mladih v Nemčiji nima niti zaposlitve niti niso vključeni v vajeniško usposabljanje. To pomeni delež NEET, ki znaša le 8,7 % v primerjavi s povprečjem EU, ki je 15,3 %. Večina jih spada v skupino NEET zaradi družinskih obveznosti. Polovica vseh NEET v Nemčiji je registriranih v javnih zavodih za zaposlovanje, finančno pomoč pa prejema tri četrtine vseh NEET v Nemčiji.

Ukrepi so potrebni tudi v okviru politike socialnega varstva za starejše. Več kot milijon ljudi iz generacije 50 in več se ne more samih preživljati (Fliegeauf et al., 2015: 1). Poleg tega je tveganje za revščino pri 16 % na osebo višje od povprečja EU14. Napovedi za demografske spremembe kažejo, da bo leta 2050 vsak tretji Nemec starejši od 60 let (Bundesamt, 2016: 41).

### Obveznice z družbenim učinkom v Nemčiji

Prva zaključena shema ODU v Nemčiji (»ELEVEN«, glej tabelo 8) kaže, da prihranki pri stroških niso edini uspešni učinek ODU v Nemčiji. V zvezi s tem je bilo izboljšanje kakovosti storitev za udeležence bolj pomemben dosežek kot kratkoročni prihranki za državo. Medtem se v Nemčiji izvaja druga shema ODU (»Prävention in den Hilfen zur Erziehung stärken« [Krepitev pomoči staršem], glej tabelo 9), tretja pa se je pravkar začela v Mannheimu (glej tabelo 10).

ELEVEN	AUGSBURG, BAVARSKA	9/2013 – 12/2015
<b>OBRAVNAVANO SOCIALNO VPRAŠANJE</b>	<b>CILJNA POPULACIJA</b>	<b>INTERVENCIJA</b>
Brezposelnost mladostnikov in mladih odraslih	Brezposelni mladostniki in mladi odrasli (stari največ 25 let), ki živijo na območju Augsburga. Udeleženci trenutno ne obiskujejo nobene šole, niso zaključili obveznega izobraževanja/vajeništva, nimajo poklica; najmanj 2 leti ne sodelujejo v programih agencije za zaposlovanje	Udeleženci so s pomočjo intenzivne podpore vključeni v trg dela. Prav tako so deležni stalne podpore, ko so se zaposlili/vstopili v vajeništvo
<b>PROJEKTNi PARTNERJI</b>	<b>POSREDNIK</b>	<b>INVESTITORJI</b>
<i>Apeiros e.V.</i> <i>Ausbildungsmanagement Augsburg/ Eckert Schulen</i> <i>Kinder-, Jugend- und Familienhilfe Hochzoll</i> <i>Joblinge gAG München</i>	<i>Juvat gemeinnützige GmbH</i> (neprofitna hčerinska družba fundacije Benckiser Foundation Future v Münchnu); njihova odgovornost je vključevanje pogajanja o pogodbi, pridobivanje investorjev in operativnih partnerjev ter iskanje primerne partnerja za ocenjevanje	<i>Fundacija BHF-BANK</i> <i>BonVenture GmbH</i> <i>BMW Foundation Herbert Quandt</i> <i>Eberhard von Kuenheim Foundation of BMW AG</i>
<b>SODELUJOČI PARTNERJI</b>	<b>OČENJEVALEC (EVALVATOR)</b>	<b>PARTNERSKI JAVNI SEKTOR</b>
	<i>Spiegel RA WP StB Partnerschaft mbB, München</i> (ocenjevalec uspešnosti) <i>Univerza v Hamburgu</i> (ocenjevalec procesa)	Bavarsko Ministrstvo za delo, socialne zadeve, družino in integracijo (Bayerisches Staatsministerium für Arbeit und Soziales, Familie und Integration)
<b>MAKS. POTENCIALNA IZGUBA</b>	<b>METRIKA ZA MERJENJE UČINKOV</b>	<b>PRAG ZA POPLAČILA</b>
V celoti pokrito s strani investorjev → 100 %	Vnaprej določeno število mladostnikov/ mlajših odraslih, ki so zaposleni/v vajeništvu vsaj 9 mesecev	20 posameznikov, ki se zaposlijo/vstopijo v vajeništvo
<b>PREMIJA</b>	<b>POPLAČILA SAMO V PRIMERU POZITIVNIH UČINKOV NA KONCU PROJEKTA (GLEDE NA KONČNO EVALVACIJO)</b>	
3-% skupni donos		

Tabela 8: Eleven (Juvat gemeinnützige GmbH, 2016b)

»PRÄVENTION IN DEN HILFEN ZUR ERZIEHUNG STÄRKEN«	OSNABRÜCK, GER	9/2017 – 9/2021
OBRAVNAVANO SOCIALNO VPRAŠANJE	CILJNA POPULACIJA	INTERVENCIJA
Starši, ki imajo zaradi družinskih izzivov individualno potrebo po podpori.	Družine z otroki, starimi od dveh do dvanajst let.  Družine so identificirane v okviru zakonsko predpisanega postopka za dodelitev pomoči za starševstvo. Odgovorna je socialna služba urada za socialno varstvo mladih v upravnem okrožju Osnabrück.	48 izbranih družin ima dostop do stopnje štiri in pet v programu <i>Triple P-Programme</i> . Predhodno akreditirani trenerji <i>Triple P-Trainers</i> iz Lega S Jugendhilfe podpirajo udeležence z izvedbo več posameznih in skupinskih usposabljanj.
PROJEKTNI PARTNER	POSREDNIK	INVESTITOR
Socialne storitve zagotavlja <i>Lega S Jugendhilfe</i>	Phineo gAG	<i>Kreissparkasse Bersenbrück</i>
SODELUJOČI PARTNERJI	OCENJEVALEC (EVALVATOR)	PARTNERSKI JAVNI SEKTOR
<i>Fundacija Bertelsmann</i> (pobudnik projekta)	Ocenjevalce izbire fundacija <i>Bertelsmann</i>	<i>Upravno okrožje Osnabrück</i>
MAKS. POTENCIALNA IZGUBA	METRIKA ZA MERJENJE UČINKOV	PRAG ZA POPLAČILA
V celoti pokrito s strani investitorjev → 100 %	Pozitivni razvoj družin je prikazan v vprašalnikih, ki so bili razdeljeni ob koncu projekta. Prav tako ni potrebe po nadaljnji pomoči v zvezi s starševstvom.	
PREMIJA	POPLAČILA SAMO V PRIMERU POZITIVNIH UČINKOV NA KONCU PROJEKTA (GLEDE NA KONČNO EVALVACIJO)	
Če bodo ukrepi zelo uspešni, bo <i>Kreissparkasse Bersenbrück</i> prejel nadomestilo za tveganje		

Tabela 9: Prävention in den Hilfen zur Erziehung stärken (Bertelsmann Stiftung, 2017)

»BILDUNGSCHANCEN FÜR KINDER VERBESSERN«	MANNHEIM, GER	9/2017 – 8/2022
OBRAVNAVANO SOCIALNO VPRAŠANJE	CILJNA POPULACIJA	INTERVENCIJA
Slaba stopnja izobrazbe med učenci migrantskega porekla v osnovnih šolah	Učenci migrantskega porekla, starši in učitelji v šoli Pestalozzi. Udeleženci imajo nizko stopnjo izobrazbe pri osnovnih predmetih, kot je matematika, in nizko jezikovno znanje.	Učenci so spremljani od 1. do 4. razreda <ul style="list-style-type: none"> <li>• Dodatne učne ure iz nemščine in matematike</li> <li>• Delovne skupine ob popoldnevih</li> <li>• Individualna podpora mentorjev</li> <li>• Podporno delo s starši</li> <li>• Navodila za učitelje</li> </ul>
PONUDBNIK STORITEV	POSREDNIK	INVESTITOR
Šola Pestalozzi, Mannheim	Phineo gAG	BASF SE (socialni investitor)
SODELUJOČI PARTNERJI	OCENJEVALCI	PARTNERSKI JAVNI SEKTOR
<ul style="list-style-type: none"> <li>• Fundacija Bertelsmann Foundation</li> <li>• Fundacija Fairchance Foundation</li> <li>• Therapy Centre for Dyscalculia (Center za zdravljenje diskalkulije)</li> <li>• Tech First Deutschland gGmbH</li> <li>• KinderHelden gGmbH</li> </ul>	Pogodbo za vrednotenje sklene fundacija Bertelsmann Foundation po projektu	Mesto Mannheim
MAKS. POTENCIALNA IZGUBA	METRIKA ZA MERJENJE UČINKOV	PRAG ZA POPLAČILA
V celoti pokrito s strani investitorjev → 100 %		
PREMIJA	POPLAČILA V PRIMERU POZITIVNIH UČINKOV NA KONCU PROJEKTA (GLEDE NA KONČNO EVALVACIJO)	

Tabela 10: Bildungschancen für Kinder verbessern (Bertelsmann Stiftung, 2018b, 2018a)

### 2.3.2. Priložnosti in izzivi

Velik izziv za prihodnje obveznice z družbenim učinkom v Nemčiji izvira iz zapletenega pravnega okvira, ki vpliva na področje oblikovanja različnih zainteresiranih strani. Thomas Scheuerle in Anja Nieveler sta v svoji razpravi opisala, da predstavniki različnih lokalnih organov v Nemčiji niso prepričani o pravnem položaju. Poleg tega so javni akterji izrazili negotovost glede osebnih obveznosti (Scheuerle and Nieveler, 2017; Schneider, 2017).

a) Nemški socialni zakonik (Sozialgesetzbücher, SGB) ureja zakonske pravice posameznikov na določenih

področjih in finančne instrumente za ukrepe socialnega varstva. Javni partner, ki ima pooblastilo za odločanje o socialnih vprašanjih in ciljnih skupinah, ki jih je treba obravnavati, mora določiti, katerega od finančnih instrumentov, predvidenih v zakonu, je treba uporabiti.

Ena od možnosti za financiranje ODU je javno financiranje v skladu z javnim pravom (öffentlich-rechtliche Zuwendung). Na ta način so ponudniki socialnih storitev običajno plačani s strani javnega partnerja za določene storitve. Kot omejitev osnovnega načela subsidiarnosti je treba vnaprej dokazati, da je dogovor za ODU, ki vključuje več zainteresiranih strani poleg ponudnika socialnih storitev, potreben za doseg smiselnega učinka. Drugo načelo nemškega javnega

prava je načelo podrejenega in komplementarnega javnega financiranja, zaradi katerega je težko upravičiti polno kritje stroškov in dogovorjeno premijo, saj javnost običajno plača samo osnovno dobavo.

Druga možnost, ki jo je uporabil tudi projekt ELEVEN, je pogodba o storitvah v okviru civilnega prava (zivilrechtlicher Leistungsvertrag) med javnim organom in posrednikom, ki nato uredi podpogodbe z investitorji in organizacijami za socialne storitve. V okviru te možnosti pogodba razmeroma jasno opredeljuje rezultate, ki jih je treba doseči, naloge, kot so obvezno zagotavljanje informacij in zahteve za dovoljenje, ter mehanizem plačil. V skladu z načelom gospodarnosti bi bil za izbiro posrednika potreben razpisni postopek. V primeru ELEVEN se je bilo izzivu mogoče izogniti, saj posrednik ni zaračunal nobene pristojbine (Fliegauf et al., 2015: 12–13).

b) Kot je bilo že omenjeno, načelo gospodarnosti temelji na nemškem proračunskem zakonu. To pomeni, da je treba predhodno dokazati potencialne prihranke novega ukrepa. V primeru projekta ELEVEN-SIB so bili ti dokazi doseženi v sodelovanju z Računskim sodiščem. Druga ovira v tem okviru je nujna zaveza za financiranje. Za ODU je potrebno obdobje več let. Doseganje zaveze za financiranje za več kot eno leto je težko, še posebej, če naj bi se ODU zaključile po obdobju volitev (Fliegauf et al., 2015: 13).

c) Ker nemški zakon o fundacijah zahteva naložbeno strategijo, ki ni naklonjena tveganju, z ohranjanjem ustanovitvenega kapitala, so naložbe v poslanstvo (tj. naložbe v upravljanje premoženja) pri ODU za fundacije zapletene. Prinašajo veliko tveganje, da v primeru neuspeha ne dobijo povrnjene investicije. Ena od možnosti so naložbe iz operativnih virov fundacij, ko ODU prispeva k poslanstvu fundacije. V projektu ELEVEN so sodelovale fundacije, ki so investirale iz prostih sredstev, ki jih je mogoče odpisati kot donacijo, če so izgubljena. To pa je lahko v nasprotju z omejitvami komercialnih poslovnih dejavnosti. Zato takšen postopek ne more biti trajna rešitev (Fliegauf et al., 2015: 13, 15–16).

Če povzamemo, večina predstavnikov javnosti, s katerimi so se posvetovali v nemški delavnici, je izjavila, da je upravna obremenitev zaradi zahtevnih pravnih negotovosti nesorazmerno visoka. Poleg tega uprave, odgovorne za finančno načrtovanje, ne pridobijo nobene posebne koristi od varčevanja denarja.

Vendar pa ODU ponujajo tudi prednosti za javnost, saj omogočajo zmanjšanje javne porabe v nemškem

sistemu socialnega varstva, vsaj dolgoročno. Poleg tega lahko pomagajo spodbujati razmislek o tem, kako je mogoče oceniti učinek ter katera orodja in strukture je treba zagotoviti v ta namen. Poleg tega lahko pomagajo pri poučevanju o vključitvi orodij za dokaze v prihodnje odločitve o dodeljevanju sredstev v družbenem kontekstu.

Druga korist ODU je možnost pomoči ljudem, ki jih socialni okvir, kot so šole, ustanove za socialno varstvo mladih ali centri za zaposlovanje, redko ali nikoli ne doseže. Znotraj ODU imajo socialna podjetja priložnost, da se osredotočijo na te ciljne skupine, in priložnost, da nenehno in intenzivno delajo z njimi na inovativnih pristopih.

Spremljevalna ocena projekta ELEVEN je poudarila, da so socialna podjetja navedla, da se inovativni pristopi lažje omogočijo s sorazmerno prožnimi proračuni brez visokih birokratskih obveznosti. Poleg tega vsem zainteresiranim stranem ponujajo možnost, da povečajo svoje razumevanje upravičencev (Scheck, 2016: 34).

V 3. poglavju bo predstavljeno, da je merjenje učinka projekta ključna točka pri oblikovanju pogodbe. Avtorji nemške razprave navajajo, da so delavnice obravnavale tudi posledice zapletene pravne situacije v Nemčiji. Ker je treba rezultate ODU vnaprej izračunati in dokazati, da gre pri njih za boljše razmerje med stroški in koristmi kot pri drugih pristopih, je za merjenje učinka potrebno poglobljeno poznavanje sistemov socialne varnosti in socialnega varstva mladih v Nemčiji.

Druga presenetljiva točka je pomanjkanje operativnih izkušenj potencialnih zainteresiranih strani. Prizadevanja za pridobivanje spoznanj in učenje iz projektov ODU so še vedno razmeroma visoka za vse deležnike.

Poleg tega je pridobljenega znanja o instrumentu le malo, »kultura učenja« v zvezi z ODU, ki so že bile realizirane, pa je nizka. Čeprav so informacije o uspešnem projektu ODU v Augsburgu posredovali posrednik in javni partner bavarsko Ministrstvo za delo, socialne in družinske zadeve in integracijo, bi bilo zaželenih več informacij o pozitivnih in negativnih izkušnjah, kvalitativni oceni učinka in vprašanja okoli stroškov, da bi vzpostavili boljši učni proces v povezavi z ODU.

Glede potencialnih vlagateljev so intervjuji pokazali, da ODU predstavljajo možnost za vlagatelje v učinek, ki sprejemajo donosnost svojih naložb pod redno tržno ravno v korist ustvarjenega družbenega učinka, saj obstaja veliko tveganje, ki je povezano z majhnim



dobičkom pri vlaganju v ODU. Takšni vlagatelji v učinek so lahko fundacije, posamezniki z visoko neto vrednostjo ali podjetja s proračunom za DOP (družbena odgovornost podjetij).

## 2.4. Italija

### 2.4.1. Dejanski položaj

#### Politični sistem in socialna politika

Država Italija je ustavna republika; Ustava je bila sprejeta leta 1948. Politični sistem je prav tako razdeljen na izvršilno, zakonodajno in sodno oblast.

V prvem desetletju 21. stoletja sta nov okvirni zakon o socialnih politikah in ustavna reforma popolnoma spremenila teritorialno porazdelitev pristojnosti na področju socialnega varstva. V skladu z načelom subsidiarnosti so se usmerili v teritorialno reorganizacijo (predvsem decentralizacijo) in večjo družbeno udeležbo, kar je okrepilo vlogo zasebnih akterjev in organizacij civilne družbe pri oblikovanju mešanega sistema socialnega varstva.

Sprememba ustave je regijam na področju socialne pomoči pripisala primarno zakonodajno oblast in s tem možnost avtonomnih odločitev glede sistema socialnih storitev in načinov izpolnjevanja socialnih pravic na različnih ozemljih. Upravne funkcije so bile dodeljene občinam, organiziranim v »socialna območja«, opredeljena na teritorialni ravni z glavno odgovornostjo za prenos regionalnih načel in okvirov v lokalne programe ter njihovo izvajanje in zagotavljanje socialnih ugodnosti in določb.

Vendar pa ustava še vedno pripisuje osrednji državi izključno pristojnost glede splošne usmeritve socialnih politik in »določanja bistvenih ravni ugodnosti v zvezi s civilnimi in socialnimi pravicami, ki jih je treba zagotoviti na celotnem nacionalnem ozemlju«, da bi izenačili storitve v različnih regionalnih sistemih.

V tem sistemu upravljanja na več ravneh je vsaka teritorialna raven dolžna spodbujati širšo in konkretno udeležbo zainteresiranih strani v vsaki fazi procesa oblikovanja politike.

Literatura obravnava italijanski sistem socialnega varstva kot reprezentativni model tako imenovanih FAMILISTOV [Esping-Andersen, 1999], v katerem so odnosi znotraj družine in med družinami intenzivni in obsežni, družina pa deluje kot socialni amortizer za zadovoljevanje potreb svojih članov. V tem sistemu država intervenira samo podrejeno, ko družina ni mogla izpolniti svoje naloge. Sistem javnih storitev v tem modelu ni v celoti razvit.

Sektor socialne pomoči v Italiji je bil vedno zaznamovan s pomembnimi posebnostmi in kritičnostmi:

- odsotnost systemske in vključujoče politike za boj proti revščini,
- pomanjkanje systemske nacionalne uredbe, ki bi določala enotne standarde za celotno Italijo (kar vodi do velikih razlik med različnimi regijami),
- osredotočenost na izdatke za pokojninski sektor s posledično marginalizacijo sektorja socialne pomoči, namenjene družini, brezposelnosti in nujnim stanovanjskim primerom,
- različne stopnje zaščite, ki jih uživajo različne poklicne kategorije (zaposleni, neodvisni delavci, kmetijski delavci itd.),
- zaostalost storitev, ki ne morejo zadovoljiti novih potreb v postindustrijski družbi, kot so nesamozadostnost in težave z ravnovesjem med družino in delom,
- pomanjkanje sredstev za sektor socialne pomoči.

Posledice tega italijanskega modela socialne pomoči se kažejo v težavah z učinkovitostjo, uspešnostjo in pravičnostjo. Kriza socialne države, ki se je začela v sedemdesetih letih 20. stoletja, je bila v Italiji še posebej intenzivna. Sprememba v obliki sodobnih družin je privedla do zmanjšanja sposobnosti slednje, da deluje kot socialni amortizer, kar je vodilo do resnejših posledic.

Tretji sektor ima dolgo zgodovino v italijanskem sistemu socialnega varstva, vendar so se v zadnjih 15 letih okrepili horizontalni odnosi na področju upravljanja in interakcija med javnimi ustanovami in drugimi akterji je organizirana na podlagi nove perspektive subsidiarnosti. To vključuje prenos odgovornosti z javnih osrednjih akterjev na lokalne nepridobitne akterje, pogosto brez zagotavljanja in prerazporeditve »ustreznih« virov za njihovo izpolnitev. To pomeni, da vloga civilne družbe v mnogih okoliščinah nadomešča javno odgovornost

in je ne dopolnjuje, kar krepí krhkost, razdrobljenost in teritorialno diverzifikacijo italijanskega sistema socialnega varstva.

Trenutno je sektor socialnega gospodarstva večinoma urejen na nacionalni ravni z več predpisi, ki se nanašajo na številne organizacije, ki delujejo v socialnem gospodarstvu: socialna podjetja, socialne zadruge, združenja za socialno promocijo, organizacije prostovoljcev, nevladne organizacije, fundacije, združenja in odbori, inovativni start-upi s socialnim poklicem, t. i. B-korporacije.

Trenutno poteka splošna sprememba ureditve z reformo zakona o nepridobitnem sektorju, ki se je začela leta 2016 in bo predvidoma začela delovati od leta 2019, in bo uvedla več sprememb.

Ko bo začela veljati reforma zakona o nepridobitnem sektorju, bo še vedno obstajala množica različnih organizacij, vendar bodo vse spadale v kategorijo »organizacij nepridobitnega sektorja«, njihove fiskalne in finančne vidike pa bo urejal en sam zakon (Viri poglavja: (Campanini; Ferrera, 2012)).

### Skupina NEET in starejši

Če pogledamo skupino NEET in mlade v Italiji v letu 2017, je stopnja NEET (oseb, starih od 15 do 34 let, ki niso zaposleni, se ne izobražujejo ali usposablajo) 25,5 % v primerjavi s povprečjem EU, ki je 14,7 % (Eurostat, 2017b). Več kot 10 % skupine NEET sestavljajo mladi z nizko izobrazbo, ki imajo samo osnovno ali nižjo srednješolsko izobrazbo (8. razred). Zgodnje opuščanje šolanja je v italijanski skupini NEET torej zelo prisotno. Mladi z nizko izobrazbo imajo tudi večjo verjetnost, da bodo brezposelni, skupina mladih brezposelnih Italijanov, starih od 15 do 29 let (31,6 %), pa je veliko večja od povprečja EU (17,5 %). Kljub skrb vzbujajoči velikosti težave je delež mladih, registriranih v javnih zavodih za zaposlovanje (PES) v Italiji, okoli 34 %. Samo približno 2 % italijanskih NEET-ov prejema finančno pomoč (Ledermaier and Mascherini, 2016: 51). Večina jih je postala delavcev, ki ne iščejo zaposlitve (11,1 %) v primerjavi s povprečjem EU, ki je 6,4 %.

Obravnavanje težave nizke izobrazbe in brezposelnosti mladih v Italiji je nujno. Preventivni posegi na tem področju so ključni, saj se pojav začne precej zgodaj, v starosti 14–16 let, ko so dijaki bolj izpostavljeni tveganju, da opustijo šolanje (Ballarino and Checchi, 2006). Intervencije v skupini NEET so primerne za mehanizem ODU, saj so rezultati izobraževanja in

zaposlovanja merljivi, na voljo pa so tudi podatki za oceno prihrankov, ki nastanejo pri doseganju teh rezultatov. Javni stroški ponavljanja razreda v Italiji na primer znašajo 7000 EUR na osebo, ponavljanje razreda pa poveča tveganje za opustitev šolanja in uvrstitev v skupino NEET (OECD, 2017). Javni stroški za NEET morajo upoštevati tudi sheme socialnega varstva (kot so nadomestila za brezposelnost, stanovanjske ugodnosti, dodatki za izobraževanje in drugo). Po podatkih Evropske fundacije za izboljšanje življenjskih in delovnih razmer so javni stroški za skupino NEET v Italiji enaki 14.337 EUR na osebo. Zato se lahko ustvarijo znatni prihranki za nacionalne in regionalne javne organe, ki so pripravljeni naročiti ODU na področju NEET.

Proces demografskega staranja, ki ga razumemo kot povečanje deleža starejših v primerjavi s celotnim prebivalstvom, je pojav, ki zaznamuje ne le območje Alp, ampak vse evropske države. Na splošno je odvisno od dveh različnih dejavnikov: na eni strani od dolgoročne dinamike rojstev, z izmeničnimi fazami rasti in padcev; po drugi strani pa splošno izboljšanje zdravstvenih razmer, ki je pozitivna posledica napredka na medicinskem in znanstvenem področju. Ti dejavniki povečujejo pričakovano življenjsko dobo ljudi, starih nad 65 let, in vplivajo na generacijsko strukturo ter človeški in socialni kapital posameznih skupnosti.

Italija vodi med 28 državami EU v deležu starejšega prebivalstva nad 65 let (21,4 %, nato sledi Nemčija z 20,8 % in Grčija z 20,5 %). Pojav staranja vključuje globoke socialno-ekonomske učinke in pomembne vplive na sistem lokalnih storitev na področju zdravja in oskrbe.

Dostop do teh storitev in podpornih družinskih in socialnih mrež ostaja odločilen za kakovostno življenje, zato pomanjkanje ali neustreznost javnih in zasebnih intervencij, ki so namenjene spopadanju z gospodarskimi težavami ali zmanjšano samozadostnostjo, povzroča, predvsem med starejšimi ljudmi, porast revščine in izključenosti.

Postopno povečanje števila starejših ljudi ustvarja tudi nove izzive, vključno z zmožnostjo izvajanja ukrepov in pobud, da bi podprli procese aktivnega staranja, v katerih starejši od 65 let postanejo akterji svojih projektov in življenjskega okolja, ne le prejemniki oskrbe in pomoči. Splošna dinamika rasti prebivalstva, starejšega od 65 let, v desetletju potrjuje pomen predvidevanja in izvajanja, s strani zakonodajalca in regionalnih družbeno-ekonomskih sistemov, učinkovitih in inovativnih posegov v korist starejših, katerih pomen je zdaj nenehno naraščajoča realnost.

Kot je znano, je ena glavnih težav, povezanih s staranjem, tveganje osamljenosti, socialne izolacije in težav, ki se lahko pojavijo ob odsotnosti referenčne družine in relacijske mreže. V tem kontekstu se upoštevajo individualni odnosi starejših oseb, njihovo zdravstveno stanje ter človeški, finančni in kulturni viri, ki so jim na voljo.

Zato smo soočeni z globoko demografsko preobrazbo. Sposobnost prepoznavanja učinkovitih strategij je eden od izzivov, s katerimi se EU že spopada. Posebna strategija je aktivno staranje, v skladu s katero ljudje, starejši od 65 let, niso več le nosilci potreb, temveč tudi viri, ki lahko ob ustrezni podpori prispevajo k družbi. Omejitve hospitalizacije ali institucionalizacije starejših v strukture in s tem spodbujanje njihovega dostojanstva, avtonomije, svobodne izbire in samoodločbe bi povzročili znatne prihranke pri stroških regionalnih sistemov socialnega varstva.

### Obveznice z družbenim učinkom v Italiji

V letih neposredno po finančni krizi je potekala ustrezna razprava o financiranju učinka kot načinu podpore za ponovni zagon gospodarskega cikla. Posledica tega v Italiji je bil vedno večji premik od subvencij in javnega financiranja k različnim intervencijam in javno-zasebnim partnerstvom, ki temeljijo na plačilu glede na rezultate. V letu 2017 sta bili izvedeni dve izjemni študiji izvedljivosti obveznic z družbenim učinkom.

1. Fondazione Sviluppo e Crescita CRT in Human Foundation sta pripravila študijo izvedljivosti za uspešno poslovanje po pogodbi s plačilom po rezultatih v sektorju socialne in zaposlitvene reintegracije nekdanjih zapornikov (»L'applicazione di strumenti pay by result per l'innovazione dei programmi di reinserimento sociale e lavorativo delle persone detenute«).
2. Finpiemonte, Next Level, Forum del Terzo Settore in deželna vlada Piemonta so izvedli študijo izvedljivosti za vzpostavitev obveznic z družbenim učinkom za reševanje težave zgodnjega opuščanja šolanja med učenci migranti. Študija je bila izvedena med projektom »SIB for Growth« (ODU za rast), financiranim iz evropskega programa EaSI. Rezultat projekta, postopek javnega naročanja in pogodbeni model so v skladu z italijanskim režimom javnih naročil.

Omeniti je treba tudi, da se merjenje in upravljanje učinkov, ki sta ključna vidika izvajanja ODU, hitro širita v italijanskih socialnih politikah, ki so jih sprejeli

javni organi in pomembne zasebne ustanove, kot je javno-zasebno socialno podjetje »Impresa con I Bambini«. Poleg tega je bil decembra 2017 z zakonom o proračunu vzpostavljen sklad za socialne inovacije v vrednosti 25 milijonov evrov, s ciljem pilotiranja pogodb za ODU.

Tako danes ni mogoče poročati o celotni pobudi ODU. Kljub temu pa obstajajo različna področja, ki izražajo zanimanje za izvajanje ODU v Italiji.

### 2.4.2. Priložnosti in izzivi

Kljub močnemu zanimanju italijanskih regij in različnih akterjev za izvajanje ODU obstajajo tudi nekatere omejitve v Italiji, ki presegajo pravni okvir.

Med delavnico »Izziv obveznic z družbenim učinkom« so udeleženci opredelili dve različni omejitvi, ki sta opisani spodaj:

#### A. Objektivne (ali systemske) omejitve:

- Slaba prilagodljivost formalnega pravnega okvira.
- Kratkoročna usmerjenost: Kratkoročne napetosti, ki jih povzročajo omejitve javnih financ, radikalno nasprotujejo filozofiji ODU. Družbeni učinek po svoji naravi izraža sposobnost ustvarjanja vrednosti in ponovnega izračuna porabe za srednjeročna obdobja. Če ga povezujemo s sposobnostjo ustvarjanja prihrankov v kratkoročnem obdobju, je to omejitev, ki močno zmanjšuje potencial ODU, medtem ko obstaja tudi protislovje med tem trendom in normo, ki zahteva, da PA načrtujejo večletne gospodarske in finančne cikle.
- Pomanjkanje postopka upravljanja procesov.
- Slabo vključevanje procesa ODU v cikel gospodarskega finančnega načrtovanja.

#### B. Subjektivne (ali kulturne) omejitve:

- Slabe vodstvene sposobnosti v PA.
- Slaba finančna pismenost v PA in nepridobitnih sektorskih organizacijah: to vodi v skepticizem in strah v odnosih s finančnimi akterji.
- Težave pri upravljanju procesov, kjer sodeluje več deležnikov.
- Šibkost vodstva, deloma zaradi pomanjkanja splošne politične strategije. Izraženo zanimanje za ODU je bilo omenjeno zgoraj.

Delavnica pa je izpostavila priložnosti, ki jih ne smemo podcenjevati. Kot prvi pozitivni element je treba omeniti zanimanje udeležencev delavnice, ki so, kot je bilo rečeno, pomembne javne organizacije. Zlasti regionalni predstavniki, ki so sodelovali v dvojni vlogi usklajevanja (navzgor z evropskimi in nacionalnimi politikami, navzdol z občinami), so izrazili zanimanje za ODU in pripravljenost za boljše razumevanje možnosti izvajanja v njihovih kontekstih.

Poleg tega so se pojavili naslednji vidiki italijanskega konteksta kot priložnost:

- Razpoložljivost etičnega finančnega sistema.
- Reforma nepridobitnega sektorja (2016), zaradi katere nepridobitne sektorske organizacije (TSO) spreminjajo svoj pristop.
- Nastanek mrež in strokovnih centrov, ki ustvarjajo večjo ozaveščenost (glej vlogo fundacij)

## 2.5. Slovenija

### 2.5.1. Dejanski položaj

#### Politični sistem in socialna politika

Slovenija je opredeljena kot decentralizirana unitarna država. Nacionalna vlada je zakonodajalec na vseh področjih, različni državni organi pa nadzirajo zakonitost dela, ki ga opravljajo lokalne skupnosti. Dvanajst statističnih regij izvaja nacionalno zakonodajo, vendar nimajo svojih vlad ali zakonodaje. Poleg tega 58 vladnih subjektov, ki nimajo statusa lokalne samouprave, dodeljujejo državne odgovornosti in upravljajo odgovornosti svojih ministrstev na regionalni ravni. Najnižjo upravno raven sestavlja 212 občin. Po ustavi imajo občine pristojnosti za lokalne zadeve, ki jih lahko samostojno urejajo in ki vplivajo le na občane določene občine. Občine so odgovorne za socialne transferje v zvezi s predšolskim in osnovnošolskim izobraževanjem, nastanitvijo in v določeni meri institucionalno oskrbo.

Za razliko od mnogih postsocialističnih držav Slovenija nima vrzeli v socialnem varstvu, ampak ima zelo močno socialno državo. 2. člen Ustave Republike Slovenije določa, da je Slovenija pravna in socialna

država. Ker je socialna država vgrajena na začetku ustave, ima temeljno vrednost (Filipovič Hrast and Kopač Mrak, 2016: 290).

Slovensko socialno državo oblikuje nekdanji socialistični sistem z državno monopolno strukturo. Javni sektor ima še vedno prevladujočo vlogo. Obstajajo pa nekatera področja socialnih storitev, ki jih pokrivajo socialna podjetja in neprofitne sektorske organizacije, ki jih sestavljajo nevladne in neprofitne organizacije. Te izvajajo projekte in storitve, ki jih je določila vlada.

#### Skupina NEET in starejši

Stopnja NEET v Sloveniji, ki znaša 12,3 %, je pod povprečjem EU, ki je leta 2015 znašalo 14,8 %. V Sloveniji delež NEET, ki so dolgotrajno brezposelni, znaša 28,2 %, kar je nekoliko nad povprečjem EU (22 %). Po drugi strani pa je le 2,1 % vseh NEET-ov obupanih delavcev, ki ne iščejo zaposlitve (povprečje EU 5,8 %). Poleg opustitve šolanja so glavne težave te skupine tudi brezposelnost mladih – predvsem dolgotrajna brezposelnost – ter nasilje, kriminal, zloraba alkohola in drog (Ledermaier and Mascherini, 2016: 13–36).

Poleg tega Kump, Kavaš in Črnigoj obravnavajo starostno skupino 30–35 let, čeprav presegajo starostno opredelitev skupine NEET. To starostno skupino je najbolj prizadel neugoden trg dela, ki je bil posledica gospodarske krize, vendar so bili prezrti s strani sheme jamstvo za mlade iz leta 2014, ki je privedla do oblikovanja in razvoja dejavnosti, namenjenih pomoči mladim pri vračanju v izobraževanje, usposabljanje ali zaposlovanje. Zato se avtorji zavzemajo za vključitev starostne skupine 30–35 let v skupino NEET v Sloveniji.

Višanje pričakovane življenjske dobe in nizka stopnja rodnosti vodita k povečanemu staranju prebivalstva v Sloveniji. Trenutno je približno 18 % prebivalstva starih 65 let in več, do leta 2080 pa bi po ocenah lahko njihov delež prebivalstva znašal približno tretjino (Eurostat, 2017a). To vodi tudi do vse večje potrebe po storitvah za starejše.

#### Obveznice z družbenim učinkom v Sloveniji

Močna socialna država v Sloveniji je eden od razlogov, da doslej ni bila uresničena še nobena shema ODU. Večina relevantnih deležnikov sistema obveznic z družbenim učinkom še vedno ne pozna, čeprav so bile ODU predstavljene in je Fundacija 05 – Fundacija za investicije z družbenim učinkom (angl. *Fund 05 – Foundation for Social and Impact Investment*) pobudo za

pilotno shemo ODU v Sloveniji podala že leta 2010 na prvih Dnevih socialne ekonomije v Ljubljani. V letu 2012 je Slovenski forum socialnega podjetništva v svoje cilje vključil etično bančništvo in ODU. Vendar pa bo staranje prebivalstva in posledično povečanje izdatkov za socialno varstvo vodilo k reformam socialne države, ki bi lahko vplivale na vlogo države.

## 2.5.2. Priložnosti in izzivi

V zvezi s pravnim okvirom se lahko za Slovenijo pokažejo različni izzivi. Prvič, ni jasno, ali trenutna slovenska zakonodaja sploh podpira izvajanje ODU. Zato je potrebnih več raziskav na to temo.

Najzahtevnejši vidiki so:

- a) donosnost naložbe, ki se izplača deležnikom-investitorjem v primeru uspešno zaključenega projekta ODU.
- b) Postopek javnega naročanja. Prvič, pomanjkanje izkušenj, saj v Sloveniji doslej ni bilo izvedenih ODU. Drugič, slovenski sistem javnih naročil je bil v kratkem časovnem obdobju predmet številnih institucionalnih in regulativnih sprememb, kar je povzročilo negotovost glede veljavnih pravil in postopkov. Tretji izziv je v slabi administrativni (upravni) usposobljenosti in daljšem obdobju, ki ga na splošno zahtevajo postopki javnih naročil.
- c) Pristojnosti javnih partnerjev na možnih področjih politike. Politični sistem z močno nacionalno ravno omejuje lokalne odgovornosti, pristojnosti in finančne vire občin. To velja tudi za področja, za katera so odgovorne lokalne ravni (urbano in prostorsko načrtovanje, domovi za upokojence, stanovanja, vzgoja in izobraževanje (vrtci, osnovna šola)). Občine se spopadajo s pomanjkanjem sredstev za izvajanje nacionalne zakonodaje.

ODU bi lahko bile zanimiv nov pristop k zmanjševanju stroškov za socialne storitve. Poleg tega dajejo vladi možnost preskušanja alternativnih storitev s pomočjo podpore zasebnikov. Če je projekt uspešen, se lahko zagotovi redno financiranje.

Ena od ključnih točk je komuniciranje in poudarjanje prednosti. ODU ne ponujajo le možnosti, da država preizkusi nove pristope, temveč vključujejo tudi priložnost, da dosežemo ljudi, ki jih obstoječe pobude ne dosežejo.

Pri vrednotenju ODU v Sloveniji pa lahko kljub temu v dokumentu za razpravo opazimo opisano globoko nezaupanje, ki so ga pokazale pretekle vlade in javnost do obveznic z družbenim učinkom, saj ima Slovenija močan in dobro delujoč sistem socialnega varstva in obstaja bojazen, da bi ODU vodile do monetizacije dela na področju socialnega varstva in imele vedno večji vpliv na obseg socialnih storitev, saj lahko postane monetarna dimenzija prevladujoča. Poleg tega avtorji opisujejo nerazumevanje v zvezi s stopnjo donosa za vlagatelje, saj je tudi ta denar namenjen za socialne storitve.

Poleg tega je opredelitev področja socialne problematike, ki bi lahko imela koristi od izvajanja ODU, v Sloveniji zahtevna naloga, saj socialne storitve že delujejo na skoraj vseh področjih politike, čeprav se pojavljajo težave zaradi pomanjkanja sredstev. Zaradi majhnosti države je še težje najti projekte, ki bi bili primerne velikosti za ekonomsko financiranje preko ODU.

Možnosti in ovire se lahko odkrijejo tudi v zvezi z vprašanjem potencialnih deležnikov v Sloveniji. Prvič, pojem ODU je za večino potencialnih partnerjev skoraj neznan. Sektor socialne ekonomije je delno seznanjen z njim, vendar pa so ODU preostalim deležnikom, kot so javni partnerji, lokalni organi itd., v glavnem neznane.

Za uspešno izvajanje ODU so potrebni motivirani vladni organi, ki so zainteresirani za inovativno reševanje težav upravljanja in zmanjšanje stroškov. Poleg tega potrebujejo zainteresirane vlagatelje in učinkovite ponudnike socialnih storitev.

Čeprav je mogoče identificirati potencialne investitorje, ki namenjajo velik delež socialnim projektom, ni popolnoma jasno, ali so zainteresirani tudi za vlaganje v ODU. Oteževalni dejavnik je, da za razliko od donacij, za vlaganje v ODU ni nobenih davčnih olajšav.

Druga zahtevna naloga je iskanje ustreznih ponudnikov socialnih storitev. V večini primerov so sedanja socialna podjetja premajhna, da bi privabila zasebne vlagatelje. Na sodni ravni Zakon o socialnem varstvu prepoveduje pridobivanje kakršne koli vrednosti preko socialnih storitev. Izvajalci socialnih storitev, ki so najverjetneje izvršilni partnerji obveznic z družbenim učinkom v Sloveniji, so izključno nepridobitne pravne osebe, njihovi prihodki, ki presegajo stroške, pa se uporabljajo samo za socialno podjetništvo ali druge nepridobitne namene. Zato finančni donosi za vlagatelje v ODU predstavljajo sporno vprašanje tudi za druge deležnike.



## 2.6. Skupni elementi in vmesni rezultat

Če pogledamo obveznice z družbenim učinkom na območju Alp, se zdi, da med državami, ki so vpletene in imajo različne politične razmere, lastne zakonodajne organe in različne sisteme socialnega varstva, vendarle obstajajo podobnosti, povezane z ovirami in priložnostmi za obveznice z družbenim učinkom, ki so jih obsežno opisali avtorji dokumentov za razpravo. Zato je mogoče odkriti skupna odprta vprašanja na področjih zakonodaje, oblikovanja pogodb in njihovega izvajanja ter na področju potencialnih deležnikov.

### Pravne negotovosti

Drugo poglavje je opredelilo različne velike omejitve za ODU v Avstriji, Franciji, Nemčiji, Italiji in Sloveniji na ravni pravosodja. Vendar pa je vsem skupna velika negotovost glede izvedljivosti ODU v skladu z veljavno zakonodajo. Za učinkovito izvajanje ODU v posameznih državah je potrebna vzpostavitev političnega in pravnega okvira, ki omogoča obveznice z družbenim učinkom ali vsaj dovoljuje nekatere pilotne projekte. Poleg tega so potrebne strukture, ki zmanjšujejo posamezne stroške ODU, da bi tako postale dolgoročno privlačne.

Ena od glavnih nalog pri izvajanju ODU je načrtovanje in strukturiranje. Strukturna vzpostavitev bistveno prispeva k uspehu ali neuspehu projekta. Avtorji dokumentov za razpravo so opisali več ključnih področij.

### Predpogoji

Ker pogodba ODU opredeljuje cilje ukrepa, pa tudi njegove predpogoje, se lahko poleg težav z dokončanjem projekta pojavijo tudi težave zaradi dejstva, da je treba preveriti okolje upravičencev. Ne samo, da je treba opredeliti ciljno skupino, temveč je potrebnega tudi veliko truda, da se preuči, ali so dejansko izpadli iz tradicionalnega sistema socialnih storitev.

### Merjenje in ocenjevanje

Druga ključna točka za uspeh ODU je ocenjevanje in merjenje učinka. Zato je razvoj učinkovitih orodij za merjenje učinka zelo pomemben pri oblikovanju pogodbe. Trenutno ni sistematičnega ocenjevanja. Za vzpostavitev smiselnega instrumenta garant

zahteva podrobno poznavanje pravnega okolja, pa tudi strokovno znanje o postopkih merjenja učinka in zmožnosti napredka. Poleg tega razprava o merjenju postavlja temeljna vprašanja, ki se nanašajo na vrednost socialnega dela. Ali je družbena vrednost sploh merljiva? Ali to pomeni, da se lahko financirajo samo projekti, ki jih je mogoče izmeriti? Ali uspeh samodejno pomeni, da koristi odtehtajo stroške?

### Javno naročanje

Pri delu z javnimi institucijami je postopek javnega naročanja nujen za pridobitev storitev ali pooblastitev institucij. Zaradi tega lahko nastanejo težavne postavitev; na primer, vključevanje izvajalca socialnih storitev v zgodnji fazi je lahko zelo težavno. Zato je odločilnega pomena iskanje alternativnih dodelitev pogodb, ki doslej niso bile uporabljene.

### Oblikovanje pogodb

Ključni vidik za delovanje mehanizma ODU je oblikovanje pogodb. Težava pri oblikovanju pogodb za ODU je skupen dejavnik za vse države zaradi njihovih individualnih političnih in socialnih okolij. Ker so ODU precej nov instrument, ni na voljo veliko izkušenj, zaradi česar je pogodbeni postopek ODU konceptualna težava.

### Povračilo denarja

Denarno povračilo v primeru uspeha je eden od bistvenih delov ODU. Zato ocena projekta predstavlja glavni vidik. Projekt ODU se običajno šteje za uspešnega, če je učinek višji od stroškov. Uspeh pomeni prihranek stroškov. Monetarni vidiki so lahko merljivi in vrednoteni, vendar se morajo deležniki zavedati, da različni projekti potrebujejo različne metodologije. Poleg monetarnih vidikov morajo biti v merjenje vključeni tudi drugi vidiki, kot so upravičenci ali socialna vprašanja. Kritična točka je, da se izognemo gledanju na prihranek stroškov, kot da je to standardna ocena družbenih vrednot. Ker so ODU precej nov instrument, ni na voljo veliko izkušenj. Vprašanje je, kaj se zgodi z denarjem v primeru neuspeha. Investitorju se denar ne bo povrnil, vendar se lahko za javnega partnerja pojavijo nove težave. V mnogih primerih je težavno, če denar, ki je bil predviden za porabo, ni potreben. Ena od možnih rešitev bi lahko bile porazdeljene ODU, v nasprotju s sedanjo zasnovo »vse ali nič«. Če meritev pokaže uspeh v delih projekta, bi lahko prišlo do delnega povračila. To bi tudi zmanjšalo tveganje za vlagatelje in s tem povečalo privlačnost naložb v ODU. Druga prednost tega modela je možnost zmanjšanja



transakcijskih stroškov pri iskanju partnerjev, saj so zaradi nižjega tveganja ODU privlačnejše za vlagatelje.

## Deležniki

V ureditvi z več deležniki je pomembno najti primerno število partnerjev. Kadar se na primer odloča o ustanovi(-ah) za socialne storitve, je treba preučiti, ali ima dovolj zmogljivosti za delo v projektu ODU, pa tudi to, da veliko različnih izvajalcev, ki niso vajeni delati skupaj, morda ne bodo dovolj učinkoviti, transakcijski stroški pa so lahko zelo visoki. ODU združujejo različne akterje, ki sicer morda niso v stiku. Izvajalci socialnih storitev, javne uprave, fundacije, svetovalne agencije in vlagatelji poskušajo prinašati nove rešitve za socialna vprašanja in pomagati ljudem v stiski. To je lahko velika prednost za projekt, saj so tako izklesane nove ideje in možnosti. Da bi iz novih perspektiv nekaj pridobili, je predvsem pomembno komuniciranje z deležniki na začetku nove ODU. Da bi se izognili nesporazumom med uresničevanjem, si je treba vzeti čas, da spoznamo različne miselnosti, da začnemo razumeti drug drugega in najdemo razumne kompromise. Ker so ODU usmerjene k učinkom, lahko nekateri pritiski za doseg določenega cilja pripomorejo k večji učinkovitosti in uspešnosti pri doseganju tega cilja, in ker so ODU običajno vodilne na novih področjih politik, so vključene organizacije za socialne storitve zelo motivirane za preizkus te nove metode. Še več, sodelovanje v ODU je lahko tudi dobra reklama za socialna podjetja, saj si s tem pridobijo pozornost javnosti.

Vendar pa se morajo deležniki zavedati, da ta konstelacija vsebuje tudi potencial za spore. Različni pristopi in stališča se lahko v tej novi konstelaciji spopadejo med seboj. Med sodelujočimi deležniki se lahko pojavijo spori. Če dva ali več izvajalcev socialnih storitev sodelujejo v ODU, se lahko pristopi k rešitvam med seboj razlikujejo in so v najslabšem primeru nedosledni. Poleg tega lahko omejen proračun povzroči povečano tekmovalnost med socialnimi podjetji. Pozornost je treba nameniti tudi dejstvu, da prenizek proračun, s spodbudami za fiksne cilje, povečuje tveganje za samoizkoriščanje.

Na kratko: Za deležnike je mogoče opredeliti veliko odprtih vprašanj glede ODU v območju Alp. V naslednjem poglavju III bomo podali nasvete, razširjene z najboljšimi praksami, tistim akterjem, ki so zainteresirani za izvajanje projekta ODU.



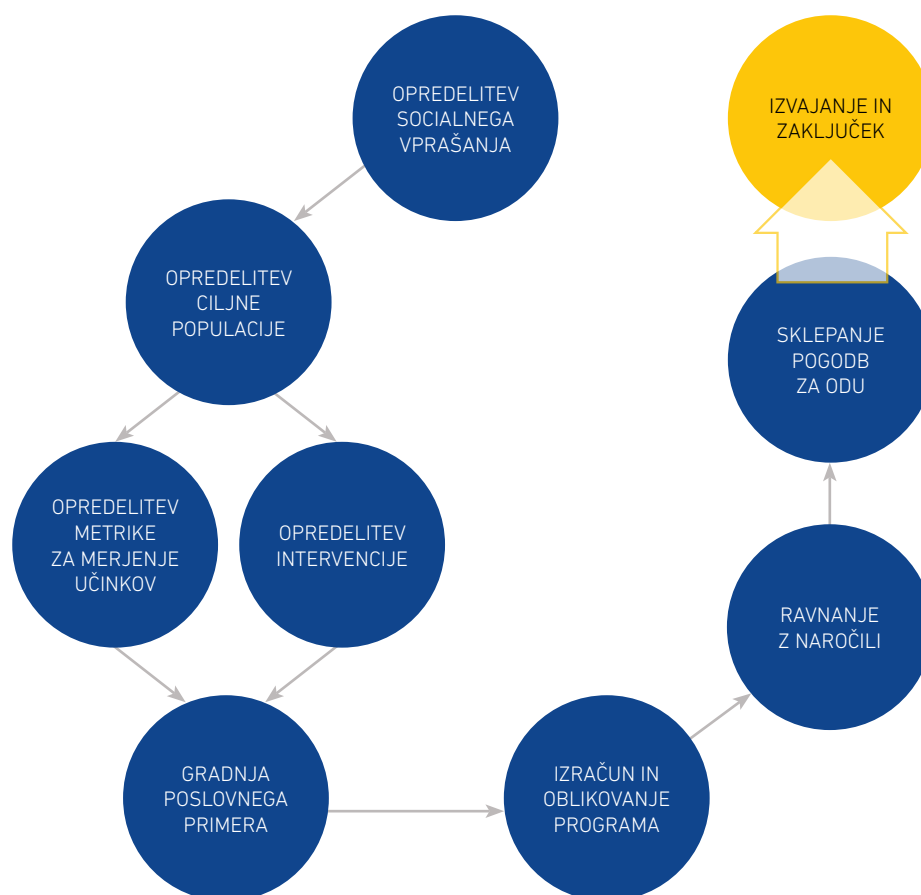
## 3. SMERNICE ZA ZAINTERESIRANE DELEŽNIKE

### 3.1. Razvojni proces obveznice z družbenim učinkom

To poglavje je namenjeno jedru skupne metodologije. Postopek razvoja ODU je predstavljen v naslednjem poglavju, posamezni koraki pa so podrobneje obravnavani. V mednarodni razpravi, kot je vidno v prejšnjem poglavju, se še vedno pojavlja vprašanje, kako zmanjšati stroške transakcij ODU. V okviru tega procesa se pogosto omenja, ali bi lahko to težavo odpravili s skladno oz. usklajeno predlogo modela. Ena stran pravi, da je s fiksnim številom vlagateljev, enotnim pogodbenim modelom in prilagojenim pristopom procese mogoče poenostaviti in so na koncu možni finančni prihranki pri transakcijskih in tekočih stroških. Druga stran se bolj osredotoča na ozadje ODU. Trdi, da ODU služijo za reševanje velikih socialnih težav v določenih družbenih skupinah, ki so po navadi težko dosegljive, in tako omogočajo državi, da pri tako kompleksnih posegih in dejavnostih doseže prihranke. Fleksibilno prilagajanje ODU skupini potreb, vlagateljem, njenemu namenu ali finančnim možnostim bi se izgubilo, če bi se model ODU standardiziral. Največji potencial ODU vidimo v teh možnostih individualne prilagoditve. Zato na naslednjih straneh ni naveden ortodoksni model, ki ga je treba upoštevati, temveč predlog, kako pristopiti k ODU. Naslednje poglavje poskuša dati le možne odgovore na vprašanje, kakšne priložnosti in koraki obstajajo pri razvoju ODU.

Poglavje 3 temelji na priročniku, ki ga je izdal Social Finance (2013), »A Technical Guide to Developing Social Impact Bonds« (Tehnične smernice za razvoj obveznic z družbenim učinkom), in osmih korakih za izgradnjo ODU. V procesu izgradnje je smiselno prehoditi korak po korak in delati na njih glede na posamezno ODU. Nekateri koraki, kot so opredelitev socialnega vprašanja in ciljne populacije ter opredelitev intervencije (posega), so večinoma potrebni in zaključeni v razvojni fazi ODU. Drugi pa so v pripravi, vendar se v pogovoru neprenehoma pojavljajo tudi pri izvajanju SIB, kot je delo na poslovnem primeru, metrika za merjenje učinkov ali pogodbene obveznosti. Naslednji diagram prikazuje posamezne korake v procesu razvoja ODU.





Slika 1: Razvojni proces ODU (prim. Social Finance, 2013)

### 3.1.1. Opredelitev socialnega vprašanja in ciljne populacije

Lahko bi trdili, da je načrtovano intervencijo in s tem tudi **socialno težavo**, ki jo je treba odpraviti, koristno izbrati na osnovi merljivosti ter na osnovi prihranka oz. izogibanja stroškov za državo (So and Jagelewski, 2013: 18). To se po navadi tudi zgodi, saj so dražje intervencije lahko strukturirane v okviru ODU, kapital pa vlagajo socialni investitorji, kar idealno omogoča vladi, da prihrani stroške. Investitorji in financerji so prav gotovo vključeni v izbiro družbene težave, ki jo je treba reševati. Pomembno je zagotoviti, da tisti, ki se zavežejo za sodelovanje, kar se pokaže v obliki investicij, že tesno sodelujejo pri odločitvah, sprejetih med ugotavljanjem izvedljivosti. Izbira sektorjev je prav tako povezana z vlagatelji, saj se njihova nagnjenost k vlaganju povečuje, ko se ustvari ozadje, osebna strast ali vključenost ali občutek velikega vpliva naložbe (Varga and Hayday, 2016: 40).

Opredelitev **ciljne skupine** je prav tako tesno povezana s socialno težavo, ki jo je treba obravnavati, in idealno, tudi z zmanjšanjem stroškov za državo. Dejavnik

prihranka stroškov se odraža v idealni ciljni skupini, ki trenutno kaže slabe rezultate, ki jih je mogoče odpraviti z ustrezno kompleksno intervencijo. Prizadevanja v zvezi s takšno intervencijo so posledica dejstva, da ciljna skupina v sedanjem sistemu ni ustrezno obravnavana. Hkrati to vodi do opredelitve idealne ciljne skupine, ki jo lahko izpeljemo iz definicije NEET v 2. poglavju. Če želimo natančneje razmejiti ciljno populacijo, mora biti zlahka prepoznavna in seveda dostopna za predvideno intervencijo. Dostop do ciljne skupine je še posebej pomemben, da bi lahko evidentirali opravljene storitve in rezultate za vrednotenje v poznejših fazah. Opredelitev ciljne skupine vključuje tudi določitev njene idealne velikosti: ne bi smela biti tako velika, da rezultatov ni mogoče ustrezno preveriti in da ni mogoče podati statističnih izjav, niti ne bi smela biti tako majhna, da specializirana intervencija dejansko ni potrebna. Na splošno mora ODU ponuditi storitve, ki temeljijo na preprečevanju, ciljna skupina pa mora biti glede na to ustrezno izbrana in opredeljena. Če je opredelitev preveč nejasna ali preveč razpršena, to neposredno vpliva na rezultat ODU (Social Finance Ltd, 2011b: 8). Če povzamemo, ugotavljanje in opredelitev ciljne skupine je ključnega

pomena za uspeh vsake intervencije, vključno z ODU, zato jo je treba izbrati natančno in ob upoštevanju različnih možnih učinkov.

### 3.1.2. Opredelitev intervencije

V okviru ODU je intervencija storitev ali storitve, ki so na voljo ciljni skupini. Te storitve so prilagojene želenim učinkom in ciljem ODU ter potrebam posamezne ciljne skupine. Zato je za uspeh ODU izrednega pomena, da intervencija doseže učinek. Stopnja opredelitve intervencije mora zato zagotoviti, da se njena učinkovitost lahko preveri na podlagi zanesljivih podatkov (Social Finance Ltd, 2014: 11).

Po drugi strani bi se bilo treba izogniti pomanjkljivostim ali opustitvam pri zagotavljanju storitve, saj bi lahko spremenile želene cilje ODU. Pri določanju ustreznih intervencij je treba upoštevati nekatera merila. Intervencije preventivne narave so še posebej primerne za vključitev v ODU, s čimer bi se izognili dragim reorganizacijskim ukrepom in tako vladam ponudili finančno spodbudo za udeležbo v ODU z obrestmi.

Intervencije z več kvalitativnimi učinki morda niso primerne znotraj ODU (Social Finance Ltd, 2013: 6–7). Potrebna je konkretna dodelitev rezultatov intervencije, ki jih je mogoče hipotetično oceniti z metodo vrednotenja ali s primerjavo. Podobno tudi različni deležniki ne zahtevajo le dobrih rezultatov, temveč želijo ustvariti napredek in s tem inovativne intervencije. Zato so intervencije, ki jih izvajajo organizacije, ki lahko pripovedujejo zgodbo o uspehu in delujejo fleksibilno in inovativno, zelo primerne za ODU, zlasti če se ne financirajo iz državnega proračuna v času izvajanja. Zato prenos tveganja na zasebne vlagatelje in obljuba, da se plača samo, če bodo rezultati doseženi, pomenita veliko priložnost in jo je treba upoštevati pri opredeljevanju intervencije. Intervencije, ki temeljijo na dokazih in imajo dobre rezultate, so prav tako najbolj primerne za ODU.

V nasprotju s tem pa model ODU ni primeren, če se učinki lahko štejejo skoraj za zagotovljene. V tem primeru je bolj smiselno, da se intervencija v celoti financira z vladne strani.

Razširljivost še vedno igra vlogo pri odločanju za ustrezno posredovanje (intervencijo). Izvajalci storitev bi morali imeti možnost, da razširijo intervencijo v tolikšni meri, da so stroški in prizadevanja primerni in utemeljeni s strukturo ODU.

Pri opredelitvi intervencij je treba omeniti še nekaj dejavnikov in točk, ki jim je treba nameniti pozornost, npr. naložbeno usmeritev. Poleg finančnih vlagateljev ima pomembno vlogo v ODU tudi nefinančna podpora. Zato je treba to upoštevati tudi pri določanju intervencije, ker se nefinančna podpora rada usmeri geografsko ali na področja, kjer so našli vrzeli v zmogljivostih, ali pa imajo specializirano znanje na enem področju ter so čustveno in osebno motivirani za podporo intervencije v okviru ODU. Pogosto je odvisna od celotnega konteksta ODU. Glede na možni mednarodni okvir, kot je predstavljen v 4. poglavju, je nefinančna podpora pogosto odvisna od lokalnega poudarka in osnove posameznega nacionalnega jezika. Kadar so trgi majhni, se lahko nefinančni vlagatelji odločijo za vzpostavitev regionalnega modela, ki je po njihovem mnenju stroškovno učinkovitejši in lahko socialnim podjetjem zagotovi učne koristi (Varga and Hayday, 2016: 36).

### 3.1.3. Opredelitev metrike za merjenje učinkov (angl. *Outcome Metric*)

»Zakaj poplačilo, ki temelji na učinkih?« Preden začnemo govoriti o tem, zakaj je poplačilo na podlagi učinkov primerna metoda za ODU, je treba opredeliti nekatere ključne pojme. Obstajata dve zasnovi, poplačilo usmerjeno bodisi v vložek (angl. *input-oriented*) bodisi v rezultat (angl. *output-oriented*), ki sta prvi korak ali del alternativnega načina za poplačilo ODU. Te vrste pogodb, ki so usmerjene v vložke ali rezultate, je nekoliko lažje meriti. Zaradi tega so voditelji javnega sektorja sprejeli te lažje merljive vložke in rezultate za ocenjevanje uspeha ODU ali drugih intervencij, ki so plačane po rezultatih. Če pogledamo definicijo vložkov in rezultatov, številke za merjenje uspeha zelo jasno izstopajo:

*Vložek* zajema vse finančne in osebne vire, ki so bili vloženi v projekt ali intervencijo. To vključuje tudi delovni čas in drugo materialno opremo.

*Rezultat* pomeni vse »takojšnje opravljene storitve« (Schober and Then, 2015: 46) za projekt ali organizacijo, ki izhajajo iz vložka. To so lahko posvetovanja, neposredna prodaja ali na primer dogodki.

Opredelitev učinkov kaže, da so konkretne številke, potrebne za merjenje uspeha, bolj skrite kot pri pogodbah, ki so usmerjene v vložke in rezultate:

*Učinki* so tako pričakovani kot nepričakovani, pa tudi vsi pozitivni in negativni učinki ter spremembe za

vkjučene deležnike ali ciljno skupino. So rezultat rezultatov (output-ov), konkretnih intervencij v okviru ODU.

Pojem vpliv/učinek (*impact*) se uporablja skoraj zamenljivo s terminologijo učinkov (*outcomes*). Vendar pa, ko pogledamo opredelitev pojma vpliv (*impact*), hitro postane jasno, da vključuje globlje raziskovanje prave vrednosti predmeta ali storitve, ki jo je treba vrednotiti:

*Vpliv lahko izrazimo z izrazom neto učinek. Različni izrazi, kot so mrtva izguba itd., se v celoti ali delno odštejejo od učinka.*

Ko govorimo o merjenju učinkov pri ocenjevanju ODU, to po navadi pomeni neto učinke, npr. vplive. Obstajajo še drugi razlogi poleg tistih, ki so navedeni na začetku tega poglavja, zakaj je poplačilo po učinkih danes bolj priljubljeno kot sklepanje pogodb in poplačilo po vložkih ali rezultatih. Vrste pogodb, ki so usmerjene v vložke ali rezultate, lahko povečajo tveganje, da izvajalci storitev zmanjšajo svoje stroške, kakovost storitve ali posredovanje (intervencija) za ciljno skupino pa se bo zmanjšala. Kadar morajo izvajalci vedno znova preverjati, ali so storitve, ki jih ponujajo, usklajene z vloženim denarjem, ni prostora za inovacije. Kjer je preveč ovir, ki nastanejo zaradi denarja ali ponujenih rezultatov (produktov), sta inovativnost in ustvarjalnost ujeti v le-te in doseženi bodo le najbolj nujni cilji. Poleg tega si vodstvo zelo prizadeva, da bi ravnalo v skladu s postopkom. Pogodbe, ki so usmerjene v vložke ali rezultate, dajejo vodstvu široko področje uporabe za izpolnitev pogodbe, tudi če končni cilji ODU niso doseženi (Social Finance Ltd, 2015: 5).

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*»Medtem ko je mogoče vložke izmeriti v času uresničevanja, se lahko učinki običajno merijo šele po končni izpolnitvi (uresničitvi).«*  
(Social Finance Ltd, 2015: 6)

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Da bi lahko izvedli poplačilo po učinkih in jih izmerili, morajo biti cilji intervencije zelo jasno opredeljeni od samega začetka. To zagotavlja, da so vsi deležniki v programu osredotočeni na doseganje teh ciljev in ne samo na zagotavljanje pogodbenih storitev v dogovorjenih pogojih. Prav tako ni prostora za anonimnost, ker je v pogodbah, ki temeljijo na učinkih, poudarjena svoboda za individualno prilagajanje storitev. Ko uspeh merimo z učinki, je inovacija mogoča, ker je na voljo prostor za razvoj novih rešitev in realizacijo učinkov na boljši način. Iz teh razlogov je poplačilo po učinkih najboljši način za poplačilo ODU.

## **Postopek razvoja metrike za merjenje učinkov (oz. metrike učinka):**

Metrika učinka je vrednost, ki je potrebna, da določimo, ali je bila dosežena dogovorjena uspešnost. V smislu ODU je metrika učinka potrebna, da se ugotovi, ali in v kakšnem obsegu se bo donos izplačal vlagateljem in, če je potrebno oz. ustrezno, izvajalcem. Postopek oblikovanja oz. razvoja metrike učinka se lahko razdeli na pet korakov. Najprej je treba opredeliti učinke: to se mora začeti zelo zgodaj v procesu razvoja projekta. Drugi korak je določitev izhodišča ali hipotetičnega scenarija. Nato je treba vrednotenje učinka določiti v skladu s cilji javnih naročnikov. Potem se lahko začeta merjenje in pripisovanje učinka. Za te korake je treba obravnavati in izbrati vrsto metod merjenja. Zadnji korak v metriki učinka je ocena (evalvacija) učinka (Social Finance Ltd, 2015, str. 10). Na srečanju TAB v Münchnu junija 2018 je Stephanie Petrick, vodja oddelka za naložbe v učinke pri Phineo gAG, podprla srečanje kot priznana strokovnjakinja za merjenje rezultatov oz. učinkov. Stephanie Petrick ima več kot 15 let izkušenj pri svetovanju zasebnim vlagateljem, mednarodnim korporacijam in socialnim podjetjem v Evropi in ZDA. Na podlagi tega srečanja TAB je njeno znanje vključeno v naslednjih odstavkih o razvoju metrike učinka (metrike za merjenje učinkov).

Sledili smo tudi smernicam o metriki učinka in merjenju, ki sta jih podala Social Finance (glej (Social Finance Ltd, 2015) in Governments Outcomes Lab (glej Government Outcomes Lab, 2017b).

## **1. Identifikacija učinkov (angl. *Identification of outcomes*): Izbira in opredelitev učinkov**

V tej fazi je treba podrobno opredeliti rezultate, ki jih je treba doseči. Iz tega sledi, da je treba dogovoriti in določiti tudi metodo merjenja najboljših rezultatov. Poleg tega je treba razviti strukturo plačil, ki opredeli določene plačilne pogoje in navaja znesek, ki ga je treba plačati. To je treba storiti za vsak posamezen učinek (Government Outcomes Lab, 2017b: 23).

Preden nadaljujemo, podajamo kratek pregled o tem, kako je treba izvesti identifikacijo učinkov (Government Outcomes Lab, 2017b: 12). Prvič, učinek intervencije ali sprememba, ki naj bi bila ustvarjena v družbeni ciljni skupini, bo uporabljena za izbiro možnih učinkov. Poleg tega se postavlja vprašanje, ali je učinek skladen s pogodbenimi cilji in finančnim primerom. Če ni tako in če ni podobnosti s pogodbeno dogovorjenimi cilji, je treba ta učinek razglasiti za neprimerne za pogodbo. Če je izbrani učinek usklajen s pogodbenimi cilji, nastopi finančna komponenta. To pomeni, da preverimo, ali so

prizadevanja in stroški merjenja učinkov sprejemljivi. Če ne, je treba določiti ustrezen približni učinek in ukrep. Po pojasnitvi finančnega vprašanja merjenja učinkov je treba opredeliti zahteve za merjenje učinkov in upoštevati metrike. Nato se bo rezultat preučil za morebitne neprimerne spodbude (pojasnilo sledi), in če se bodo ugotovile, bodo ublažene. Šele po prehodu skozi vse te faze se šteje, da je učinek primeren za pogodbo.

Identifikacija in izbira učinkov, ki jih je treba izmeriti, je ključni korak pri razvoju ODU. To ni linearen proces; obstaja veliko korakov in priložnosti za doseg natančne opredelitve. V nekaterih primerih so cilji intervencij zlahka izmerljivi, zato se lahko iz njih oblikujejo učinki. Toda v drugih primerih je potrebnih več ponovitvenih zank, da bi dobili »smiselne in merljive« (Social Finance Ltd, 2015: 11) učinke. Social Finance ponuja nekaj vprašanj v tehničnem priročniku za oblikovanje metrike učinkov, ki lahko pomagajo določiti in opredeliti takšne učinke:

1. Kako izgleda uspeh za ta projekt?
2. Kateri objektivni ukrepi tega uspeha so na voljo?
3. Kateri izmed teh ukrepov so povezani z obstoječimi viri podatkov, ki jih je mogoče praktično uporabiti?
4. Ali bi to pomenilo smiselno oceno v smislu resničnega pozitivnega napredka v življenju ljudi?
5. Če ti podatki še ne obstajajo, ali bi lahko bili zajeti objektivno in brez znatnih dodatnih sredstev? (Social Finance Ltd, 2015: 12).

Druge organizacije so razvile tudi matriko učinkov (outcome matrix), ki vključuje različna področja družbenega interesa. Metriko učinka, ki sta jo razvili ustanova Big Society Capital ali organizacija New Philanthropy Capital (Social Finance Ltd, 2015: 13), lahko, na primer, uporabite kot delovno pomoč.

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*Merjenje učinka običajno nastopi zelo zgodaj v projektu; da bi razumeli, kaj izboljšanje pomeni za ciljno skupino in kako ga lahko izmerimo. Katere kazalnike moramo upoštevati? In kako ustrezno vzpostaviti intervencijo? Ali se lahko tej intervenciji pripiše učinek/vpliv? Stephanie Petrick*

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Izbran časovni okvir, v katerem se merijo učinki, mora biti dovolj velik za ustvarjanje trajnostnih učinkov. Časovni okvir prav tako določa in vpliva na plačila

učinkov. Finančno načrtovanje vlagateljev in izvajalcev je zelo odvisno od tega, kako drago bo »za vlagatelje ali izvajalce, ki vlagajo v tvegani kapital« (Social Finance Ltd, 2015: 16). Vlagatelji običajno pričakujejo plačilo v približno treh letih med začetkom intervencije in dokončanjem merjenja učinkov. Krajši časovni okvir pomeni, da bodo vlagatelji prej prejeli donos svojih naložb in bodo lahko hitreje financirali nove projekte, s čimer bodo ustvarili več družbenega učinka.

Druga vprašanja, o katerih je treba razpravljati in za katere je treba najti odgovore za posamezne ODU, vključujejo časovni okvir, usklajene spodbude in neprimerne spodbude (Social Finance Ltd, 2015: 16–20).

*Usklajene spodbude* lahko razumemo kot premisleke o tem, kako uokviriti uspeh. Učinki se lahko merijo po binarni ali frekvenčni metodi. Merjenje z binarno metodo pomeni, da se bo na primer izmerilo število NEET, ki so se udeležili usposabljanj glede prijavljanja za zaposlitev in se nato s pomočjo podpore zaposlili. Gre za bolj absolutno razlago. Frekvenčna metoda pomeni, da se meri število pisnih vlog. Vsak učinek mora uokviriti uspeh in določiti, kako ga je mogoče najbolje izmeriti s frekvenčno ali binarno metodo.

*Neprimerne spodbude* se pojavijo, »ko poplačila učinkov [...] spodbudijo ukrep, ki škodljivo vpliva na družbene učinke« (Social Finance Ltd, 2015: 16). Z dobro pogodbeno zasnovo in pomembnimi izbranimi in opredeljenimi učinki se je mogoče izogniti dvema izmed glavnih neprimernih spodbud. Ena od glavnih neprimernih spodbud je *izbiranje najboljšega* (*»cherry picking«*), kjer izvajalec storitev izbere tiste člane ciljne skupine, ki so za intervencijo lažje dosegljivi kot drugi. Gre za poskus maksimiranja poplačil učinkov v škodo tistih NEET, ki jih je težje doseči. Po drugi strani je tudi *parkiranje* neprimerna spodbuda, pri čemer izvajalec storitev ignorira skupine, ki jim je težje pomagati, in jih izključi iz storitve, saj je z njimi težje zaslužiti plačilo po učinku.

Tveganja in spodbude se bodo pojavili v vseh ODU. Toda tveganje bi se lahko zmanjšalo s »plačilom izvajalcem za zagotavljanje dejavnosti in z vlagatelji, ki prevzamejo tveganje za doseganje učinkov« (Social Finance Ltd, 2015: 16).

## **2. Določitev izhodišča ali hipotetičnega scenarija (ali obratnega scenarija)**

Določitev izhodišča se običajno izvede s posebno raziskavo. Vtis o stanju ciljne skupine je treba s



takšno raziskavo narediti pred podpisom pogodbe in izvajanjem intervencije. Izvesti jo je treba čim prej. Oblikovanje izhodiščne raziskave bi moralo temeljiti na zasnovi vrednotenja za pridobitev vrednosti in rezultatov, ki jih je mogoče kasneje primerjati. Če v ODU obstaja dodatni ocenjevalec (evalvator), bi moral opraviti tako izhodiščno raziskavo kot evalvacijo, če je to mogoče.

V nekaterih primerih ni mogoče določiti izhodišča. V tem primeru so lahko na voljo drugi nizi podatkov, ki omogočajo primerjavo s ciljno skupino na enak način, kot bi to storila izhodiščna raziskava. Druga možnost: če obravnavane in primerjalne skupine sestavlja skoraj enaka populacija, je lahko veljavna ena sama ocena.

*Za določitev hipotetičnega scenarija se pogosto uporabljajo tri metodologije: kontrolna preskušanja (najbolje naključna), podatki o preteklih izhodiščih ali tarife učinkov.*

Stephanie Petrick

Hipotetični scenariji določajo vse rezultate in učinke, ki bi se pojavili, če ne bi bilo posredovanja (intervencije). Raziskava hipotetičnih scenarijev je potrebna za primerjavo dejanskih rezultatov in učinkov s tistimi, do katerih bi prišlo brez intervencije. Tveganje, ki se ustvari s tem, ko teh ugotovitev nimamo, se zato imenuje »hipotetično tveganje«. Učinki so lahko precenjeni ali podcenjeni, če ni ugotovitev o učinkih ali rezultatih za primer, če storitev ni zagotovljena.

Nekateri dejavniki, ki vplivajo na hipotetično tveganje, so pojasnjeni v nadaljevanju (Social Finance Ltd, 2016: 13): Razpoložljivost preteklih podatkov znotraj nizkega ali v nekaterih primerih nobenega izhodišča bo vplivala in povečala hipotetično tveganje. Odvisnost učinkov od zunanjih dogodkov vpliva tudi na to tveganje, vendar je to mogoče upravljati s tesnimi povezavami z zagotavljanjem storitev. Moč dokazne baze za ciljno skupino pomeni, da morda ni povezave med intervencijami za podobno skupino, kar prav tako vpliva na hipotetično tveganje. Obsežno zagotavljanje storitev in preverljivi učinki lahko zmanjšajo to tveganje. V kombinaciji s kratkim trajanjem ODU, kot je eno ali dve leti, je kontekst stabilen.

V primeru velikega hipotetičnega tveganja, na primer z nepreverjeno intervencijo ODU za mlade nekdanje obsojence, je naložba v merjenje ocene učinka korak, ki financirjem učinkov zagotavlja, da ne plačujejo za rezultate, ki bi se pojavili tudi sicer (brez intervencije oz. posredovanja). Poleg tega se vlagateljem ni treba bati

nizkih povračil za učinke, ki jih je bilo »težje doseči, kot je bilo pričakovati« (Social Finance Ltd, 2016: 16). Če se zdi, da je hipotetično tveganje zelo nizko, na primer z dobro preizkušenim usposabljanjem glede prijavljanja za zaposlitev, dodatni stroški za merjenje učinkov morda niso prava izbira.

### 3. Vrednotenje učinkov

Za oceno rezultatov ODU se pogosto uporabljajo povprečni prihranki stroškov v javnem sektorju. Ti prihranki pri stroških so združeni z družbeno vrednostjo, ki bi jo plačal naročnik storitev. To je posledica izboljšanja učinkov. Vendar je treba pri ocenjevanju rezultatov opozoriti, da je ta vrednost, ki se uporablja za določitev potencialnih donosov, tudi tesno povezana s prihranki stroškov vlade (Social Finance Ltd, 2011b: 7–8). Vrednost učinka je v najenostavnejši obliki opredeljena kot prihranki v vladnih proračunih.

### 4. Merjenje in pripisovanje vpliva/učinka

Namen metrike učinka je pokazati, koliko vpliva/učinka je bilo doseženega z intervencijo. To natančneje pomeni, da je treba določiti neto učinek. Tako imenovano »dodatnost«, manj dejavnikov za to, kar bi se lahko zgodilo, če posredovanje ni bilo zagotovljeno in izvedeno, je treba izračunati na tej stopnji merjenja učinka.

Za določitev neto učinka je treba od celotnega učinka odšteti nekaj postavk. **Mrtva izguba** je ena najbolj znanih postavk. To pomeni učinke, ki bi bili doseženi tudi brez posredovanja (intervencije). To je kot »osnovni test« (Social Finance Ltd, 2015: 16), ali bi se učinek, kot rezultat intervencije, zgodil v vsakem primeru.

**Uhajanje** pomeni, da obstajajo učinki in spremembe, do katerih je prišlo v skupini in za katere ni bilo predvideno, da bi se z intervencijo dosegli. **Premik** je učinek, ki ga povzročijo druge osebe ali organizacije, npr. če brezposelna oseba dobi službo, s čimer drugim brezposelnim osebam odvzame priložnost (Schober and Then, 2015: 50). Premik je vključen v izračun le, če ima ustrezno visok vpliv. **Pripisovanje** se razume kot »pripisovanje učinkov zadevnemu projektu« (Schober and Then, 2015: 50). Natančneje, izključuje učinke drugih projektov ali organizacij. Zmanjšanje učinkov, zlasti za dolgoročneje projekte, je všteto v **upad** in je ustrezno odšteto od »končnega učinka« ali vpliva.

Obstajajo različni modeli in strategije za vrednotenje in merjenje učinkov. Različni dejavniki, kot so stroški, pragmatizem in kakovost, vplivajo na odločitev o tem, kateri sistem merjenja bo uporabljen. Na žalost

je najdražja tista metoda, ki je najbolj premišljena in robustna. Večina ODU v ZDA uporablja **naključna kontrolna preskušanja**, ker imajo visoko finančno vrednost (Social Finance Ltd, 2015: 16). Intervencijska in kontrolna skupina se naključno oblikujeta iz udeležencev in različnih učinkov in rezultatov, ki jih je treba primerjati. To se lahko zgodi le, če je intervencija zasnovana tako, da doseže ciljno skupino naključno. Naključna kontrolna preskušanja so zelo robustna in ponujajo močne kontrolne mehanizme za dejavnike, kot so mrtve izgube itd. Ravno tako robustni so **hkratni kontrolni preskusi**. Tukaj se udeleženci primerjajo zaradi statističnih značilnosti s kontrolno skupino, ki intervencije ne prejme. Vendar je ta metoda tako draga in zamudna kot druga kontrolna preskušanja.

**Analiza preteklih izhodišč** pomeni primerjavo učinkov dejanske intervencije s preteklimi, »prejšnjimi, enakimi ali podobnimi kohortami« (Social Finance Ltd, 2015: 16). Ta model je možen le, če obstajajo ciljne skupine, ki jih je mogoče opazovati v podobnem časovnem okviru. Če se za merjenje uspeha ODU z majhno velikostjo pogodb uporabljajo pretekla izhodišča, so lahko stroški zelo visoki. Po drugi strani pa je to dobra možnost za merjenje, če naključna ali hkratna kontrolna preskušanja niso izvedljiva iz etičnih razlogov.

Druga možnost za merjenje učinka ODU je vzpostavitev **tarifnega modela učinkov**. Pričakovani stroški, če intervencija ne bi bila izvedena, se uporabljajo za pridobitev standardiziranih meril. V okviru teh meril je oblikovan in uporabljen tarifni model za merjenje učinkov. Za primerjavo rezultatov s skupino, ki ni del intervencije, ni postopka. Delo s tarifnim modelom učinkov je preprost način za upravljanje in strukturiranje merjenja učinkov in celotne ODU. Vendar pa je tveganje mrtvih izgub ali neprimernih spodbud pri merjenju s tarifami večje.

## 5. Vrednotenje učinka

PHINEO uporablja tri besedne zveze za opis cikla upravljanja učinkov neprofitne organizacije v svoji publikaciji »Navigator družbenih učinkov« (angl. Social Impact Navigator) (Kurz and Kubek, 2016): 1.) načrtovanje rezultatov, 2.) analiza rezultatov in 3.) izboljšanje rezultatov. V zvezi z izboljšanjem rezultatov Phineo gAG predlaga, da se v organizaciji redno izvaja proces neprekinjenega učenja ter redno poroča o rezultatih, učinkih in pričakovanem vplivu.

Za poročanje in vrednotenje družbenih učinkov sta posebej razvita dva tipa modelov: socialna donosnost

naložb (SROI) in standard socialnega poročanja (SRS). Podrobneje bosta razložena v nadaljevanju:

Po Then in Schober 2015, se **SROI** uporablja za oblikovanje modela vpliva z vzročnimi odnosi za določen projekt ali organizacijo. »To je mešan pristop pri ocenjevanju družbenih, gospodarskih in okoljskih vplivov intervencij.« (Maier et al., 2015). Model vpliva SROI služi za merjenje finančne in socialne dodane vrednosti organizacije. Analiza SROI se lahko uporablja kot orodje za upravljanje, primerljivo z uravnoteženimi kazalniki, ali kot metoda ocenjevanja projektov in celotnih podjetij.

Metodologijo je razvil Robert Enterprise Development Fund (REDF) v San Franciscu in je bila prvič uporabljena leta 1996 za izračun socialne dodane vrednosti intervencij za vključevanje brezposelnih oseb na delo (Sprinkart, 2015: 93).

Za opredelitev vrednosti in posameznih učinkov na strani deležnikov, vključenih v projekt, se v SROI in modelu vpliva upoštevajo tri različne stopnje analize, s katerimi se opredelijo učinki projekta z uporabo metode SROI in se, kjer je mogoče, pretvorijo v denarne enote:

Prva stopnja je *ekonomska vrednost*, ki v glavnem prevzema poslovni izid v smislu bilance stanja, izkaza poslovnega izida ali splošnih finančnih naložb. *Ekonomska vrednost* nastane, ko »obstaja finančni donos za naložbo«. Druga stopnja zagotavlja pogled na *družbene vrednosti* projekta ali organizacije. To pomeni »vsi nedenarni izmerljivi dodatni prihodki« (Sprinkart, 2015: 93). Navedeni so npr. izboljšana kakovost življenja ali izboljšano zdravstveno stanje. Z drugimi besedami, to vključuje dejavnosti in vire, ki prinašajo izboljšave za posebne ciljne skupine ali družbo.

Zadnja stopnja, ki se upošteva, je *socialno-ekonomska vrednost*. Na ta način se monetarno izračunljivi zaslužek zabeleži zunaj ključnih poslovnih podatkov. To je nekakšna vmesna raven, ki se giblje med socialnimi in ekonomskimi vrednotami in učinki.

**SRS** je standard poročanja, ki omogoča enako preglednost tako zunanjim kot notranjim deležnikom. Pomaga spodbujati usmerjenost k učinkom znotraj organizacije in izboljšati programe in procese. SRS je razvil konzorcij organizacij, ki so dejavne pri financiranju nepridobitnih organizacij in socialnih podjetij v Nemčiji (vključno s Phineo gAG). SRS ne vključuje monetizacije socialne vrednosti (tj. učinkov in vplivov).

### 3.1.4. Gradnja poslovnega primera

V zvezi z razvojem poslovnega primera (angl. *Business Case*) se pogosto omenja t. i. model petih primerov (angl. *five-case model*). To vključuje pet razsežnosti, ki so potrebne za funkcionalni poslovni primer: strateški primer, ekonomski primer, trgovski primer, finančni primer in primer upravljanja so zato podrobneje pojasnjeni spodaj (na podlagi HM Treasury, 2018: 7–10). Ta model se lahko uporablja za projekte, politike, strategije, programe itd. in tudi za obveznice z družbenim učinkom (ODU).

Cilj **strateškega primera** kot razsežnosti poslovnega primera je pojasniti, kako so spremembe strateško primerne. Za spodbujanje in oblikovanje sprememb je potrebna sodobna organizacijska poslovna strategija, ki upošteva vse politike in cilje ter zagotavlja osnovo za cilje in gonilne sile predlagane porabe. V najboljšem primeru so te utemeljitve oblikovane v skladu z načelom SMART (specifični, merljivi, dosegljivi, ustrezni in časovno omejeni). Izziv pri tem je pojasniti, zakaj so dodatni izdatki potrebni za doseganje pomembnih vložkov, rezultatov in končno tudi učinkov za, na primer, vlagatelje, ponudnike storitev in ciljno skupino. V strateškem smislu se ODU ukvarjajo z razpravo o vzrokih, motivih in razlogih za uporabo opredmetenega in neopredmetenega kapitala za različne deležnike.

**Ekonomski primer** kot dimenzija poslovnega primera vključuje tri vrednote, ki na prvi pogled niso nujno ekonomske. Poleg ekonomskih učinkov intervencije bi morala ekonomska razsežnost upoštevati tudi socialna in ekološka vprašanja, ki vplivajo na družbo. Pri tem ima ključno vlogo merjenje in opredeljevanje uspeha programa ali projekta. Določene so minimalne zahteve, uporablja pa se analiza stroškov in koristi ali podobno orodje za določitev najboljše možne vrednosti intervencije za podjetje ali, v primeru ODU, za NEET in ciljno skupino. Pri obravnavanju specifičnih potreb ciljne skupine – v primeru ODU gre večinoma za NEET – je pomembno opredeliti naravo družbene težave, kako vpliva na ljudi v vsakdanjem življenju, ovire pri ustvarjanju boljših rešitev in na koncu izbrati najprimernejšo ciljno skupino (Social Finance Ltd, 2011a: 7). Najprej je treba izbrati prave možnosti za obseg, rešitev, izvajanje in financiranje. V nasprotnem primeru možnosti ne bodo zagotovile optimalne vrednosti za denar, kar bo upravičilo višje stroške v smislu koristi in tveganj ter jih ovrednotilo.

**Trgovski primer** se nanaša na dokaz dobro strukturiranega dogovora med javnim sektorjem in

ponudniki storitev. To zahteva dobro razumevanje trga in storitev, ki jih mora zagotavljati ponudnik storitev, ter morebitna tveganja, ki izhajajo iz mehanizmov javnih in zasebnih plačil. V trgovski razsežnosti je še posebej zahtevno ravnati pametno in v prihodnost usmerjeno, v smislu možnih sprememb za poslovne, organizacijske ali operativne zahteve med pogodbeno fazo.

**Finančni primer** se nanaša na cenovno dostopno financiranje možnosti in intervencij, ki vključujejo deležnike. V programskem obdobju je treba čim bolj preprečiti vrzeli v financiranju in jih preventivno določiti. Ker ODU pogosto financirajo več ponudnikov storitev, se v finančni razsežnosti ne smejo zanemariti intervencijski stroški. Tukaj so vključeni skupni stroški za izvedbo programa, infrastrukturo in režijske stroške in jih morajo zbrati vlagatelji preko ODU. Zato je pomembno v zelo zgodnji fazi vzpostaviti finančni model, ki bo odražal ekonomske vidike ODU. Upoštevati je treba tri dejavnike: zgoraj navedene skupne stroške intervencije, vrednosti rezultatov in časovni raspored odplačil naložb (Social Finance Ltd, 2011a: 9).

S **primerom upravljanja** poslovni primer zagotavlja tako izvajanje kot vrednotenje strateškega dela organizacije, programa ali projekta. Za doseganje pričakovanih rezultatov sta potrebna obvladovanje tveganja in vzpostavitev načrtov ukrepov ob nepredvidljivih dogodkih.

Predstavili smo razsežnosti, ki bi morale biti vključene v poslovni primer, zdaj pa bomo pregledali tudi proces oblikovanja poslovnega primera. Obstajajo nekatere ključne dejavnosti, ki so opredeljene v treh korakih (HM Treasury, 2018: 11–18). Še pred razdelitvijo ključnih dejavnosti v tri faze je potrebna strateška razsežnost poslovnega primera, da se zagotovi kontekst in ocena v fazi strateškega načrtovanja. Ta faza ustreza točki 0 in določa strateški kontekst, tj. potrditev, da je projekt ODU strateško usklajen.

Temu sledi prva faza: določitev obsega sheme in priprava strateškega okvirnega primera (SOC). Zagotavlja ponovno potrditev strateškega konteksta. To se izvede v dveh korakih: ustvarjanje primera za spremembo in raziskovanje prednostne metode. Po zaključku faze SOC bodo vodstvo in deležniki razumeli robustnost intervencije in njeno prihodnjo usmeritev.

Druga faza je osredotočena na načrtovanje sistema in pripravo okvirnega poslovnega primera (OBC). To je konkretna faza načrtovanja, v kateri se spet razpravlja o ugotovitvah SOC za podrobno oceno, tj. vrednost za

denar se določi v četrtem koraku. Potem se pripravi potencialna pogodba (peti korak), v šestem koraku pa se določijo zahteve glede dostopnosti ali financiranja. Načrtovanje za uspešno izvedbo zaključuje to drugo fazo, kar omogoča deležnikom, da se dogovorijo o upravljavski razsežnosti v fazi javnega naročanja. Tretja in zadnja faza razvoja poslovnega primera je nabava rešitve in priprava polnega poslovnega primera (FBC). Faza javnega naročanja, kot je obravnavana v prejšnjem poglavju, sledi pogajanjem s potencialnimi ponudniki storitev (pridobitev rešitve za vrednost za denar kot 8. korak), preden postane polni poslovni primer s podpisom pogodbe: to je 9. korak. Dogovori o upravljanju, izvedbi, spremljanju in vrednotenju projekta ali ODU so opravljeni v zadnjem in 10. koraku, načrtovanju za uspešno izvedbo.

Na tej točki je razvoj poslovnega primera zaključen, saj je bil razvit na podlagi modela petih primerov. Tudi ko je razvit, poslovni primer ostaja pomemben za ODU. Služil naj bi kot vodilo za spremembe, ki jih zahteva organ za naročila ali ponudnik storitev. Poleg tega mora podpirati nadaljnje ukrepanje in vrednotenje intervencij in projektov ter nuditi možnost dostopa do njih v teh primerih.

### 3.1.5. Izračun in oblikovanje programa

Kot je bilo omenjeno v uvodu tega poglavja, raznolikost ponudnikov storitev in pogodb povzroča tveganje, da bi pozabili na celotne stroške izvajanja programa, vključno s stroški transakcij, infrastrukturo in režijskimi stroški. Dobro razumevanje tega je bistvenega pomena za ODU. Oblikovanje okvirnega proračuna za opravljene storitve tako določa znesek financiranja, ki ga morajo vložiti vlagatelji. Operativni načrt ODU pomaga pri izvajanju priporočil za natančen poslovni načrt v skladu z načelom stroškovne učinkovitosti. Operativni načrt mora vključevati tudi predpostavke o obremenitvah. To pomeni natančno oceno števila uporabnikov storitve, ki jo ponuja in zagotavlja ODU. Iz tega lahko izdelamo podroben operativni načrt. Za oceno števila uporabnikov se dejanski rezultati (izhodišča) zbirajo pred začetkom opravljanja storitev. Ti vključujejo stroške vzpostavitve pred opravljanjem storitve, kot tudi končno obdobje merjenja med koncem zagotavljanja storitev in merjenje končnih rezultatov. Pri pripravi operativnega načrta je treba opozoriti na naslednje točke: Če se izhodiščna meritev za potencialne uporabnike intervencije začne pred izvajanjem in se nadaljuje v intervencijskem obdobju,

bodo nastali dodatni stroški merjenja. Prav tako je bistveno, da se storitev, ki jo financira ODU, dobro ujema z obstoječimi lokalnimi storitvami. Poleg tega operativni načrt zagotavlja, da je pot prenosa za storitve, ki jih financira ODU, dogovorjena in urejena z javnim organom naročnikom ali posrednikom (Social Finance Ltd, 2011a: 21–24).

Oblikovanje programa vključuje tudi ponudnike socialnih storitev. Pri izbiri ponudnika storitev, kot je opisano v poglavju 3.1.2., vlagatelji sodelujejo v izbirnem postopku, da svoja potencialna tveganja in upravljanje prevzamejo v svoje roke. Ta pregled bo zahteval tako rezultate kot dokazilo o merljivi uspešnosti in predvideni intervenciji za ciljno skupino, kot tudi zmogljivost izvajanja, vključno z obsegom storitev, ki jih je treba opraviti, in lokalnimi odnosi na področju storitev ODU. Nazadnje nastopi pregled cenovne dostopnosti, ki obravnava tudi bilanco stanja izvajalske organizacije. Na ta način je treba, kolikor je to mogoče, zagotoviti, da se izvajajo tudi pogodbeno dogovorjene storitve in da je ponudnik storitev pravilen za to ODU. Zato je treba pred razporeditvijo proračuna izvesti primerjalno analizo ponudnika storitev, da bi zagotovili stroškovno učinkovitost.

Upravljanje uspešnosti se nanaša na delo s ponudniki storitev in njihovo imenovanje. Posledično lahko organizacije, ki zagotavljajo intervencijo, dobijo informacije od upravljalne ravni, npr. podprte s strani velikih družb za socialna vlaganja, ki spodbujajo učenje znotraj podjetja in s tem nadzorovanje in podporo splošnega izvajanja dogovorjene intervencije. Poleg tega je tako mogoče družbene učinke bolje razumeti, jih spremljati in o njih poročati, da bi iz njih izpeljali spremembe in izboljšave. Skratka, zaupanje vlagateljev se poveča z dobrim upravljanjem uspešnosti, ki ga je treba opredeliti v zasnovi programa. Čeprav upravljavec uspešnosti običajno ni vključen v vsakodnevno poslovanje in razvoj ODU, je še vedno vir, ki partnerju za zagotavljanje storitev svetuje pri upravljanju deležnikov ter zagotavlja prepoznavnost in zagotavljanje storitev na terenu. Upravljavec uspešnosti deluje kot reševalec težav in kontaktna točka za vlagatelje in ponudnike storitev. Tudi tam, kjer je samo en ponudnik storitev, kot v nekaterih neposrednih ODU, je lahko delo upravljavca uspešnosti sicer manj intenzivno, vendar je še vedno nepogrešljivo za doseganje dobrih družbenih učinkov in ohranjanje ODU na načrtani poti.

Izračun temelji na podrobnem finančnem modelu, ki obravnava ekonomske vidike ODU. Vključuje intervencijske stroške in režijske stroške kot naložbeno



zahtevo za ODU, kot tudi prihranke pri stroških in vrednosti učinkov, ki vključujejo uspeh in posledični donos od ODU za vlagatelje. Končno je tu še časovno obdobje za realizacijo in plačilo teh donosov finančnemu modelu. Z matematičnega vidika je finančni model ODU uspešen, če so intervencijski stroški z režijskimi stroški in fiksnimi stroški na splošno nižji od prihrankov v javnem sektorju, vrednosti učinka. Časovno obdobje odplačevanja je zelo odločilno (glej poglavje 3.1.4.).

Izračun in določitev plačilnega mehanizma sta prav tako del izračuna ODU. Tukaj pride v poštev element merjenja učinka iz poglavja 3.1.3. Mehanizem plačil bi moral podrobno opisati, kako izgleda in se meri uspešnost intervencije. Poleg tega je za vsak delni uspeh določena tarifa, določena pa sta tudi čas in znesek poplačil vlagateljem. Zato so potrebni rezultati za merjenje zelenega in pričakovanega uspeha. Natančneje, delamo z metrikami učinka, ki so opredeljene v poglavju za merjenje učinka, in metodo, ki je podrobno izmerjena na tem področju. Znesek plačil je potem odvisen od izmerjenega, pričakovanega uspeha (uspešnosti). Javni organi naročniki so dolžni plačati ta dobiček. Tarife se zato uporabljajo za določitev ravni plačila, npr. v primeru prihranka stroškov za državo se vrednost prihrankov enakomerno razdeli med vlagatelje in naročnike. Ta delež bi morali določiti obe stranki pri določanju tarif za delitev dobička in s tem plačilnega mehanizma. Čas plačila je močno odvisen od metode merjenja. Če so rezultati odvisni samo od uspešnosti posameznika, se lahko rezultati pridobijo v rednih časovnih presledkih s programom in je mogoče hitro plačilo. Če pa je plačilo odvisno od uspešnosti kohorte kot v prvi ODU, obveznici z družbenim učinkom Peterborough, se lahko merjenje rezultatov izvede šele po prekinitvi intervencije. Seveda vlagatelji želijo, da se njihov denar čim prej vrne. Najboljše časovno obdobje je treba preučiti za vsak primer posebej, vendar se priporoča časovno obdobje približno petih let. Zato je potreben dobro določen časovni razpored med intervencijo, merjenjem učinkov in izplačilom donosov (Social Finance Ltd, 2011b: 9). V tem primeru mora vlagatelj na svoje plačilo čakati dlje.

Postopek zbiranja naložb se lahko začne takoj, ko je na voljo finančni model, vključno z operativnim načrtom. Temu običajno sledijo razprave z vlagatelji o zagotavljanju zavez, kar pomeni zagotavljanje naložb ne glede na končni rezultat. Investitorji bi morali resnično razviti »apetit«, da bi podprli cilje ODU (Social Finance Ltd, 2011a: 23). Ta postopek se bo zaključil pred podpisom pogodbe in bo vseboval seznam, ki bo povzel glavne elemente pogodbe. Namen procesa je

zagotoviti novo storitev v skladu s ciljem ODU, ki se plačuje z denarjem družbenih investitorjev in s tem bistveno izboljša rezultate uporabnikov storitve. Zato ODU, s svojimi številnimi deležniki in prekrivajočimi se strukturami, predstavlja veliko tveganje za vlagatelja. To je zato, ker bi lahko vlagatelj izgubil ves svoj vložen denar, če so rezultati neustrezni ali ne obstajajo. Družbeni vlagatelji se soočajo s tem tveganjem samo zato, ker to izrecno želijo in želijo podpirati učinkovitejše ukrepe. Tako hitro postanejo bolj vključeni v celoten proces in so vključeni v to, ali lahko intervencija pozitivno vpliva na uporabnike. V idealnem primeru bi morala vključevanje prevzeti stranka, ki nadzoruje postopek zbiranja naložb. Tako npr. podpisanim okvirnem poslovnem primeru naročniki zabeležijo to vključenost vlagateljev. Vsebinsko je torej lahko zanimanje za določeno družbeno področje in metodologijo merjenja uspeha. Praviloma mora usklajevalno stran urediti državni organ za finančne storitve.

### 3.1.6. Ravnanje z naročili

Obravnava postopka javnega naročanja pri plačevanju na podlagi učinkov lahko povzroči nekatere izzive. Kot je na srečanju TAB v Münchnu junija 2018 povedal Julian Blake, je pogled na vidik naročil povezan s pogodbo in z vlaganjem v učinke. Številne različne stranke z različnimi interesi morajo sodelovati na podlagi pogodbe in z namenom ustvarjanja rezultatov, da bi dobile vrnjene naložbe. Blake nas opozarja tudi, da so javna naročila prepogosto postala postopek, kjer je preveč ljudi preveč osredotočenih na proces. Uradniki javnih organov lahko na primer gledajo na sam proces, medtem pa pozabijo, kaj naj bi se uresničilo. Z drugimi besedami, zaradi osredotočenosti na proces pozabljajo, da je celoten namen javnih naročil doseči najboljšo vrednost v javnih storitvah.

Med postopkom javnega naročanja se lahko pojavijo nekateri izzivi. Zato morajo naročniki in ponudniki storitev sodelovati v skupnem partnerstvu še tesneje kot v drugih pogodbenih oblikah. Skupaj morajo razpravljati in razvijati ideje za oblikovanje modela storitve. Ta način dela je pogosto nenavaden za javne organe naročnike in ponudnike storitev, zlasti med postopkom javnega naročanja. Na primer, naročnik ni več edini, ki gleda na izid, saj tudi večja socialna podjetja, ki so vključena v ODU, želijo ustvariti dobiček. Obstaja tudi nekakšen tržni premik, ko govorimo o javnih naročilih. Socialne storitve in organizacije ne potrebujejo izrecno strogih pogodb; saj lahko

»zagotovijo stopnjo zaupanja in relacijskega opravljanja pogodbenega dela« (Government Outcomes Lab, 2018a: 5). Dostop do istih informacij med postopkom javnega naročanja je ena najzahtevnejših faz v celotnem procesu. Naročnik mora zagotoviti, da ponuja informacije vsem dobaviteljem, ne samo tistim, ki so bili udeleženi od začetka. Predhodno informativno obvestilo in druge rešitve bodo razložene v naslednjem razdelku.

ODU se pogosto razvija z več kot dvema različnima strankama, kot so vlagatelji, ponudniki ali oboji skupaj. Ponudnikom storitev je lahko težko, če se razvija model ODU, kjer lahko na koncu izgubijo v izbirnem postopku. Da bi se izognili propadu celotne ODU zaradi razočaranega ponudnika, se lahko pripravijo rešitve pri oblikovanju postopka javnega naročanja. V nekaterih primerih ima ponudnik vodilno vlogo pri razvoju ODU. Smiselno je, da ponudnik meni, da je tisti, ki sodeluje pri vseh odločitvah. Vendar ko pride do posvetovanja z javnim organom naročnikom, je organ tisti, ki sprejme končne odločitve o tem, kako poteka javno naročanje.

Med postopkom javnega naročanja je izziv, kako doseči resnično konkurenco. ODU je precej novo orodje, kjer lahko v večini primerov le malo ponudnikov izvaja pravo storitev za doseganje inovativne rešitve. Zato odprti razpisni postopek ne bo prejel veliko ponudb. Drugi glavni načini javnega naročanja, ki lahko rešijo to težavo, bodo razloženi na naslednjih straneh.

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»Ne razmišljajte o standardu, pomislite na model.«  
Julian Blake

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V nadaljevanju bomo izpostavili tudi nekatere spremembe pri javnih naročilih, ki jih je treba upoštevati v skladu z EU uredbo o javnih naročilih 2015. Prav tako ponazarjamo nekatere priložnosti različnih postopkov in poti javnega naročanja. To so predlogi in v vsakem primeru se mora posamezno odločati o tem, kateri je najboljši pristop za javno naročanje ODU. Na sestanku TAB je Blake izjavil, da smo se premaknili iz obdobja, ko so bila pravila obravnavana kot ovire zaradi nerazumevanja in napačne razlage, in tako vedno bolj prepoznavamo namensko in permisivno naravo pravil. Pomembno je, da ne pozabimo na nove prožnosti pri javnih naročilih in »ne razmišljamo o standardu, ampak o modelu«.

### Uredba o javnih naročilih 2015

Direktive o javnem naročanju v javnem sektorju EU so bile izvedene v okviru uredb EU o javnih naročilih leta

2015. Evropska zakonodaja si prizadeva doseči visoko kakovost s konkurenco in dobaviteljem omogočiti enak dostop do priložnosti. Poudarek ni bil vedno na služenju javnim interesom. Novi predpisi vsebujejo več prožnosti v smislu predpisov o javnih naročilih, tako da lahko naročniki zdaj opravljajo naročila hitreje in se lahko bolj usmerijo k iskanju dobaviteljev, ki so najbolj primerni za cilj naročenega projekta.

Obstaja nekaj ključnih sprememb, ki bodo razložene v naslednjih odstavkih.

MSP lahko bolje sodelujejo, ker imajo organi podporo pri manjšem številu naročil in omejitvah glede pragov prometa. Izбира dobavitelja je enostavnejša, kjer se bolj uporabljajo samostojne izjave dobaviteljev in ponujenih je več možnosti dostopa. Novo prožnost v novih uredbah EU je mogoče opaziti tudi pri spremembi celotnega postopka in posvetovalnih poti. Začasna tržna posvetovanja med naročniki ali organi in dobavitelji so možna in bi morala ustvariti boljše specifikacije za dosego cilja projekta. Roki so se prav tako spremenili. Minimalni rok za odzivanje na oglaševana javna naročila se je zmanjšal za približno 30 %.

Ena od najpomembnejših novosti je **manj obvezujoča ureditev** (angl. *Light Touch Regime*). To pomeni, da lahko javni organi naročniki in organi načrtujejo postopek javnega naročanja, kot ga potrebujejo. Biti mora le v skladu z načeli Pogodbe EU (Villeneuve-Smith and Blake, 2016: 9). Pet načel je bistvenega pomena za vodenje postopka javnega naročanja:

Potekati mora *brez diskriminacije* na podlagi državljanstva. Načelo enakega obravnavanja pomeni enake možnosti dostopa za vse dobavitelje. Vsi morajo imeti enake informacije za oddajo ponudb. Načelo *preglednosti* določa, da mora biti postopek javnega naročanja predvidljiv in odprt. Dokumenti o sklepanju pogodb in javnih naročilih morajo biti jasni in vsebovati vse sporazume v skladu s predlaganim naročilom. Vse dokumente drugih narodov je treba sprejeti in *vzajemno priznati*. Zahteva glede usposobljenosti v zvezi s ciljem projekta ali ciljno skupino pogodbe mora biti upravičena in primerna za naročeno storitev ali delo. To je načelo *sorazmernosti*.

### Poti javnega naročanja

Celoten postopek javnega naročanja je mogoče razdeliti na štiri glavne postopke javnih naročil: **odprti postopek** pomeni, da naročnik ponudnikom ponuja možnost, da se neposredno odzovejo na naročilo pogodbe kot

odgovor na obvestilo o naročilu. Izbrani ponudnik storitev je izbran neposredno. Pomanjkljivost odprtih postopkov javnih naročil je v tem, da ni možnosti za predkvalifikacijski postopek ali kakršna koli pogajanja. Prav tako je pomembno vedeti, da je »zahteva lahko v celoti določena vnaprej« (Social Finance Ltd, 2011a: 33). Zato se odprti postopek pogosto ne uporablja za nabavo obveznic z družbenim učinkom.

**Omejeni postopek** pomeni, da naročnik predhodno izbira ponudnike, ki se odzovejo na obvestilo o naročilu. V izbirnem postopku sodelujejo samo tisti, ki so predhodno izbrani (najmanj pet, če je na voljo pet). Omejeni postopek je dvostopenjski proces, ki vključuje ožji seznam in predložitev uradnega razpisa. Izbrani ponudnik je prav tako izbran neposredno. Ta vrsta postopka javnega naročanja je primerna za obveznice z družbenim učinkom.

Če je ODU bolj kompleksna, bi prava izbira za naročanje lahko bil **postopek konkurenčnega dialoga**. Po objavi obvestila o naročilu in izvedbi izbirnega postopka, kjer je treba izbrati najmanj tri ponudnike za dialog, bo naročnik obravnaval eno ali več rešitev, ki so prilagojene zahtevam projekta. Izbrani ponudniki so povabljeni k oddaji ponudb po konkurenčnem dialogu med seboj in organom.

Zadnja glavna pot javnega naročanja je **postopek s pogajanj**. Po objavi obvestila o naročilu se izvede izbirni postopek, kjer je treba izbrati tri ponudnike za pogajanja. Naročnik se zdaj pogaja o pogodbi in pogojih z enim ali več ponudniki. Ta postopek s pogajanj bi se moral uporabljati le, če drugi postopki ne delujejo, če konkurenca ni ustrezna ali kjer predhodna splošna določitev cen ni mogoča. V okviru uredb EU o javnih naročilih za leto 2015 lahko organi uporabljajo pospešen postopek s pogajanj. Uporaba tega lahko upraviči krajše časovne roke. Obstaja tudi »več možnosti za pogajanja po razpisu« (Government Outcomes Lab, 2017a: 7), zato lahko organi bolje optimizirajo končne razpise.

Ena od poti javnega naročanja, ki je tudi najnovejša, je partnerstvo za inovacije. »To je dobra priložnost za širjenje ODU in pogodb, ki temeljijo na rezultatih. Gre za postopek naročanja partnerja in ne ponudnika storitev. Predpostavka je, da je potreben partner za pomoč pri inovativnem oblikovanju, ne pa ponudnik storitev. Partner lahko nato nadaljuje z izvajanjem na novo oblikovane storitve v okviru iste pogodbe o partnerstvu za inovacije, za razumno pogodbeno obdobje, sorazmerno z naravo storitve in potrebo po

njeni ustanovitvi in razvoju.« (Vzeto iz zapisnika govora J. Blakea na 3. sodelovalnem kreativnem laboratoriju v Ljubljani, M. C. Pizzorno, 4. december 2017)<sup>1</sup>.

To je pogodba za skupno eksperimentiranje. Rezultat partnerstva za inovacije je model izvajanja, glede na trajanje izvajanja pa se bo določilo trajanje pogodbe ali, po besedah Juliana Blakea:

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*»To je postopek, ki javnemu organu omogoča, da sodeluje z inovacijskim partnerjem«.*

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Partnerstvo za inovacije se začne s postopkom izbire dobaviteljev, ki so se odzvali na oglas. Nato naročnik uporabi pogajalski pristop, da povabi dobavitelje, da razpravljajo in razvijajo ideje za inovativna dela v okviru partnerstva. V partnerstvu za inovacije lahko naročnik sklene partnerstvo z več kot enim dobaviteljem. S tem postopkom javnega naročanja partnerstvo za inovacije rešuje težavo »konkurenčne prednosti« in »intelektualne lastnine«, saj priznava naravo sodelovanja. Partnerstvo za inovacije zagotavlja proces za razvoj raziskav, daje smisel sodelovanju v postopku pred-naročanja, omogoča tržno sodelovanje za inovativne rešitve, je sredstvo za delitev tveganja inovacij, sredstvo za javni sektor, da dvigne standarde in vzpostavi sistem »vse na enem mestu« za oblikovanje in izvajanje. Ta proces torej pomeni nekatere spremembe, saj vlaganje v učinek postane isto kot vlaganje.

Če je ODU precej, vendar ne popolnoma zanesljiva, bi moral naročnik uporabiti **predhodno informativno obvestilo (PIN)**. Omogoča majhen prostor za potencialne dobavitelje, da izrazijo zanimanje in se odzovejo s predlogom v roku 10 dni. Tako obstaja za ponudnika omejena možnost brez predhodnega sodelovanja. PIN se uporablja tam, kjer je ponudnik v neprebojnem položaju, na primer z vodenjem razvoja ODU. PIN daje tovrstnim ponudnikom možnost ponudbe. Predhodno informativno obvestilo se pogosto uporablja v omejenem postopku javnega naročanja.

Obrnjen zaključek PIN-a je **Prostovoljno predhodno obvestilo (VEAT)**. Ta ne predvideva konkurence; namesto tega se uporablja, kadar ima naročnik jasne razloge, da verjame, da obstaja le en dobavitelj, ki bo izvedel razpisano storitev. V takem primeru lahko naročnik objavi VEAT. Podaja naknadno obvestilo o odločitvi o sklenitvi pogodbe s ponudnikom brez konkurence.



»VEAT je postopek v okviru javnega naročila za tržno testiranje, ali obstaja edinstven dobavitelj ali ne.«

Julian Blake

VEAT napoveduje, da naročnik namerava oddati naročilo, ne da bi predložil predpise EU o javnem naročanju, Uradni list Evropske unije. Z drugimi besedami, obvestilo predstavlja utemeljitev odločitve naročnika (Government Outcomes Lab, 2018c: 6).

Konkretni koraki vzpostavitve VEAT določajo obdobje mirovanja približno od 10 do 15 dni po oddaji naročila. V tem obdobju lahko organizacije »ugovarjajo in zahtevajo dostop do konkurence« (Government Outcomes Lab, 2018c: 6). Če se v tem času noben drug ponudnik storitev ne odzove na VEAT, se lahko postopek javnega naročanja nadaljuje s postopkom pogajanj. Odločitve ni mogoče izpodbijati izven obdobja mirovanja.

Če naročniki želijo sodelovati z drugimi naročniki, kot so drugi organi javnega sektorja, lahko uporabijo **dogovor o sodelovanju**. V tem primeru konkurenca ni potrebna, ampak je potrebna oblika dogovora s pogodbenimi obveznostmi obeh naročnikov. Ta vrsta postopka javnega naročanja je bila razvita za »Storitve za pomoč družinam pri boju z drogami in alkoholom« v Kentu. Dogovor o sodelovanju je bil ustanovljen med okrožnim svetom Kent Country Council, svetom Medway Council in fundacijo Tavistock and Portman NHS Foundation Trust. .

### 3.1.7. Sklepanje pogodb za ODU

Sklepanje pogodbe za ODU potrebuje natančno načrtovanje. Začelo se je s strukturiranjem in izbiro vrste pogodbe, ki se popolnoma ujema s predvideno ODU. Na sestanku TAB v juniju 2018 v Münchnu je projektna skupina iz AlpSIB povabila Jussija Nykänena

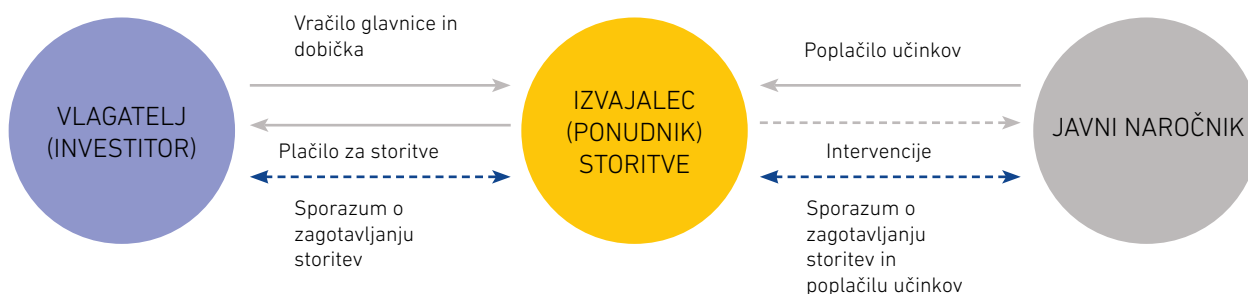
iz Finske, da predstavi svoje znanje o sklepanju pogodb za ODU in predstavi različne vrste pogodb. Dr. Jussi Nykänen je ustanovitveni partner podjetja Epique Ltd, prve družbe za upravljanje investicij v učinke v nordijskih državah.

V naslednjih razdelkih bodo pojasnjene različne vrste in možnosti sklepanja pogodb za ODU in ključni pogoji pogodb ODU.

#### Neposredne pogodbe

Neposredna pogodba je opredeljena kot pogodba o dobavi med ponudnikom storitev in financerjem rezultatov (učinkov). Ponudnik storitev dobi obratni kapital neposredno od vladnega naročnika ali organa, ki plačuje za učinke. Obratni kapital se pogosto plačuje kot posojilo (to se pogosto izvaja v francoskih ODU). Izplačilo učinkov se izvede, če so doseženi fiksni cilji in učinki, kot so zabeleženi v pogodbi. Ta izplačila se pošljejo ponudniku storitev, ki jih nato posreduje vlagateljem (So and Jagelewski, 2013: 13). Če dogovorjeni učinki niso bili doseženi, ne bo prišlo do izplačila učinkov, kot je značilno za ODU.

Če ima ponudnik storitev slabe rezultate, lahko nastane pogodbeni težava. Investitor ne more zlahka spremeniti ali prekiniti pogodbe, zato nosi visoko tveganje. Da bi to tveganje čim bolj zmanjšali, mora pred sklenitvijo pogodbe s ponudnikom storitev opraviti podroben postopek skrbnega pregleda delovanja. Ta vrsta neposredne pogodbe daje izvajalcu (ponudniku) storitev zelo osrednjo vlogo. Odgovoren je za izvajanje posla in tudi za celotno notranje upravljanje uspešnosti (Gustafsson-Wright et al., 2015: 9; OECD, 2016: 6). Vendar je težko deliti tveganje z izvajalcem storitev. Medtem ko je večja verjetnost, da podjetja prevzamejo del tveganja, nevladne organizacije ne morejo imeti dobička, ker lahko krijejo le stroške, zato bo odvisno od vrste ponudnika storitev.



**Slika 2:** Neposredno financiranje storitev (povzeto s predstavitev strukturnih možnosti ODU / SOC Jussija Nykänena na sestanku TAB v Münchnu, 19. junij 2018)<sup>2</sup>

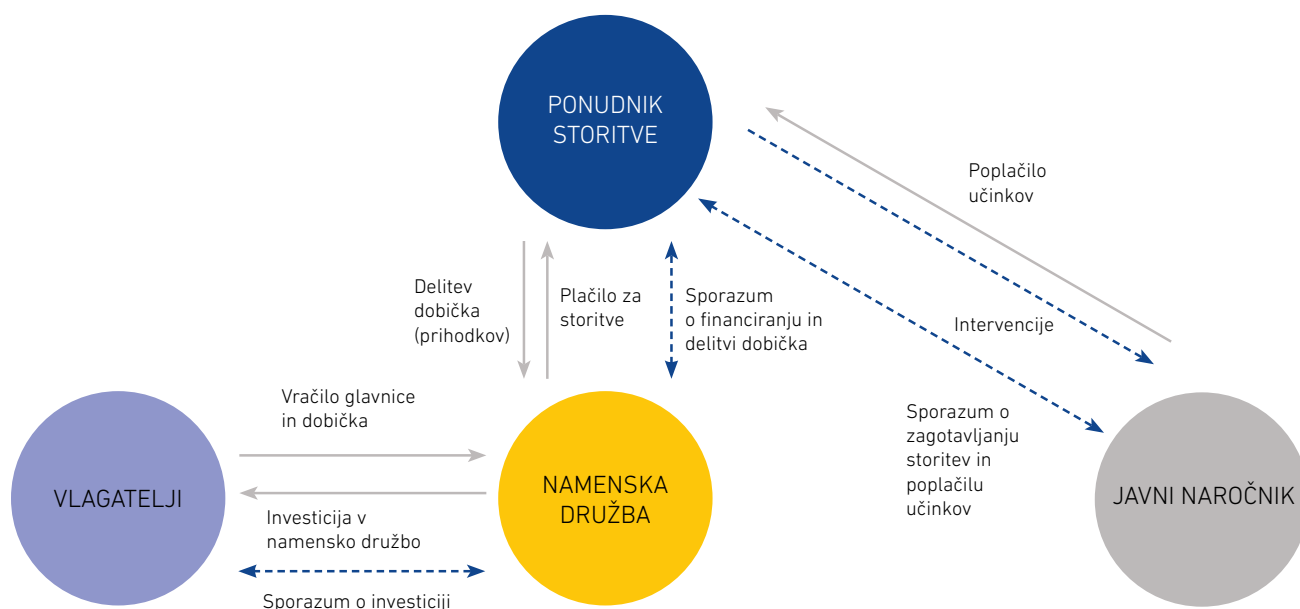
## ODU z namensko družbo (SPV)

Druga vrsta neposrednega sklepanja pogodb je pogodba z uporabo namenske družbe (SPV), pravne osebe, ki je posebej oblikovana za ODU. Preprosto povedano ima namenska družba bančni račun, na katerem vlagatelji deponirajo svoj denar (So and Jagelewski, 2013: 12). Nato namenska družba denar prenese ponudniku storitev za financiranje intervencije. Denar se zahteva le, ko je potreben za intervencijo. Naročnik sklene dogovor o plačilu učinkov in izvajanjem storitve s ponudnikom storitev. Če je bila ODU uspešna in so učinki doseženi, gre denar v obratni smeri: naročnik plača stopnjo donosa ponudniku storitev, ki denar pošlje namenski družbi. S pogodbo o naložbi med namensko družbo in investitorji le-ti prejmejo dobiček neposredno od namenske družbe.

Jussi Nykänen nas je na srečanju TAB v Münchnu junija 2018 opomnil, da je namenska družba dober pogodbeni model za velike ODU, na primer 10 milijonov evrov in več. Prav tako je dobra izbira, kadar je vpletenih veliko vlagateljev ali naročnikov. Zaradi tega imajo vlagatelji večjo varnost, saj prenašajo denar na namensko družbo in ga ne morejo neposredno deponirati pri ponudniku storitev. Po drugi strani pa vlagatelji niso

tako tesno vključeni v celoten projekt zaradi razdalje med njimi in ponudnikom storitev.

Javni naročniki pogosto dajejo prednost tej vrsti pogodbe, saj prinaša večjo prožnost. Na primer, če en ponudnik storitev med izvajanjem ODU ni uspešen, lahko namenska družba prekliče sporazum o financiranju in delitvi dobička med namensko družbo in ponudnikom storitev in sklene sporazum z drugim, ki je bolj primeren (So and Jagelewski, 2013: 12). Tudi nekatere druge aplikacije so možne le z namensko družbo. Na primer, prenos sredstev je v pogodbah ODU ogromen izziv, ker se veliko sredstev ne da prenesti ali pa je postopek prenosa zelo težaven. Pri namenski družbi kot subjektu z lastnimi sredstvi pa sredstev ni treba več razdeljevati med različne stranke. Prav tako tudi tveganja ne prevzema več matična družba. Namenska družba kot ločeno podjetje deli tveganje in morebitno finančno tveganje v primeru stečaja ali druge težave. Poleg tega lahko podjetja, ki nimajo naložbenega razreda, prihranijo stroške financiranja z izoliranjem sredstev v namenski družbi (PwC, 2011: 5). Če povzamemo, ODU, ki jo upravlja namenska družba, je v pomoč pri točkah pravne službe in upravljanja denarnih tokov.



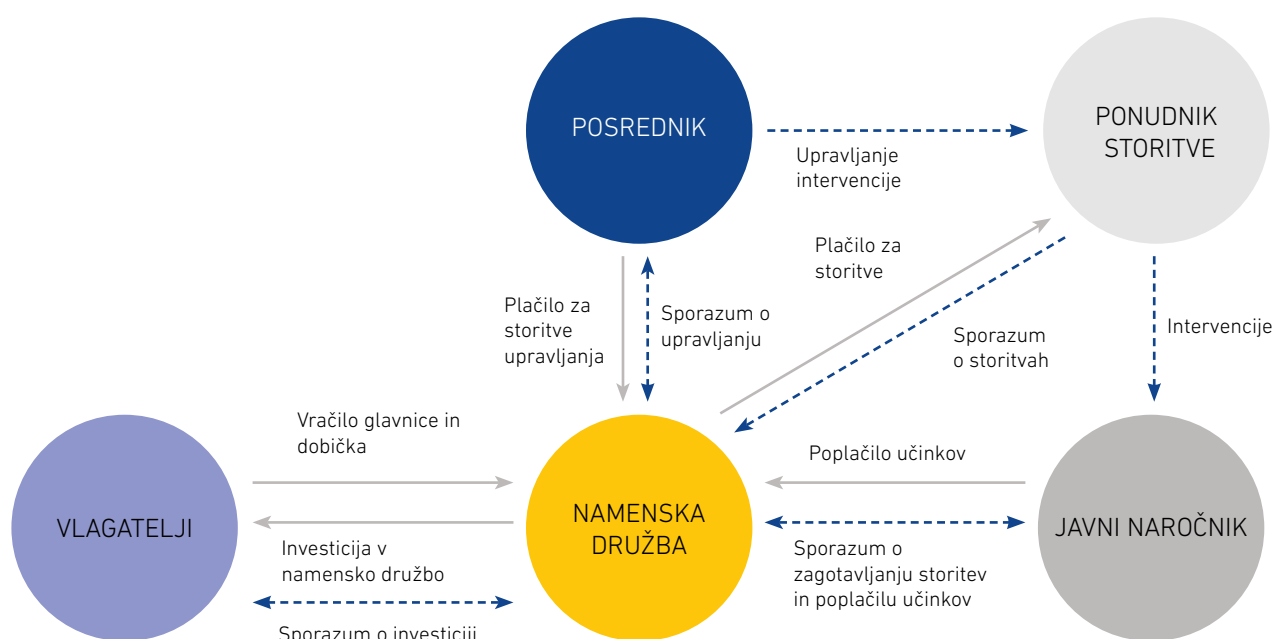
**Slika 3:** Financiranje storitev preko namenske družbe (povzeto s predstavitev strukturnih možnosti ODU / SOC Jussija Nykänena na sestanku TAB v Münchnu, 19. junij 2018)<sup>3</sup>

## Posredna ODU

Če obstaja posrednik med namensko družbo in enim ali več ponudniki storitev, se pogodba in tip ODU imenuje posredna ODU. Posrednik ima relativno visoko stopnjo odgovornosti pri razvoju ODU in upravljanju uspešnosti preko pogodbe o upravljanju z namensko družbo (Gustafsson-Wright et al., 2015: 9). Posrednik je za opravljanje storitve upravljanja plačan s strani namenske družbe. Med posrednikom in ponudniki ni dogovora. Posrednik lahko nastopa v imenu vlagateljev, če intervencija ne deluje ali če ponudnik storitev ne doseže zadovoljivih rezultatov.

V tem primeru lahko posrednik zmanjša plačilo ustreznim ponudnikom storitev.

Ta pogodbeni model povečuje kakovost projektov in, kot je dejal Jussi Nykänen na sestanku TAB, omogoča oblikovalcem ODU, da oblikujejo ekosistem okoli ponudnikov storitev. Ekosistem vedno izhaja iz težave, ki jo je treba rešiti, ne iz vključenih ponudnikov in njihovih posameznih ciljev. Rezultat, ne glede na to, ali je uspešen ali ne, je rezultat njihovega skupnega dela in ne posameznih prizadevanj. Zato je tveganje v tem primeru deljeno in je na strani namenske družbe in posrednika posebej.



**Slika 4:** Financiranje storitev preko posredne namenske družbe (povzeto s predstavitev strukturnih možnosti ODU / SOC Jussija Nykänena na sestanku TAB v Münchnu, 19. junij 2018)<sup>4</sup>

## ODU, ki jih upravljajo skladi

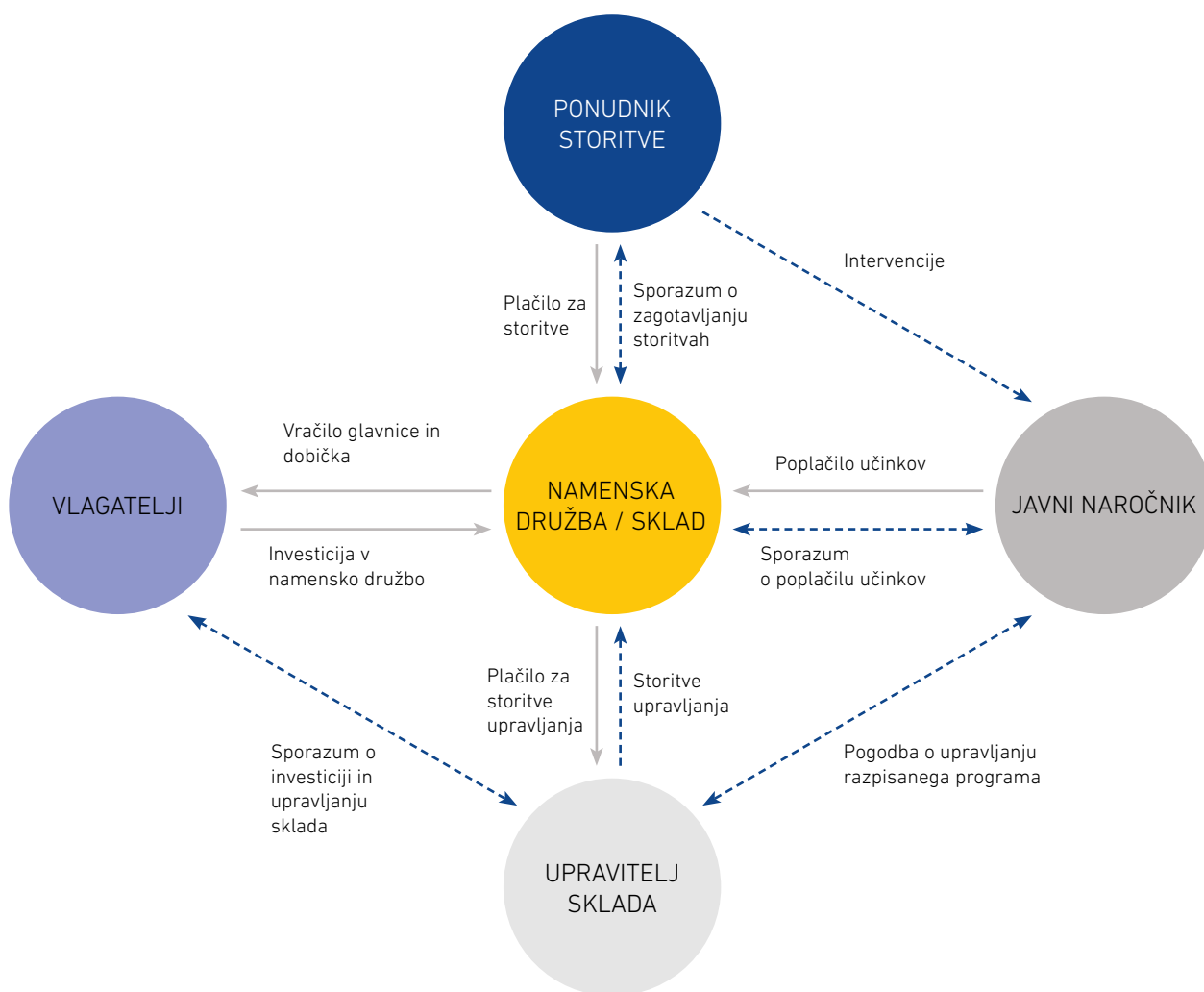
ODU, ki jo upravljajo skladi, je ideja, ki je bila dokazana na Finskem. Preprosto razloženo, to je primer, ko namenska družba postane posredni ali podobno imenovani sklad. Naročnik išče upravitelja sklada, ki mu je izplačana provizija iz sklada, in z njim sklene pogodbo o upravljanju razpisanega programa. Velika prednost ODU, ki jo upravljajo skladi, pred drugimi vrstami pogodb je v tem, da je mogoče skleniti več pogodb, ki obravnavajo isti družbeno težavo in jo rešujejo s pomočjo ukrepov iz ODU.

V nadaljevanju je pojasnjeno, kako delujejo ODU, ki jih upravljajo skladi, s pomočjo vzorčnih števil. Pri oblikovanju tovrstnih pogodb bi lahko začetni strošek znašal 100.000 EUR; to je plačilo za vzpostavitev pogodbe. Upravitelj sklada dobi plačana 2 % za upravljanje ODU. Če je upravitelj sklada tudi intervencijski upravitelj, je lahko plačilo do 4 %. Donosnost naložb je od 5 % do 8 %. Vlagatelji so zelo različni; ne vlagajo enakih količin denarja. Nekateri vložijo 10 milijonov, nekateri manj, npr. ustanove, vendar vsi vlagajo pod enakimi pogoji. Vendar pravila nadzora preprečujejo vključevanje malih vlagateljev, ker je za zasebne, nepoklicne vlagatelje razumevanje tveganja, povezanega z ODU, preveč zapleteno. Družbam za upravljanje skladov prav tako ni dovoljeno vlagati, ker morajo imeti obvladovanje tveganja in razumeti, kako upravljati tveganje, finški organ za finančne storitve pa je odločil, da morajo razumeti tudi intervencijo, kar je za tradicionalna finančna podjetja zahtevna naloga.

Nykänen je pojasnil, da so odgovornosti razdeljene, ker se naročniki ne morejo izogniti svoji odgovornosti za skrb, na primer, za otroke v občinah. Javni naročniki bi lahko storili le to, da takšne intervencije eksternalizirajo. V večini primerov bo poleg občinskega osebja in izvajalcev storitev sestavljena tudi koordinacijska skupina. Vsi sodelujejo, da bi analizirali, kaj potrebuje ciljna skupina, informacije pa prejmejo neposredno iz ciljne skupine. Pri ODU, ki jo upravljajo skladi, lahko zadevne osebe sodelujejo pri upravljanju intervencije, ponudniki storitev pa nimajo resničnega tveganja za neuspeh.

Za vzpostavitev ODU, ki se upravlja s skladi, je treba pridobiti licenco od organa za finančni nadzor na Finskem (FSA). V drugih evropskih državah, ki so preučene v okviru te skupne metodologije, obstajajo različni predpisi o tem, ali je treba upoštevati licence ali druga pravna načela:

- V *Sloveniji* bi takšen sklad bil reguliran po Zakonu o investicijskih skladih in družbah za upravljanje (Uradni list RS, št. 15, 81/15 – 77/16). Zakon strogo ureja vsa področja takšnih investicijskih skladov, vključno s pogoji za ustanavljanje in storitve, dovoljenja, spremljanje itd. Če bi bil sklad ODU organiziran kot »navidezni sklad« (na primer v okviru pravne strukture zasebne ustanove), finančna uprava ne zahteva posebnih dovoljenj (na primer Komisija iz Zakona o investicijskih skladih in družbah za upravljanje, Banka Slovenije itd.).
- V *Italiji* mora status »finančnega posrednika« odobriti Banka Italije. Postopek je skoraj enak finski osnovni različici.
- Nasprotno pa v *Franciji* za izvajanje in pogodbo ODU, ki se upravlja s skladi, ni potrebna nobena licenca ali kaj drugega.
- Za izvajanje sklada v *Nemčiji* je treba narediti veliko korakov. Potrebni so različni ponudniki finančnih storitev. Na primer, družba za upravljanje kapitala je potrebna za upravljanje sklada. Kasneje je potrebna depozitna banka. Upravitelj sklada ali zunanji ponudnik finančnih storitev, ki upravlja sklad, mora imeti tudi licenco, kot je to določeno v nemškem zakonu o bančništvu, § 32 Kreditwesengesetz (KWG).
- *Avstrijske* investicijske sklade ureja Zakon o investicijskih skladih iz leta 2011. Investicijske sklade upravljajo posebej pooblašene družbe za upravljanje.



Slika 5: Financiranje storitev preko sklada (povzeto s predstavitve strukturnih možnosti ODU / SOC Jussija Nykänena na sestanku TAB v Münchnu, 19. junij 2018)<sup>5</sup>

### Ključni pogoji v pogodbah ODU

Nekatere ključne pogoje je treba zapisati in vključiti v vsako pogodbo ODU. Za ponazoritev pogodbenega modela in za primerjavo bodo v nadaljevanju pojasnjeni glavni ključni pogoji.

Pojasnilo ključnih pogojev se zgleduje po strukturi predloge pogodbe iz kabineta Cabinet Office 2013 (Dodatek 6.1.1.) in povezanih pojasnilih (Government Outcomes Lab, 2017c). KOTO SIB v Dodatku 6.1.2 je prav tako pomemben. Čeprav gre za upravljano ODU, redko vrsto pogodbe, ki jo je težko rekonstruirati v drugih evropskih državah razen Finski, daje dober pregled strukture in vsebine pogodbe ODU.

Na začetku je lahko *izjava o skupnih ciljih*, ki določa, da različne pogodbenne stranke sodelujejo pri delu. Ta pogodbeni klavzula ustvarja okolje za razumevanje in razlago obveznosti različnih pogodbenih strank. Zato je treba cilje opredeliti z opisom intervencij, ki

jih je treba doseči. V pogodbi je treba pojasniti tudi glavno delovanje ODU. *Struktura upravljanja* kot osnova mehanizma ODU mora biti jasno sporočena. Struktura upravljanja je individualna, tako kot vsaka ODU. Zato jo je treba prilagoditi tako, da bo ustrezala posamezni vrsti in potrebam intervencije ter vključenim deležnikom. Pogoje, kot so mehanizem poročanja in drugi izzivi, je treba vzpostaviti v okviru vzpostavitve in razvoja strukture upravljanja med izvajanjem ODU. Različni deležniki, ki so vključeni v strukturo upravljanja ODU, imajo različne vloge in odgovornosti. Te so pojasnjene v (So and Jagelewski, 2013: 15):

- Če začnemo s finančnim vidikom: denar *vlagateljev* je pod tveganjem. Torej za njihov interes, ki vključuje doseganje najboljših pozitivnih družbenih in kasneje najboljših finančnih rezultatov, morajo pogodbeni storitve dobro delovati za dosego teh ciljev.
- Naloga *ponudnikov storitev* je ponuditi storitev, ki najbolj ustreza potrebam ciljne skupine

<sup>5</sup> Vir ni javno dostopen.

in izpolnjuje standarde kakovosti, pogodbene obveznosti in učinke.

- Na splošno morajo *naročniki* izpolnjevati zakonske odgovornosti. Če pogledamo vrsto pogodb z namensko družbo, je javni naročnik odgovoren za spremljanje pogodbe o učinkih preko rednih sestankov z upravljavcem uspešnosti ali ponudnikom storitev, da preveri dogovorjene pogodbene pogoje.
- *Upravljavec uspešnosti*, kot je pogosto določen v namenskih družbah, spremlja in podpira doseganje učinkov in zagotavlja analizo podatkov za poročanje vlagateljem. Upravljanje uspešnosti se lahko sprejme od ponudnikov storitev, posrednikov ali upravljavca uspešnosti namenske družbe, odvisno od vrste pogodbe ODU. Upravljavec uspešnosti zagotavlja tudi skladnost ponudnikov storitev z dogovorjenimi pogodbenimi pogoji. Da bi to preveril, deluje na območju ciljne skupine, kjer so storitve opravljene, da bi podprl ponudnika storitev pri upravljanju interakcij med njimi in drugimi deležniki ali lokalno skupnostjo. Ob vseh teh podpornih dejavnostih pa je najbolj pomembna osredotočenost na doseganje ciljnih učinkov.

*Trajanje* pogodb med različnimi akterji ODU ni zelo dolgo. Na primer, ponudniki storitev imajo pogosto sklenjene pogodbe za eno leto. *Trajanje pogodb* pogosto ni enako dolgo kot trajanje ponujene storitve. V vseh 38 ODU, ki so jih pregledali Gustafsson-Wright et al., 2015, je najkrajše trajanje pogodbe približno 20 mesecev, najdaljše pa 120 mesecev. Trajanje pogodbe je ena največjih prednosti modela ODU. Za intervencije, ki se financirajo iz javnih proračunov, se finančna sredstva sproščajo vsako leto. ODU odpirajo daljše in bolj trajnostno časovno obdobje. Projekti in intervencije se lahko načrtujejo, financirajo in delno strukturirajo v pogodbe več let.

Klavzula, ki vsebuje sporazume, ki bi jih lahko vključili v izraz *mobilizacija*, pomeni predpise za pripravljalno delo, ki bo morda potrebno. Obe strani imata v tem pripravljalnem obdobju obveznosti, ki so določene v načrtu mobilizacije. Ta načrt mora biti zagotovilo, da bo vse, kar je potrebno za začetek izvajanja storitev in intervencij, doseženo in izvedeno s strani vseh pogodbenih strank. Optimalni čas za začetek opravljanja storitev je lahko del načrta mobilizacije. Včasih je treba začeti intervencije med ali pred določenim datumom, na primer začetkom šolskega leta.

Točka, imenovana *pregled, spremljanje in obveznosti*, poskuša preprečiti težave in možnost, da razvoj

inovativne rešitve, kot je ODU, morda že od samega začetka ni popolna. Za primer, v okviru te klavzule je datum pregleda pogodbe rešil to težavo s sestankom vseh sodelujočih pogodbenih strank, da bi preučili ta vprašanja in se odločili, kako se odzvati. Ti pregledi se opravijo v šestih mesecih, nato pa enkrat na leto.

*Plačila in naložbe*, h katerim se investitorji zavežejo, so še ena točka, ki jo je treba vključiti. Predloga pogodbe iz urada kabineta deli plačila na dve vrsti: Na eni strani je plačilo za storitve za tekoče intervencije in storitve. Na drugi strani pa je obdobje, v katerem se kapital in naložbe lahko vrnejo vlagateljem, to so poplačila učinkov. To obdobje, v katerem bo denar vrnjen glede na dosežene rezultate, bo daljše od trajanja pogodbe. Pred pogodbeno točko kapitalskega donosa je treba določiti merilo uspešnosti in kako se bo uspešnost merila. *Jussi Nykänen poudarja, da se lahko načrt plačil vlagateljem individualno prilagodi strukturam ODU in vrsti vlagateljev. Čeprav pogodba med investitorji in, na primer, ponudniki storitev upošteva celotno trajanje ODU, se lahko plačila realizirajo na različne načine. Načrt plačil se torej ne nanaša na dolžino pogodb o storitvah, temveč je odvisen od vmesnih rezultatov.*

Pogodbe bi morale vključevati tudi pojme *neizpolnjevanje obveznosti in prekinitev pogodbe* (So and Jagelewski, 2013: 14). Ne smemo pozabiti, da ima vsaka stranka pravico, da kadarkoli odpove pogodbo. Ustrezni pogoji so zapisani v tej klavzuli. Pri ODU, ki so sklenjene z modelom namenskih družb, morajo imeti vlagatelji možnost preklicati dogovore in pogodbe s ponudniki storitev, ki ne zagotavljajo zadovoljive kakovosti. Cilji uspešnosti se lahko izognejo sporu s poudarkom na učinkih ODU. Model ODU in pogodba vedno poskušata prenesti tveganje, na primer finančno tveganje, z vlade na vlagatelje. Ponudniki storitev se lahko štejejo za odgovorne v primeru premajhne uspešnosti, vendar nikoli za doseganje določenih učinkov. Kadar je ocena učinkov negativna, je potreben načrt za izboljšanje uspešnosti, da bi se pogodbeni cilji uresničili v dogovorjenem časovnem okviru in da bi se izognili neizpolnjevanju obveznosti izvajalca. Potrebni ukrepi, ki jih je treba sprejeti v primeru neizpolnjevanja obveznosti s strani izvajalca, so tudi del te klavzule. Isto velja za možnost neizpolnjevanja obveznosti s strani organa.

### **Izzivi in priložnosti v okviru sklepanja pogodb ODU v različnih državah in političnih sistemih**

Oblikovanje pogodbe ODU v **Nemčiji** je pravno in konceptualno vprašanje (Scheuerle and Nieveler, 2017: 11). Vrednotenje procesa je že pokazalo, da je natančna



in premišljena opredelitev ciljev težka (Scheck, 2016: 3). To je lahko lastno novim področjem ali intervencijskim pristopim do določene točke. Nemške pogodbe ODU so pretežno civilni sporazumi o storitvah med javnim sektorjem in posredniki, ki se osredotočajo na izmenjavo storitev (Fliegauf et al., 2015: 12). Storitve, ki se bodo denarno izmenjale, so jasno opredeljene, kot tudi merljivi učinki z mehanizmom nagrajevanja. Prednost teh civilnih sporazumov je, da se zahteve lahko uveljavljajo s pravnimi ukrepi. Škoda bi lahko bila to, da se vse točke in določbe pogodb v Nemčiji lahko podrobno uredijo, tako da lahko vladni izvajalec v veliki meri sodeluje pri točkah socialnih intervencij in kako se bodo izvajale. Iz tega sledi, da je postopek sklepanja pogodb dolg in zapleten. Še en izziv pri sklepanju pogodb ODU v Nemčiji je, da se pri pogodbah s plačilom po rezultatih konkretni prihranki lahko prikažejo samo predhodno. To predstavlja izziv v zvezi z načelom učinkovitosti in gospodarnosti, saj je preverjanje dejanskih prihrankov, v primerjavi z odškodninskimi stroški ali podobnim, zelo težko. Nadaljnji vidik je, da so v skladu s členom §38 zvezne proračunske kode (Bundeshaushaltsordnung) intervencije, ki ponujajo stroške v naslednjih proračunskih letih, dovoljene le, če so v skladu s proračunskim načrtom (Fliegauf et al., 2015: 12–14). Zlasti dolge pogodbe lahko predstavljajo težave, če so daljše od zakonodajnega obdobja. Dolge pogodbe, ki trajajo več kot štiri leta, so možne samo, če obstaja dovoljenje v zakonu o proračunu. Ni gotovo, ali bo to dovoljenje podeljeno, ker ODU v Nemčiji niso posebej priljubljene. Rešitev za daljše trajanje pogodb bi lahko bila samo denominacijska struktura.

Z vidika **Francije** je izziv pri sklepanju pogodb ODU v francoskem političnem sistemu ta, da je večina politik v pristojnosti nacionalne vlade, kar otežuje lokalne ali regionalne pogodbe. V zvezi s strukturo upravljanja ni kulture posrednikov. To je težava, ker se zdi, da je vloga vlagateljev kot posrednikov v francoskem kontekstu zelo pomembna. Možnosti, ki jih ponujajo ODU, so v interesu vlade. Leta 2016 je vlada sprožila razpis za predloge ODU, ki je bil namenjen financiranju ODU in določitvi regionalne ali lokalne ODU, kar je omogočilo izbiro 13 ODU. Nov razpis za zbiranje predlogov je verjetno načrtovan za leto 2019.

V **Sloveniji** obstaja več praktičnih izzivov pri sklepanju pogodb ODU in oblikovanju pogodb. Zaradi pomanjkanja praktičnih izkušenj ni jasno, ali bi se zakon o javno-zasebnih partnerstvih lahko uporabil tudi kot pravna podlaga za sklepanje pogodb ODU. Poleg tega predstavlja izziv tudi pomanjkanje izkušenj v zvezi s čl.

43 zakona o javnih naročilih in njegova uporaba za ODU. Na podlagi direktive ES je cilj pristopa Partnerstvo za inovacije razviti inovativne izdelke ali storitve in njihovo kasnejšo uporabo, medtem ko merila za izbor temeljijo na najboljši ceni in kakovosti. Omejevanje sodelovanja v partnerstvih za inovacije samo na podjetja je še vedno izziv (na primer omejitve na socialna podjetja, ki so organizirana kot nevladne organizacije). V zvezi z uporabo čl. 31 zakona o javnih naročilih (rezervirana javna naročila) za ODU obstaja nekaj nejasnosti in splošno pomanjkanje znanja o uporabi »socialnih klavzul«, ki temeljijo na zakonodaji ES. Če postopek temelji na »klasičnem« javnem naročanju, lahko pride do pravnega izziva pri pred-faznem sodelovanju deležnikov. Vključitev možnih ponudnikov v načrtovanje in razvoj shem ODU ni urejena in se lahko šteje kot nezakonita (vsaj s strani drugih možnih izvajalcev) v poznejših postopkih javnih naročil. Obstajajo dodatne omejitve za ODU na področju socialnih storitev: ponudniki v Sloveniji morajo biti nepridobitne pravne osebe in v zvezi s socialnimi storitvami ni dovoljen noben dobiček. Kako jim omogočiti finančne ugodnosti v okviru pogodbenega razmerja, ostaja izziv. V zvezi s sklepanjem pogodb se finančni donosi za vlagatelje v ODU soočajo z dvema ovirama: najprej je treba določiti, kako zakonsko opredeliti in izvajati plačila iz državnega proračuna za vlagatelje v primeru uspešne implementacije ODU. Drugič, finančni donos od socialnih storitev bi se verjetno obravnaval kot sporno vprašanje in bi ga bilo treba zelo pazljivo opredeliti in vključiti v pogodbe, vključno z obsežnim komuniciranjem in razlagami javnosti.

V **Italiji** sta trenutno možni samo dve pogodbeni ali upravljalni vrsti: ena priložnost je model upravljanja, ki vključuje namensko družbo. To pomeni visoke stroške, ki so upravičeni le za velike naložbe. Druga možna rešitev je model upravljanja brez namenske družbe, ki pomeni neposredno povezavo in pogodbo med investitorjem in ponudnikom socialnih storitev. To je še posebej zapleteno zaradi pravnega in upravnega okvira v Italiji in takšna zapletenost lahko odvrta vlagatelja. Pri uporabi strukturnih skladov lahko pride do nekaterih izzivov: čas registracije odhodkov je eden od izzivov, saj obstaja tveganje, da se nekaj denarja lahko prihrani ali ne porabi, kar ni pozitivno v logiki upravljanja strukturnih skladov (sredstva strukturnih skladov se dodelijo regijam, da bi jih porabili, ne da bi jih prihranili). Poleg tega strukturnih skladov ni mogoče uporabiti za plačilo obresti.

Težavo pri oblikovanju pogodbe v **Avstriji** na eni strani predstavlja pogodba med javnim sektorjem in

zasebnimi vlagatelji ter na drugi strani med javnim sektorjem in posrednikom. V avstrijskem pilotnem projektu ODU posrednik ponuja svoje storitve brezplačno, zato zgoraj omenjena ovira ni igrala nobene vloge. Za dobro pobudo, dober projekt in dobri model ODU je zgodnje sodelovanje s ponudniki storitev bistveno in koristno, saj najboljše vedo, kaj je potrebno. Vendar je to v neposrednem nasprotju s predpisi o postopku javnega naročanja, kjer njihova vključitev v zgodnji fazi ni dovoljena (Schneider, 2017: 9).

## 3.2. Mehanizmi po izvedbi ODU

Pričakovanja, da bi ODU lahko nadomestile financiranje EU, niso postala običajna praksa, saj je večina evropskih držav doslej izvajala največ enega ali dva projekta ODU. Inovacijski proces ni povzročil sistemskih sprememb. Procesu ni mogoče povečati ali standardizirati tako kot v industrijskem sektorju. Torej, kaj je ostalo po razvojnem procesu, ko smo implementirali in izvedli ODU? Kateri mehanizmi lahko iz tega izhajajo in ali jih je mogoče konsolidirati? Na tej točki želimo pogledati posamezne deležnike in si upamo razmišljati o tem, kako bi lahko nadaljevali po ODU. Pojasnili bomo vprašanja, kaj pomeni za ponudnike storitev, ko se nenadoma umakne financiranje projekta ali kakšne so razmere za nadaljnje naložbe vlagateljev, da bi ohranili in podvojili ustvarjeno dodano vrednost.

ODU spremenijo razumevanje socialne države. Namesto da je dobavitelj, država postane neke vrste investitor. Socialna politika se spremeni, da tako postane del splošne politične akcije, ki podpira ljudi v okviru razpoložljivih virov (Burmester and Wohlfahrt, 2018: 87). ODU se lahko obravnava kot instrument za preoblikovanje sektorja socialnih storitev (Burmester and Wohlfahrt, 2018: 83). Teoretično vplivajo na socialno politiko kraja, v katerem se izvaja ODU, da bi svoje ukrepe bolj uskladili z interesi socialnih vlagateljev. Vendar pa to ostaja le teoretični konstrukt v praksi ODU. Monetiziranje vpliva ODU pa prisili družbeno-politične odločevalce, da izberejo projekte z merljivim uspehom. Nadaljnji razvoj zaznavnih rezultatov namesto učinkov ali vplivov je v tem procesu večinoma zanemaren. Prednost ODU za

državo je predvsem »outsourcing« vladnih tveganj pri financiranju socialnih storitev, saj ustvarja alternativne in nove metode v socialni politiki in, v najboljšem primeru, znižanje stroškov za javno blagajno. Podporna logika, ki se od usmerjenosti v proces obrača k usmerjenosti v cilje in učinkovitost, je in ostaja moč, ki jo javni sektor pridobi od ODU.

Za upravo pomeni precejšen premik od birokratsko-upravne delitve nalog in fiksnih proračunov v smeri pristopa k proračunu, ki je usmerjen v učinek. ODU sprožijo spremembo v upravi, in sicer v smeri podjetniškega razmišljanja in delovanja. Vendar pa je poudarek na učinkovitosti ustvaril učinke na strani regionalne politike in v upravi s kombinacijo različnih intervencijskih logik (Burmester and Wohlfahrt, 2018: 84) in predvsem dražje ukrepe kot s tradicionalnim financiranjem.

Splošna vloga ODU pri preoblikovanju birokratsko-upravnega sistema socialnih storitev v različnih državah je odvisna od vloge lokalnih oblasti pri izvajanju in razvoju ODU.

Zagotovo je mogoče ugotoviti pospešitev odpiranja trga v sektorju socialnih storitev, čeprav ponudniki storitev zahtevajo samo čisto doseganje ciljev in ne tehnične kakovosti. Količina nad kakovostjo vse bolj vpliva tudi na sektor socialnih storitev z uvedbo ODU, ko gre za učinkovitost ukrepov. Poleg tega razsežnosti storitve, ki jo ponuja ponudnik storitev, običajno narekujejo posredniki in vlada, saj so ključnega pomena pri oblikovanju storitve. Zato se ponudniki storitev s tem ukvarjajo med in po projektu ODU. To je zato, ker imajo manj možnosti za prožnost kot pred ODU in so še vedno redno spremljani ter imajo močno povečano upravno breme (Roy et al., 2018). Ta upravna obremenitev zaradi poročil, števil in podatkov, ki jih je treba dostaviti, sega tudi izven obdobja izvajanja ODU in se širi v fazo ocenjevanja. Poleg tega so ti podatki potrebni za razvoj novih ODU. Če na primer prejšnja ODU, v kateri je sodeloval ponudnik storitev, ni prinesla pričakovanih rezultatov, ni verjetno, da bi bil ponudnik storitev ponovno izbran kot ponudnik storitev za ODU. Če povzamemo, ponudnik storitev nima finančnih sredstev za ponavljanje ali nadaljevanje intervencij in ne za zagotovitev ustrezne ponudbe ciljni skupini. V okviru ODU predstavlja težava odvisnost od investitorja in s tem tudi nadaljnja toleranca neslišnosti ciljne skupine. Financiranje in privatizacija socialne in javne politike je potencialna grožnja, ki jo predstavljajo ODU na strani ponudnika storitev (Roy et al., 2018).





## 4. ŠIRŠI POGLED – ODU V EVROPSKI UNIJI

### 4.1. Vloga evropskih institucij

Projekt AlpSIB je poudaril, kako dinamična je evropska regija pri pilotiranju ODU in, v širšem smislu, finančnih instrumentov, ki temeljijo na učinkih, za pobude, ki so usmerjene v vpliv.

Kljub temu se deležniki pri načrtovanju izvajanja ODU v evropskih državah srečujejo s posameznimi predpogoji. Glede na zakonodajo in izvajanje je mogoče najti številne skupne izzive. Glavne točke segajo od konkretnih vprašanj o merjenju do pomanjkanja poznavanja tega instrumenta in strahov – na primer, da bi se lahko socialni sektor zmanjšal na številke (glej poglavje 2.6).

Drugi nadnacionalni svetovalni odbor (TAB) projekta AlpSIB se je osredotočil na evropski kontekst za reševanje teh težav.

Evropska slika je še vedno zelo nehomogena, saj ima vsaj tri skupine držav:

1. Združeno kraljestvo, pionirska evropska država v ODU, je zdaj v tretji fazi razvoja: po prvih pilotnih pobudah in širjenju z več kot 40 shemami eksperimentira z infrastrukturami druge stopnje (kot je sklad Bridges Venture Fund, ki podpira sheme SIB).

2. Skupina držav, vključno s Švico, kjer z nekaj pobudami preizkušajo zasnovo in infiltrirajo okolje na ravni socialnih organizacij, vlad in finančnih institucij. Med te lahko vključimo Francijo, Finsko, Avstrijo, Portugalsko in nekaj drugih.

3. Druge države, v katerih se zanimanje za ODU močno povečuje, vendar so eksperimenti izpostavljeni številnim težavam (na primer političnim, upravnim, pomanjkanju pobudnikov), zlasti v zvezi z lokalnimi ekosistemi, ki se zdijo še vedno krhki ali še niso pripravljeni na izziv. Med te lahko vključimo Italijo, Nemčijo in Španijo.

Da bi pospešili in razširili proces v evropskem kontekstu, obstajajo vsaj tri pomembna vprašanja:

- Kakšne so potrebe zasebnih in javnih ustanov (zlasti v državah iz skupine 1 in delno iz skupine 2)?
- Kako lahko izkušnje Združenega kraljestva in držav skupine 2 vplivajo na države skupine 3 v smislu utemeljitve, strukturiranja in vključevanja različnih deležnikov?
- Kaj je in kaj bi lahko bila vloga evropskih institucij pri podpori razvoja ODU?

Na evropski ravni je mogoče najti nekaj pristopov k reševanju izzivov izvajanja ODU, kar je bilo poudarjeno v dokumentu, ki ga je predložila Georgia Efremova:

V zadnjih 5–8 letih sta dve obsežni pobudi na evropski ravni (tj. Program socialnih inovacij in Pobuda za socialno podjetništvo) spodbujali številne tokove dela, katerih cilj je:

- olajševanje dostopa do financiranja preko niza finančnih instrumentov v okviru programa za zaposlovanje in socialne inovacije ter Evropskega sklada za strateške naložbe,
- olajšati dostop socialnih podjetij do trga s pomočjo izgradnje zmogljivosti in programov tehnične pomoči,
- izboljšanje okvirnih pogojev s podporo za izvajanje nacionalnih in regionalnih strategij,
- spodbujanje sodelovanja med tradicionalnimi in socialnimi podjetji, s čimer se povečujejo inovativnost, tehnološki napredek in oblikovanje novih poslovnih modelov,
- podpiranje mednarodne razsežnosti z dejavnim sodelovanjem v globalnem političnem procesu.

Evropska komisija je za naslednji večletni okvir financiranja (2021–2027) predlagala enoten integrirani naložbeni program, ki predstavlja naložbeno strategijo na ravni EU, imenovano InvestEU. Njegov prvi steber, sklad InvestEU, bo v enem združil vse sedanje finančne instrumente, vključno s tistimi, ki so namenjeni socialnim naložbam. InvestEU bo podprt z jamstvom v vrednosti 38 milijard EUR iz proračuna EU. Od teh 38 milijard EUR sredstev bo 4 milijarde EUR namenjenih inovativnemu in integriranemu okviru za socialne naložbe in spretnosti, ki podpira naložbe v socialno infrastrukturo, socialne storitve, človeški kapital in veščine, sheme inovacij in socialnih učinkov, mikrofinanciranje in socialno gospodarstvo. Okvir bo podprt s celovitimi svetovalnimi storitvami (izgradnja zmogljivosti, tehnična pomoč in razvojna pomoč projektom) in bo vključeval strateško partnerstvo s fundacijami in filantropskim sektorjem.

V pripravi na začetek novega programa (2021–2027) EIB in Evropska komisija začneta horizontalno svetovalno platformo EU za pogodbe z družbenimi učinki (SOC) v okviru Evropskega svetovalnega vozlišča za naložbe (EIAH), drugega stebra naložbenega načrta

za Evropo. Namen platforme je povečati ozaveščenost in zmogljivost med javnimi organi, zgraditi zbirko dokazov in olajšati čezmejno izmenjavo učenja/prakse na področju SOC.

Še en projekt, ki se je začel leta 2018, Buying for Social Impact (nakup za družbeni učinek), bo povečal ozaveščenost in podprl javne organe pri uporabi javnih naročil za doseganje socialnih ciljev. To vključuje tudi spodbujanje javnih organov, da poslujejo s podjetji socialnega gospodarstva, da bi jim pomagali pri dostopu do novih trgov in virov prihodkov.

Pilotni projekt za evropsko socialno gospodarstvo na lokalni ravni (European Social Economy Region Pilot) je namenjen ozaveščanju in zagotavljanju prepoznavnosti podpornih programov EU za socialno gospodarstvo ter zbiranju informacij o lokalnih potrebah in izzivih za razvoj socialnega gospodarstva (vzeto iz priročnika »Politika EU za gospodarstvo z družbenim učinkom in pilotne pobude, ki povezujejo EU in lokalno/regionalno raven«, ki jih je G. Efremova zagotovil na srečanju TAB v Milanu, 27. februarja 2019)<sup>6</sup>.

#### 4.1.1. Okvir politike – obstoječe pobude in programi

Finančna kriza v letu 2008 je povzročila naložbeno vrzel v EU. Zlasti v socialnem sektorju je bila naložbena vrzel velika. Hkrati se je stopnja brezposelnosti znatno povečala. Danes, deset let po krizi, je še vedno na visoki ravni (16,6 milijona brezposelnih oseb septembra 2018 (European Commission, 2018: 2)). Zlasti na podeželskih območjih je še vedno prisotna visoka stopnja brezposelnosti. Septembra 2016 je Evropski parlament Svetu in Komisiji predložil »Pisno izjavo« z namenom reševanja teh primanjkljajev (European Parliament, 2016). Toda oblikovalci politik EU so že pred leti spoznali, da obstaja povezava med gospodarsko rastjo in naložbami v socialni sektor. Evropska komisija je z uvedbo agende EU za socialne inovacije leta 2010 in s pobudo za socialno podjetništvo leta 2011 podprla socialno podjetništvo kot ključno prednostno področje za politično ukrepanje. Poleti 2013 je Evropski parlament (EP) v resoluciji poudaril pomembno vlogo zasebnega sektorja pri naložbah z družbenim učinkom. Evropski parlament je pozval države članice, naj več uporabljajo finančni inženiring preko instrumentov, kot so obveznice z družbenim učinkom, in pozval Komisijo, naj pripravi podrobnejše predloge o novih finančnih instrumentih, ki bi lahko spodbudili javne socialne

<sup>6</sup> Vir ni javno dostopen.



naložbe (European Parliament, 2013). Resolucija je bila odziv EP na obvestilo o socialnih naložbah, ki ga je Evropska komisija objavila februarja 2013. V obvestilu je Komisija prepoznala, da morajo socialna podjetja dostopati do zasebnih financ in pozvala države članice EU, naj se osredotočijo na zasebni sektor ter preskusijo in ocenijo instrumente, kot so obveznice z družbenim učinkom (European Commission, 2013). Leta 2013 je Evropski investicijski sklad (EIF) v sodelovanju z vlagatelji iz zasebnega sektorja sprožil tudi Pospeševalnik socialnega učinka (SIA), prvo vseevropsko javno-zasebno partnerstvo za vlaganje v družbeni učinek. SIA deluje kot sklad skladov, ki ga upravlja EIF, in vlaga v sklade za družbeni učinek, namenjene socialnim podjetjem po vsej Evropi.

Po izvolitvi za predsednika Evropske komisije leta 2014 je Jean-Claude Juncker začel z investicijsko pobudo, »Juncker-Plan«, ki ima tri glavne cilje:

1. Odprava ovir za naložbe, 2. Tehnična podpora za naložbene načrte in njihovo spodbujanje, 3. Učinkovitejša in uspešnejša uporaba finančnih sredstev (Evropska komisija, brez datuma).

Evropski sklad za strateške naložbe (EFSI) je finančni steber Junckerjevega načrta, ki ga upravlja Evropska investicijska banka (EIB). Del EFSI je lastniški kapital EFSI (EFSI Equity), instrument, ki zagotavlja kapitalske naložbe finančnim posrednikom ali skupaj z njimi, in se osredotoča na področja zgodnje faze, faze rasti in financiranja širitve. Njegov namen je zagotoviti vsaj 150 milijonov EUR socialnim podjetjem in organizacijam socialnega sektorja, ki so ali delujejo v EU. Trije pilotni instrumenti družbenega učinka, podprti v okviru EFSI Equity, so naložbe v ali skupaj s finančnimi posredniki, ki so povezani z inkubatorji, in/ali pospeševalci, naložbe skupaj s poslovnimi angeli ali v sklade poslovnih angelov in posredniki, ki vzpostavljajo in upravljaajo sheme naložb v obveznice z družbenim učinkom / plačilo po rezultatih (European Investment Fund, 2017).

Evropski investicijski sklad (EIF), finsko ministrstvo za gospodarstvo in zaposlovanje in Epikus<sup>7</sup>, finski upravitelj skladov, specializiran za naložbe z družbenim učinkom, so napovedali shemo obveznic z družbenim učinkom za poletje 2017. Ta sporazum, ki ga je omogočila podpora Evropskega sklada za strateške naložbe (EFSI), vključuje naložbe investitorjev, kot so EIF, Epikus, SOK, Tradeka in *Sitra*,

v vrednosti 14,2 milijona EUR za podporo vključitvi 2500 do 3700 migrantov in beguncev na finski trg dela. Model ODU je oblikoval finski inovacijski sklad *Sitra*, neodvisna javna ustanova, pod nadzorom finskega parlamenta, ki je uvedla obveznice z družbenim učinkom na Finskem (Government Outcomes Lab, 2018b).

Evropsko svetovalno vozlišče za naložbe (EIAH) in Evropski portal za naložbene projekte (Portal #InvestEU) tvorita drugi steber Junckerjevega načrta. Pomagata pri uresničevanju predlaganih naložbenih projektov z zagotavljanjem tehnične pomoči in večje prepoznavnosti naložbenih priložnosti (Evropska komisija). Portal za naložbene projekte je namenjen združevanju nosilcev projektov, ki iščejo naložbe, z vlagatelji, ki iščejo projekte. Leta 2018 je bila v okviru EIAH sprožena horizontalna vseevropska svetovalna platforma za sklepanje pogodb z družbenimi učinki (SOC). Platforma je namenjena h krepitvi zmogljivosti javnih organov in sektorskih deležnikov za razvoj in uporabo SOC ter za olajšanje čezmejne izmenjave učenja/prakse. Platforma SOC bo iskala rešitve za skupne izzive, kot so javna naročila, učinkovita uporaba evropskih strukturnih in investicijskih skladov za pobude, ki temeljijo na učinkih, ustanovitev skladov za **družbene učinke** na regionalni / nacionalni / in morda evropski ravni, in bo ponudila skupen lokalni pristop za »soustvarjanje učinka« za deležnike na nacionalni in lokalni ravni (povzeto po izročku »EC Policy Context for Social Impact Economy & Pilot Initiatives linking the EU and local/regional level« G. Efrermove na sestanku TAB v Milanu, 27. februarja 2019)<sup>8</sup>. Platforma se je začela s finskim ministrstvom za socialne zadeve in zdravje in jo podpira tudi finski inovacijski sklad *Sitra*.

Druga pomembna platforma na tem področju je *fi-kompas* za svetovalne storitve o finančnih instrumentih v okviru Evropskih strukturnih in investicijskih skladov (ESIF). *fi-kompas* izvaja Evropska komisija v sodelovanju z Evropsko investicijsko banko. Namenjen je podpori organom upravljanja ESIF in drugim zainteresiranim stranem z zagotavljanjem praktičnega strokovnega znanja in učnih orodij za finančne instrumente. Med njimi so priročniki, informativni listi in publikacije s študijami primerov, pa tudi izobraževalni seminarji »osebne narave (face-to-face)«, dogodki za mreženje in video informacije.

<sup>7</sup> Epikus je drugi registrirani upravitelj Evropskega sklada za socialno podjetništvo EuSEF (European Social Entrepreneurship Fund) v Evropi. Nadzoruje ga finski organ za finančni nadzor in deluje kot socialno podjetje, 50 % svojega dobička pa namenja ciljem socialnega in okoljskega poslanstva. Epikus deluje kot upravitelj sklada, ki posreduje med finančno skupnostjo na eni strani in javnimi naročniki ali organizacijami s poslanstvom, na primer dobrodelnimi organizacijami, na drugi strani.

<sup>8</sup> Vir ni javno dostopen.

Leta 2018 je *fi-kompas* objavil študijo »Portugalska pobuda za socialne inovacije – Program obveznic z družbenim učinkom – Uporaba ESS za financiranje socialnih inovacij in socialnega podjetništva«. Dva glavna cilja študije sta zagotoviti praktične smernice drugim državam članicam, ki so pripravljene izvajati tovrstne mehanizme financiranja, in zagotoviti rezultate na podlagi dokazov za Evropsko komisijo pri oblikovanju regulativnega okvira za inovativne mehanizme financiranja ESS (European Investment Bank, 2018: 8).

Tudi leta 2018 je delovna skupina High-Level Task Force (HLTF) za vlaganje v socialno infrastrukturo objavila poročilo »Spodbujanje naložb v socialno infrastrukturo v Evropi (Boosting Investment in Social Infrastructure in Europe)«, ki vsebuje priporočila in predloge za jasno strategijo socialne infrastrukture. HLTF je bila sprožena s strani Evropskega združenja za dolgoročne vlagatelje (ELTI)<sup>9</sup> in ustanovljena februarja 2017 v posvetovanju z Evropsko komisijo. Njen cilj je »povečati politično pozornost, namenjeno pomembni vlogi socialne infrastrukture« in »spodbujati javne in zasebne naložbe v tem sektorju« (HLTF, 2018: 14).

### Pobude na področju vlaganj v družbene učinke

»Velik pok« za naložbe z učinkom je bila ustanovitev delovne skupine za naložbe z družbenim učinkom, ki so jo ustanovile države G8. Sir Ronald Cohen je vodil delovno skupino, ki je med letoma 2013 in 2015 pripravljala poročila in priporočila vladam različnih držav o načinih, kako lahko spodbujajo naložbe v učinke. Trenutno Cohen predseduje Svetovni mreži za naložbe v učinke GIIN (Global Impact Investing Network) in Svetovni usmerjevalni skupini za naložbe v učinke GSG (Global Steering Group for Impact Investment).

Svetovna usmerjevalna skupina za naložbe v učinke (GSG) je neodvisna svetovna usmerjevalna skupina, ki spodbuja naložbe v učinke in podjetništvo. GSG je bil ustanovljen avgusta 2015 kot naslednik delovne skupine za naložbe z družbenim učinkom, ustanovljene v okviru predsedovanja Združenega kraljestva skupini G8. Od leta 2013 se je GSG povečala z osmih članic na 19 držav plus EU kot članice (oktober 2018). GSG predstavljajo države preko svojih nacionalnih svetovalnih odborov (ali NAB)<sup>10</sup>. Svetovalni odbor Evropske unije, ustanovljen leta 2017, je skupna pobuda

Evropske komisije (ES), Evropskega investicijskega sklada (EIF) in Evropske investicijske banke (EIB). »Želi spodbujati politično razpravo za opredelitev regulativnega okvira za rast sektorja socialnega podjetništva v EU« (GSG, 2018: 52). GSG je imel svoje letno srečanje v New Delhiju od 8. do 9. oktobra 2018, ki se ga je udeležilo 150 govornikov iz 30 držav. Naslednji vrh bo potekal v Santiagu de Chile od 18. do 19. novembra 2019.

Organizacija za gospodarsko sodelovanje in razvoj (OECD) je imela ključno vlogo pri Svetovni pobudi za naložbe z družbenim učinkom, ki se je začela leta 2013 med predsedovanjem Združenega kraljestva skupini G8. Poročilo »Naložbe z družbenim učinkom: izgradnja baze dokazov« (2015) je zahtevalo oblikovanje globalnih standardov za opredelitve, zbiranje podatkov, merjenje učinka in ocenjevanje politik.

OECD tesno sodeluje z GSG, GIIN in drugimi platformami na nacionalni in regionalni ravni.

GIIN se osredotoča na zmanjšanje ovir za naložbe z družbenim učinkom, z izgradnjo ključne infrastrukture in razvijanjem dejavnosti, izobraževanjem in raziskavami, ki pomagajo pospešiti razvoj skladne industrije za vlaganje v učinke. Člani GIIN so podjetja, nevladne organizacije in fundacije, kot so na primer fundacija Bill & Melinda Gates, J. P. Morgan, fundacija Bertelsmann Stiftung in Sitra, finski inovacijski sklad.

Globalna mreža za socialne finance (Social Finance Global Network) je sodelovanje med neodvisnimi nepridobitnimi organizacijami, ki ponovno razmišlja o načinih, kako družba obravnava kronične socialne težave. To dela v sodelovanju z vlado, socialnim sektorjem in finančno skupnostjo. Social Finance UK je leta 2010 prvi uvedel obveznice z družbenim učinkom. Danes razvija in lansira obveznice z družbenim učinkom po vsem svetu in deluje kot posredniška organizacija v okviru obveznic z družbenim učinkom. Danes ta globalna mreža zajema organizacije Social Finance UK, ZDA, Izrael, Indija in Nizozemska.

<sup>9</sup> ELTI je bil ustanovljen leta 2013, da bi zagovarjal nov naložbeni okvir v Evropi.

<sup>10</sup> Nacionalni svetovalni odbori (NAB) spodbujajo in usmerjajo nacionalni razvoj ekosistema in trga, ki vlaga v učinke, v njihovi matični državi.

## Naložbe z družbenim učinkom na nacionalni ravni

»Prvi, zadnji in najpomembnejši dejavnik pri ugotavljanju, ali obstaja vloga za obveznice z družbenim učinkom na katerem koli trgu, je pripravljenost vladnih agencij, da sprejmejo orodje ali preučijo različne načine plačevanja ali sklepanja pogodb za socialne storitve«  
(Social Finance Ltd, 2016: 44).

Ne samo v Evropski uniji, temveč po vsem svetu je Združeno kraljestvo poleg Avstralije in ZDA eden od pionirjev na področju naložb z družbenim učinkom in obveznic z družbenim učinkom.

V ZDA je vladni Government Performance Lab na šoli Harvard Kennedy School 9 imel ključno vlogo podpore vladi pri projektu ODU z zagotavljanjem notranje podpore za upravljanje projektov. Združeno kraljestvo sledi temu zgledu in je imenovalo šolo Blavatnik School of Government v Oxfordu za izgradnjo podobnih povezav. Poleg tega je vlada Združenega kraljestva v zadnjih letih začela izvajati več skladov za spodbujanje in podporo lokalnemu razvoju ODU. Največji je sklad Life Chances, ki ima sedež na Sektorju za digitalne, kulturne, medijske in športne dejavnosti. Sklad v vrednosti 80 milijonov funtov dodaja sredstva za učinke za lokalno razvite projekte, ki se ukvarjajo s kompleksnimi socialnimi vprašanji (GOV.UK, 2012).

Poleg tega je z zakonom o financah iz leta 2014 vlada Združenega kraljestva sprejela davčno olajšavo za socialne naložbe (SITR), s čimer je posameznikom, ki želijo vlagati v družbene učinke, omogočeno, da od obveznosti za davek od dohodka odštejejo 30 % stroškov njihove naložbe. Poleg tega so za SITR upravičene naložbe v družbe, ki so ustanovljene za izvajanje obveznic z družbenim učinkom (GOV.UK, 2016).

Poleg Združenega kraljestva je tudi Portugalska že naredila prvi korak z ustanovitvijo Portugalske Inovação Social leta 2015, ki vključuje petletni sklad za družbene učinke v vrednosti 30 milijonov EUR.

Na vmesni razpravi aprila 2017 se je finska vlada odločila, da bo vključila model ODU investicij z družbenim učinkom v svoje orodje in ga uporabila za spodbujanje zaposlovanja in preprečevanje izključenosti mladih. V začetku junija je ministrstvo za gospodarstvo in vključevanje v zaposlovanje napovedalo projekt Koto-SIB. Gre za največji projekt te vrste v Evropi in drugi največji na svetu. Njegov cilj je v obdobju treh let pomagati 2500 migrantom, da se zaposlijo.

Poleg tega je finski nacionalni svetovalni odbor predlagal, da bi bil – tako kot v Združenem kraljestvu in na Portugalskem – na Finskem ustanovljen sklad za učinke po parlamentarnih volitvah spomladi 2019 (NAB, 2018).

## 4.2. Seznam želja za politične organe – možnosti obveznic z družbenim učinkom

Namen tega poglavja je odgovoriti na vprašanje, kaj lahko storijo politični organi, da bi ODU postale bolj privlačne ali celo izvedljive za potencialne deležnike v različnih regijah.

Razprava na forumu TAB v Torinu je opredelila številna vprašanja in posledice za različne akterje, ki so povezane predvsem s tremi glavnimi strateškimi cilji:

- Okrepiti zavezanost različnih deležnikov
- Podpora pilotiranju (poskusnemu izvajanju)
- Spodbujanje vključevanja.

### a) Okrepiti zavezanost različnih deležnikov

ODU in instrumenti, ki temeljijo na učinkih, na različnih področjih še vedno katalizirajo razprave o vlogi in odgovornosti vlad v sistemih socialnega varstva in o hiper-zapletenosti financ. Poleg tega, da razen v Združenem kraljestvu še vedno obstaja le nekaj pobud, ki zajemajo nekaj socialnih vprašanj, se različni deležniki ne strinjajo glede učinkovitosti in uspešnosti ODU ter njihovi vključitvi v bolj tradicionalne politične okvire. V zvezi s tem bi morali biti ukrepi institucij EU in ključnih deležnikov usmerjeni v naslednje:

#### a.1 Potrjevanje racionalnosti in legitimnosti ODU

v okviru sistemov socialnega varstva v celinski Evropi. To bi lahko dosegli s širjenjem primerov, ki zdaj obstajajo na različnih področjih in v različnih političnih okvirih, od držav z bolj centraliziranim sistemom socialnega varstva do tistih, kjer se veliko politik sprejema na lokalni ravni.

a.2 **Razviti skupni jezik** med različnimi državami in regijami, po možnosti z vključitvijo terminologije ODU in iskanjem nove in širše terminologije (npr. »pogodba z družbenim učinkom« je bila predlagana kot bolj vključujoča terminologija za družino ODU in instrumente, ki temeljijo na uspešnosti).

**a.3 Podpirati nadnacionalno sodelovanje in vzajemno učenje** na ravni ozaveščanja z vključevanjem oblikovalcev politik in ključnih deležnikov v delavnice in skupine za razprave, z oblikovanjem platforme za izmenjavo (široka mreža institucij) in programov tesnega medinstitucionalnega sodelovanja.

**a.4 Politično podporo** institucijam, ki se zavedajo potenciala in so zainteresirane za pilotne pobude, vendar morajo zgraditi koalicije na lokalni in nacionalni ravni. K temu cilju lahko prispeva politična podpora v obliki pobud, navedenih v točki a.3, in/ali v obliki dejavnosti vključevanja deležnikov na lokalni ravni, s podporo ES/EIB/EIF, in v obliki usmerjanja regionalnih programov/mehanizmov financiranja (AlpSIB je dober primer, programi financiranja ESRR pa lahko v prihodnosti igrajo pomembno vlogo).

## **b) Podpora pilotiranju (poskusnemu izvajanju)**

Razen Združenega kraljestva so skoraj vse regije v celinski Evropi še vedno v fazi (zgodnji fazi) izdelave prototipov. Trenutni pilotni projekti so zelo različni v smislu sprejetih shem, vrste obravnavanih socialnih vprašanj, deležnikov in dinamike procesov. Po mnenju številnih opazovalcev še vedno obstaja velika potreba po poskusnih shemah in preskusih ODU (in podobnih pogodbenih dogovorov), da bi dopolnili katalog možnosti in zbrali dovolj ustreznih podatkov o stroških, učinkih (rezultatih) in ključnih vhodnih spremenljivkah. Poleg tega bi morale razširjanje pilotnih projektov vključevati regije in države, kjer so trenutno poskusi težje izvedljivi, in hkrati razširiti vrsto možnosti v državah, kjer so se nekateri poskusi že izvajali. Na tem področju obstaja več možnih ukrepov, kot so:

**b.1 Pokritje transakcijskih stroškov** s strani tretjih institucij, kot je ES, da bi olajšali pilotne projekte v majhnem obsegu. Podobne sheme, kot je EaSI, so že vzpostavljene za sklade z družbenim učinkom, vendar pa lahko večja količina majhnih in lahko dostopnih vstopnic bistveno pospeši proces.

**b.2 Odkrivanje in podpiranje pobudnikov.** Različni poskusi, ki že obstajajo, so zelo različni v smislu procesov in udeležencev, ne le v smislu končnih struktur shem. Procese včasih sprožijo vlade, v nekaterih primerih jih sprožijo finančne institucije finančnih posrednikov, v spet drugih pa družbeni akterji. Ta raznolikost je bogastvo, vendar hkrati

postavlja nekaj vprašanj v zvezi z identifikacijo in podporo akterjem, ki imajo lahko ključno vlogo. Mehanizmi majhnega obsega, kot so predhodne študije izvedljivosti, bi lahko imeli pomembno vlogo pri ugotavljanju in krepitvi voditeljev procesov prihodnjih shem.

**b.3 Pilotni projekti, ki vključujejo človekoljubne ustanove, kot so fundacije,** kot partnerji za kritje potencialnih izgub in poplačil v primeru pozitivnih učinkov. Številni poskusi uvedbe ODU so naleteli na velike težave pri vključevanju lokalnih ali nacionalnih vlad zaradi kulturnih in/ali upravnih vprašanj. Kljub temu bi se lahko mehanizmi, ki temeljijo na uspešnosti, preizkusili tudi v zasebnem kontekstu, z namenom reševanja javno pomembnih vprašanj. V takem okviru bi lahko fundacije igrale zelo pomembno vlogo kot vodilni filantrop in inovacijski voditelji v lokalnih kontekstih. Tudi takšni poskusi lahko utrejo pot za izgradnjo poslovnega primera za ODU in pritegnejo zanimanje drugih ustreznih deležnikov.

**b.4 Tehnična pomoč vladam.** V skladu s prejšnjimi odstavki – zlasti a.3 in a.4, vendar z usmeritvijo v že ozaveščene institucije – lahko Evropska komisija in/ali EIS, neposredno ali preko svetovalcev, zagotovi tehnično pomoč lokalnim vladam, da bi olajšali vzpostavitev shem ODU, začetek procesov vključevanja deležnikov in uporabili prejšnje izkušnje.

**b.5 Opredelitev standardiziranih modelov.** Ena od težav, s katero se pobudniki soočajo pri oblikovanju in spodbujanju mehanizmov financiranja, ki temeljijo na rezultatih, je ta, da morajo začeti iz nič. Dejstvo je, da so si socialne potrebe, ki jih običajno obravnavajo ODU, in arhitektura partnerstev pogosto zelo podobne. Navajanje ali podajanje primerov možne uporabe iztržkov in opredelitev standardnega postopka bi lahko znatno poenostavilo postopek vključevanja deležnikov in zasnove izdelka.

## **c) Spodbujanje vključevanja**

Tudi če se za zdaj vključevanje ne zdi najpomembnejša strategija, bi lahko opredelitev strategij vključevanja in njihovega preizkušanja v bolj zrelih državah zagotovila pomembne indikacije vladam in deležnikom v državah, kjer prakse še niso vzpostavljene ali kjer jih obstaja le nekaj. Primer Združenega kraljestva z več kot 40 praktičnimi primeri in infrastrukturami drugega reda kaže, da lahko prihodnost sklepanja pogodb z družbenim

učinkom po pilotnih projektih vključuje vrsto socialnih vprašanj in kontekstov

c.1 Pregledati je treba politike in **postopke javnega naročanja**, da se ustvarijo pogoji za širšo uporabo ODU. V številnih evropskih državah postopki izbire dobaviteljev v javnem sektorju niso dovolj prožni, da bi omogočili izgradnjo kompleksnih povezav med različnimi deležniki. Poleg tega uvedba mehanizmov plačila po rezultatih uvaja elemente negotovosti, ki niso združljivi z veljavnimi upravnimi standardi.

c.2 **Usklajevanje praks** v smeri številnih navideznih standardnih shem in razpoložljivost preskušanih okvirov za merjenje učinka lahko zmanjša transakcijske stroške in hkrati mobilizira pomembna finančna sredstva. Primer zelenih obveznic dobro ponazarja, da poenostavitev in tipizacija razširja področje uporabe in privablja finančne organizacije z nizkim strokovnim znanjem na tem področju.

c.3 **Čedalje večja kompleksnost** za boljše obvladovanje tveganj in zmanjšanje transakcijskih stroškov. Razvitost lahko vključuje finančne sheme (državni skladi za socialne inovacije), sheme za merjenje učinka (z lokalnimi agencijami), razširitev praks in socialnih organizacij (z vključitvijo skladov z učinkom).

c.4 **Povečajte velikost**. Z vidika naložb je velika večina ODU majhnega obsega. Ta okoliščina preprečuje udeležbo velikih igralcev in povečuje relativno težo fiksnih stroškov, kar zmanjšuje donose. Z združevanjem kvalificiranih socialnih projektov lahko zmanjšamo transakcijske stroške in privabimo velike institucionalne vlagatelje.





## 5. ZAKLJUČEK IN ZAHVALE

Številne pobude in programi, ki se izvajajo ali se razvijajo na evropski ravni, se osredotočajo na inovativne pristope za podporo in vključevanje marginaliziranih in težko dostopnih skupin evropskega prebivalstva, kot so NEET in starejši. Podpora za vzpostavitev, izvajanje in finančni okvir ODU v Evropski uniji, njenih institucijah in političnem okviru že obstaja.

Vendar pa je pred nami še dolga pot, da bi ODU postale prednostni finančni instrument za socialne potrebe in obrobne skupine. Ta instrument je še vedno neznan potencialnim deležnikom, še vedno je veliko strahov in predsodkov, ki jih je treba najprej resno obravnavati in odpraviti. Poleg tega je razčlenitev političnega okvira na lokalno raven še vedno precej težka.

Potrebni so več pilotnih projektov za resničen napredek pri odzivanju na odprta vprašanja pri izzivih, ki jih postavlja pravni okvir ter izvajanje in rezultat obveznic z družbenim učinkom.

Prepričani smo, da je ta skupna metodologija v pomoč pri pojasnjevanju, kako se lahko izvajajo obveznice z družbenim učinkom in kakšen je politični kontekst, pa tudi pri tem, da si lažje predstavljate obveznice z družbenim učinkom kot instrument za financiranje projektov in instrument za ustvarjanje trajnostne priložnosti za prizadete ciljne skupine.

### Zahvale

Skupno metodologijo so napisali **R. Ribarek, S. Brückner, V. Frick, M.C. Pizzorno, M. Bartolomeo, D. Del Maso in F. Priesmeier, s podporo projektnih partnerjev AlpSIB.**

Posebna zahvala gre tistim, ki so prispevali k uspehu Skupne metodologije:

- strokovnjakom na sestankih nadnacionalnega svetovalnega odbora (TAB):

**Stephanie Petrick, Julian Blake, Dr. Jussi Nykänen, Mikka Pyykkö, Dorothee Vogt, Phillipe Bernard-Treille, Ulrich Dobler, Georgia Efremova, Maha Keramane**

- avtorjem nacionalnih dokumentov za razpravo:

**Nina Schneider, Thomas Scheuerle, Anja Nieveler, Lavinia Pastore, Luigi Corvo, Nataša Kump, Damjan Kavaš, Matjaž Črnigoj, Fabien Lanteri, Anna Kamenskaya, Annick Martin**

Avtorji se zahvaljujejo tudi vsem udeležencem razprav, ki tukaj niso omenjeni.



## 6. APPENDIX

### 6.1. Examples of Contract Models

#### 6.1.1. Template contract developed by the Centre for Social Impact Bonds (GB)

Source: (Centre for Social Impact Bonds, 2017b)

**DATED**

**20[ ]**

**[INSERT NAME OF AUTHORITY]**

**AND**

**[INSERT NAME OF CONTRACTOR]**

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**THIS AGREEMENT** is made the [DAY] day of [MONTH] 20[ ]

**BETWEEN:**

(1) [NAME] of [ADDRESS] (the “**Authority**”); and

(2) [NAME] whose registered office is at [ADDRESS] and whose registered [company] number is [NUMBER] (the “**Contractor**”);

each one a “**Party**” and together the “**Parties**”.

**RECITALS**

(A) The Authority has initiated a procurement process and identified the Contractor as the bidder appearing most likely to deliver the Outcomes in the most economically advantageous manner.

(B) The Authority has selected the Contractor to provide the Services and the Contractor undertakes to provide the Services on the terms set out below.

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement:

<b>“1998 Act”</b>	means the Data Protection Act 1998;
<b>“Affiliate”</b>	means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and “holding company” and “subsidiary” shall have the meaning given to them in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;
<b>“Agreement”</b>	means the terms and conditions below together with the Schedules listed in the table of contents;
<b>“Agreement Term”</b>	means the period from and including the Commencement Date to the Expiry Date or, if earlier, the Termination Date;
<b>“Authorised Change Note”</b>	means a Proposed Change Note signed by the Parties in accordance with paragraph 3 of Schedule 6 ( <i>Change Procedure</i> );
<b>“Authority Default”</b>	means: <ul style="list-style-type: none"> <li>(a) failure to pay sums properly due and payable under this Agreement within forty (40) days of their due date;</li> <li>(b) [failure to make [at least [x]% of] the Required Referrals in any [month]/[quarter]]; or</li> <li>(c) breach of any obligations under this Agreement which has a material adverse impact on the Contractor in performing the Services or achieving the Minimum Expected Outcomes;</li> </ul>

<b>“Authority Default Termination Sum”</b>	means an amount which is reasonably determined by the Authority, on the basis of information available to the Authority following consultation with the Contractor and having regard to any representations made by the Contractor (provided that, if the Contractor does not agree with the Authority's determination the matter shall be determined in accordance with the Dispute Resolution Procedure), as being equivalent to the amount the Contractor would have received (net of any payments already received under this Agreement) had this Agreement continued until the Expiry Date and the Contractor had met [the Minimum Expected Outcomes] less the additional costs that the Contractor would have incurred in providing the Services from the Termination Date to the Operational Period End Date (for the avoidance of doubt without adjusting either the Outcomes Payments or the additional costs for inflation);
<b>“Authority Mobilisation Obligations”</b>	means the obligations set out at Schedule 1 Part 4 ( <i>Authority Mobilisation Obligations</i> );
<b>“Authority Obligations”</b>	means the obligations set out in Schedule 1 Part 3 ( <i>Authority Obligations</i> );
<b>“Authority Policies”</b>	means the policies of the Authority referred to in Schedule 1 Part 2 ( <i>Authority Policies</i> );
<b>“Authority Related Party”</b>	means an officer, agent, contractor, employee or subcontractor (of any tier) of the Authority acting in the course of his office or employment or appointment (as appropriate) but excluding the Contractor and any Contractor Related Parties;
<b>“Authority's Authorised Representative”</b>	means the person appointed and authorised by the Authority in accordance with clause 11 to represent the Authority for the purposes of this Agreement;
<b>“CEDR”</b>	means the Centre for Effective Dispute Resolution;
<b>“Change in Ownership”</b>	Means: <ul style="list-style-type: none"> <li>(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends). and/or</li> <li>(b) any other arrangements that have or may have or which result in the same effect as paragraph (a);</li> </ul>
<b>“Change Procedure”</b>	means the change procedure set out in Schedule 6 ( <i>Change Procedure</i> );
<b>“Commencement Date”</b>	means [DATE]/[the date on which the conditions precedent referred to in clause 3.2 are satisfied];
<b>“Commercially Sensitive Information”</b>	means the subset of Confidential Information listed in column 1 of Part 1 of Schedule 9 ( <i>Commercially Sensitive Contractual Provisions</i> ) and column 1 of Part 2 of Schedule 9 ( <i>Commercially Sensitive Information</i> ) in each case for the period specified in column 2 of Part 1 and Part 2 of Schedule 9

**“Confidential Information”**

means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of any Party and all personal data within the meaning of the 1988 Act;
- (b) Commercially Sensitive Information; and
- (c) Personal Data;

**“Contract Review Date”**

means each of the dates falling six, eighteen, thirty and forty-two months following the Services Commencement Date;

**“Contractor Default”**

means one of the following events:

- (a) a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;
- (b) any receiver or manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property of the Contractor that is the subject of a charge;
- (c) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor;
- (d) an administration order is made or an administrator is appointed in respect of the Contractor;
- (e) a failure by the Contractor to implement a Performance Improvement Plan in accordance with clause 24.1.3, or the occurrence of a Service Failure or Negative Outcomes Assessment which the Parties agree, or it is determined pursuant to clause 24.1.4, cannot be remedied through a Performance Improvement Plan;
- (f) a breach by the Contractor of its obligation to take out and maintain the Required Insurances;
- (g) the existence of a conflict of interest on the part of the Contractor which, in the reasonable opinion of the Authority, presents a material reputational risk to the Authority or compromises the Contractor's ability to perform the Services and which the Contractor fails to address in accordance with clause 7 (*Conflicts of Interest*);
- (h) a breach by the Contractor of its obligations in clause 30 (*Assignment and Sub-Contracting*);
- (i) where a consent, licence or approval which is material to the provision of the Services is suspended, cancelled, revoked, terminated or otherwise ceases to be in full force and effect and is not replaced by an equivalent consent, licence or approval within thirty (30) Days of such consent, licence or approval being suspended, cancelled, revoked, terminated or otherwise ceasing to be in full force and effect;
- (j) a breach by the Contractor of its obligations in clause 31 (*Change in Ownership*);

<b>“Contractor Related Party”</b>	means an officer, servant or agent of the Contractor, or any Affiliate of the Contractor, or any Subcontractor and any officer, servant or agent of such a person;
<b>“Contractor’s Authorised Representative”</b>	means the person appointed and authorised by the Contractor in accordance with clause 11 to represent the Contractor for the purposes of this Agreement;
<b>“Current Employer”</b>	means the employer of an individual providing part of the Services at the Service Transfer Date;
<b>“Data Sharing Policy”</b>	means the policy at Schedule 4 ( <i>Data Sharing Policy</i> );
<b>“Day”</b>	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
<b>“Deed of Assurance”</b>	means an agreement executed as a deed between the Authority, the Contractor and a Principal Subcontractor in the form set out in Schedule 3 ( <i>Deed of Assurance</i> );]
<b>“Demobilisation Plan”</b>	means the plan at Part 2 of Schedule 5 ( <i>Mobilisation and Demobilisation Plans</i> );
<b>“Directive”</b>	means EC Council Directive 2001/23/EC;
<b>“Direct Losses”</b>	means all Losses other than Indirect Losses;
<b>“Dispute Resolution Procedure”</b>	means the procedure to deal with disputes as set out at clause 29 ( <i>Dispute Resolution Procedure</i> );
<b>“Employee Liability Information”</b>	means the information listed in Regulation 11(2) of TUPE;
<b>“Environmental Information Regulations”</b>	means the Environmental Information Regulations 2004;
<b>“Expiry Date”</b>	means [ <i>day falling [•] years/months following</i> ] the Operational Period End Date or such other date agreed between the Authority and the Contractor in accordance with this Agreement;
<b>“FOIA”</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
<b>“Force Majeure Event”</b>	means any cause materially affecting the performance by a Party of its obligations under this Agreement arising from any act, event, omission, happening or non-happening beyond its reasonable control including, without limitation, acts of God, strikes, lock-outs or other industrial disputes, war, riot, flood or any disaster affecting either one of the Parties;
<b>“Future Service Provider”</b>	shall have the meaning given in clause 27.3.1;
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor providing services of a similar scope, type and complexity to the Services, seeking in good faith to comply with its contractual obligations, complying with all applicable Legislation and engaged in the same type of undertaking and under the same or similar circumstances and conditions;

<b>“Indirect Losses”</b>	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue under this Agreement;
<b>“Information”</b>	has the meaning given under Section 84 of FOIA;
<b>“Initial Subcontractor[s]”</b>	means <i>[NAME (if any)]</i> ;
<b>“Intellectual Property Rights”</b>	means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-how which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by the Contractor, any Contractor Party or by other third parties (for the use by or on behalf of or for the benefit of the Contractor) for the purposes of providing the Services or otherwise for the purposes of this Agreement;
<b>“Investor[s]”</b>	means [the parties providing finance to the Contractor to fund the delivery of the Services] <i>/[NAME[S]]</i> ;
<b>“Legislation”</b>	means any Act of Parliament, government regulation or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom;
<b>“Loss”</b>	means all damages, losses, liabilities, claims, actions, costs, expenses (including legal and other professional charges and expenses, legal costs being on an indemnity basis) proceedings, demands and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;
<b>“Minimum Expected Outcomes”</b>	means <i>[the minimum number of Outcomes that the Authority and the Contractor agree are expected to be achieved in each of the [weeks / months / years] of the Operational Period]</i> ;
<b>“Mobilisation Period”</b>	means the period commencing on <i>[DATE]</i> /[the Commencement Date] and expiring on the Day immediately prior to the Services Commencement Date;
<b>“Mobilisation Plan”</b>	means the plan at Schedule 5 ( <i>Mobilisation and Demobilisation Plans</i> );
<b>“Negative Outcomes Assessment”</b>	means an assessment, conducted at a Review Meeting in accordance with clause 12.1.2, which establishes that the current performance levels for the Service have not achieved the Satisfactory Level of Outcomes;
<b>“Objective”</b>	means the intended effect of delivering the Outcomes under this Agreement, namely <i>[insert details]</i>
<b>“Operational Period”</b>	means the period during which the Contractor shall provide the Services which will start on the Services Commencement Date and end on the Operational Period End Date or the Termination Date if earlier;
<b>“Operational Period End Date”</b>	the Day falling <i>[[•] years and [•] months]</i> following the Services Commencement Date, save where extended pursuant to clause 3.4;
<b>“Outcomes”</b>	means the Outcomes identified as such in the Services Specification;
<b>“Outcomes Payment”</b>	means the payments by the Authority to the Contractor for the achievement of the Outcomes calculated in accordance with Schedule 2 ( <i>Payment Schedule</i> );



<b>“Performance Improvement Plan”</b>	means the plan agreed in accordance with clause 24.1.2 to remedy a Service Failure or address a Negative Outcomes Assessment;
<b>“Personal Data”</b>	means personal data as defined in the 1998 Act which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services;
<b>“Potential Service Users”</b>	means [ <i>describe target client group</i> ];
<b>“Prescribed Rate”</b>	means [ <i>four (4)</i> ] per cent above the Bank of England base rate from time to time;
<b>“Principal Subcontractor”</b>	means the Subcontractor to whom the Contractor subcontracts performance of all or a major part of the Services;
<b>“Prohibited Act”</b>	means: <ul style="list-style-type: none"> <li>(a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> <li>(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Authority; or</li> <li>(ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Authority;</li> </ul> </li> <li>(b) entering into this Agreement or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010;</li> <li>(ii) under Legislation creating offences in respect of fraudulent acts; or</li> <li>(iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Authority; or</li> <li>(iv) defrauding or attempting to defraud or conspiring to defraud the Authority;</li> </ul> </li> </ul>
<b>“Proposed Change Note”</b>	means a note issued by the Contractor in accordance with paragraph 2 of Schedule 6 ( <i>Control Procedure</i> );
<b>“Requests for Information”</b>	has the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;
<b>“Required Insurances”</b>	means the insurances listed in Schedule 7 ( <i>Required Insurances</i> );
<b>“Retendering Information”</b>	means, in respect of any employee, Employee Liability Information (other than the name of the employee, who shall instead be identified by his or her staff reference number), date of birth, gender, site, department, national insurance letter (A or D), salary or if applicable salary scale and point, details of involvement in the Services, terms and conditions of employment and any applicable policies (whether contractual or discretionary), records of the employee’s sick, maternity, paternity, parental or other leave and all the pensions information as required under clause 27.4;

<b>“Review Meeting”</b>	has the meaning given to such term in clause 12.1.2;
<b>“Satisfactory Level of Outcomes”</b>	means [ <i>threshold to be negotiated on a project specific basis reflecting acceptable performance of the project</i> ];
<b>“Service Failure”</b>	means a breach by the Contractor of any of its obligations under this Agreement which materially and adversely affects the Authority or the Service Users;
<b>“Service Transfer Date”</b>	has the meaning given to it in clause 27.5.2 of this Agreement ( <i>Expiry, Termination or a Transfer Change</i> );
<b>“Service Users”</b>	means [ <i>describe individuals selected for participation in the program</i> ];
<b>“Services”</b>	means the services to be provided by the Contractor to the Authority under this Agreement in accordance with the Services Specification;
<b>“Services Commencement Date”</b>	means the latest to occur of (i) [ <i>insert expected Services Commencement Date</i> ] and (ii) the date on which the Mobilisation Plan has been completed, or such other date as the Parties agree in accordance with clause 4.5;
<b>[“Services Fee”</b>	means the fee payable by the Authority in consideration of the performance of the Services by the Contractor in accordance with this Agreement being [ <i>insert amount</i> ] as may be amended in accordance with this Agreement;]
<b>“Services Specification”</b>	means the specification contained in Part 1 of Schedule 1 ( <i>Services Specification</i> );
<b>“Subcontractor”</b>	means a person to whom the Contractor directly subcontracts any of its obligations under this Agreement;
<b>“Suitable Third Party”</b>	means any person who is not <ul style="list-style-type: none"> <li>(a) a person who has a material interest in the production, distribution or sale of tobacco products, alcoholic drinks and/or pornography;</li> <li>(b) a person whose activities may, in the reasonable opinion of the Authority, have a material adverse effect on the reputation of the Authority;</li> <li>(c) a person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of the Services in the area; or</li> <li>(d) a person whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security;</li> </ul>
<b>“Tender Submission”</b>	means the bid documents (comprising [ <i>INSERT DETAILS OF RELEVANT DOCUMENTS</i> ]) submitted by the Contractor and relied upon by the Authority in selecting the Contractor to deliver the Services pursuant to this Agreement;
<b>“Termination Date”</b>	means the date of early termination of this Agreement in accordance with its terms;
<b>“Termination Notice”</b>	means a notice of termination issued in accordance with this Agreement;
<b>“Transferring Employees”</b>	has the meaning given to it in clause 27.5.2 of this Agreement ( <i>Expiry, Termination or a Transfer Change</i> );
<b>“TUPE”</b>	means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 246); and
<b>“VAT”</b>	means Value Added Tax.

- 1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.3 Save where it is stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document.
- 1.4 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.5 References to clauses, paragraphs, Parts and Schedules are, unless otherwise provided, references to the clauses, paragraphs, Parts and Schedules to this Agreement.
- 1.6 In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence. In the event of any inconsistency between Schedules, the conflict should be resolved according to the following descending order of priority:
  - 1.6.1 Schedule 2 (*Payment Schedule*);
  - 1.6.2 Schedule 1, Part 1 (*Services Specification*);
  - 1.6.3 the Schedules other than Schedule 1, Part 1 (*Services Specification*) and Schedule 2 (*Payment Schedule*).
- 1.7 Except as otherwise expressly provided in this Agreement, all remedies available to the Contractor or to the Authority under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 1.8 A reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders.
- 1.9 The expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.
- 1.10 The words "including", "includes" and "included" will be construed without limitation unless inconsistent with the context.

## **2. STATEMENT OF SHARED AIMS**

1.
  - 2.1 The principal purpose of the Parties in entering into this Agreement is to achieve the Objective by delivering the Outcomes.
  - 2.2 The successful implementation of this Agreement will depend on the Parties' ability effectively to co-ordinate and combine their expertise, manpower and resources in order to deliver an integrated approach to the provision of the Services under this Agreement in accordance with its terms.
  - 2.3 The Parties shall develop a close working relationship between the Authority and the Contractor at all appropriate levels, based upon openness and trust in a transparent information and data sharing environment.

### 3. COMMENCEMENT AND DURATION

3.

- 3.1 The rights and obligations of the Parties under this Agreement shall take effect on the Commencement Date and shall continue in force until the Expiry Date unless terminated earlier in accordance with the termination provisions of this Agreement.
- 3.2 [The Commencement Date shall take place on the occurrence of the last of the following events:
- 3.2.1 *If conditions precedent are required, insert here, otherwise this clause 3.2 and clause 3.3 may be deleted*
- 3.3 If the conditions specified in clause 3.2 are not satisfied by [DATE] the Parties may terminate this Agreement immediately, following which this Agreement and the rights and obligations of the Parties under this Agreement shall terminate so that neither Party shall be liable to the other in respect of such termination.]
- 3.4 [The Parties may extend the Operational Period for a further period not exceeding an additional [five] years from the Operational Period End Date where they are satisfied that the Outcomes are being achieved and will continue to be so and such extension can be agreed on terms that deliver value for money to the Authority.
- 3.5 The Parties shall agree the details of any such extension to this Agreement not less than six months prior to the Operational Period End Date, failing which this Agreement shall terminate on the Expiry Date.
- 3.6 The Parties shall not exercise the right to extend this Agreement contained in clause 3.4 above on more than one occasion.]

### 4. MOBILISATION

4.

- 4.1 The Contractor will perform the responsibilities allocated to it under the Mobilisation Plan during the Mobilisation Period to achieve the commencement of the Services on the Services Commencement Date.
- 4.2 The Authority will perform the Authority Mobilisation Obligations during the Mobilisation Period to support the commencement of the Services on the Services Commencement Date.
- 4.3 During the Mobilisation Period the Contractor shall provide a monthly report to the Authority on progress against the Mobilisation Plan.
- 4.4 If at any time during the Mobilisation Period the Authority and/or the Contractor reasonably believes that the Mobilisation Plan will not be delivered in accordance with the timings contained in the Mobilisation Plan and/or the Services Commencement Date will not be achieved the relevant Party shall immediately notify the other in writing.
- 4.5 The Authority and the Contractor will meet to discuss any matter notified under clause 4.4 of this Agreement in order to agree actions to ensure that the Services Commencement Date is met, or to amend the Mobilisation Plan and/or the Services Commencement Date if appropriate.

## 5. DEED OF ASSURANCE

The Contractor shall:

4.

- 5.1 deliver the Deed of Assurance signed by the Principal Subcontractor and the Contractor to the Authority on the date of this Agreement;
- 5.2 deliver to the Authority certified copies of the subcontract entered into between the Contractor and the Principal Subcontractor on or prior to the date of this Agreement; and
- 5.3 not engage any replacement Principal Subcontractor unless such person has delivered to the Authority a duly executed agreement substantially in the form of the Deed of Assurance and in each case such Deed of Assurance must be delivered to the Authority before such person performs any part of the Services.

## 6. CONTRACTOR WARRANTIES AND REPRESENTATIONS

6.

- 6.1 The Contractor warrants and represents to the Authority that on the date of this Agreement:
  - 6.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
  - 6.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Agreement;
  - 6.1.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Agreement has been taken;
  - 6.1.4 the obligations expressed to be assumed by the Contractor under this Agreement are legal, valid, binding and enforceable to the extent permitted by law;
  - 6.1.5 the execution, delivery and performance by it of this Agreement does not contravene any provision of:
    - (a) any existing Legislation, either in force or enacted but not yet in force, binding on the Contractor;
    - (b) the Memorandum and Articles of Association of the Contractor;
    - (c) any order or decree of any court or arbitrator which is binding on the Contractor; or
    - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Agreement;
  - 6.1.6 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Agreement; and
  - 6.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues, and the Authority relies upon such warranties and representations.



6.2 Each warranty and representation in this clause 6 shall be construed as a separate warranty or representation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or representation or any other term of this Agreement.

6.3 The Contractor shall be deemed to have satisfied itself before entering into this Agreement as to the accuracy and sufficiency of the payments it has agreed to receive, which shall (except as otherwise provided in this Agreement) cover all its obligations under this Agreement.

## **7. CONFLICTS OF INTEREST**

7.

7.1 Each Party warrants to the other that at the date of this Agreement it does not have (and is not aware that it will have in the future) any interest in any matter where there is or is reasonably likely to be a conflict of interest between its interest and that of the other Party or Service Users.

7.2 If a Party becomes aware of any conflict of interest or any potential conflict of interest it shall promptly notify the other Party. The Parties shall discuss the actual or potential conflict and shall use reasonable endeavours to eliminate or avoid the conflict or minimise its impact, taking into account in particular any statutory duties of the Authority and the interests of the Service Users.

## **8. GENERAL ASSISTANCE AND COOPERATION**

8.

8.1 Subject to clause 8.2, each Party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and in particular will:

8.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the other Party;

8.1.2 not interfere with the rights of the other Party and its servants, agents, representatives, contractors or subcontractors (of any tier) on its behalf in performing its obligations under this Agreement nor in any other way hinder or prevent such other Party or its servants, agents, representatives, contractors or subcontractors (of any tier) on its behalf from performing those obligations; and

8.1.3 assist the other Party (and its servants, agents, representatives, contractors or subcontractors (of any tier)) in performing those obligations so far as is reasonably practicable.

8.2 Nothing in clause 8.1 shall:

8.2.1 interfere with the right of each Party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;

8.2.2 oblige any Party to incur any additional cost or expense or suffer any loss of profit in excess of that required by its proper performance of its obligations under this Agreement;

8.2.3 relieve a Party from any obligation under any indemnity contained in this Agreement or from any obligation to pay any debt due or payable under such document; or

8.2.4 fetter the discretion of the Authority in fulfilling its statutory functions.

## 9. THE SERVICES

9.

9.1 The Contractor shall provide the Services during the Operational Period with the intent of achieving the Outcomes.

9.2 The Services shall be delivered in accordance with:

9.2.1 the Service Specification;

9.2.2 all applicable Legislation;

9.2.3 the Authority Policies (insofar as they are relevant and do not refer to matters addressed specifically elsewhere in this Agreement); and

9.2.4 Good Industry Practice.

9.3 Subject to clause 30 (*Assignment and Sub-Contracting*) the Contractor shall [,or shall procure that the Subcontractor does,] at all times engage a sufficient number of personnel and/or Contractor Related Parties to deliver the Services in accordance with applicable Legislation and Good Industry Practice.

9.4 All personnel involved in the provision of the Services (whether employed by the Contractor or Contractor Related Parties) shall possess the skills, qualifications and competence to deliver the Services in accordance with applicable Legislation and Good Industry Practice.

9.5 The Contractor shall procure that all aspects of the Services are the subject of, and are conducted in accordance with appropriate quality assurance systems. The Authority may carry out periodic audits of the aforementioned quality assurance systems at approximate intervals of six (6) months. If the Authority believes (acting reasonably) that the Contractor is in breach of this clause 9.5 it may carry out other periodic monitoring, spot checks and auditing of the Contractor's quality systems. The Contractor shall procure that the Authority shall have a like right in respect of any relevant Subcontractors. The Contractor shall co-operate and shall procure that any relevant Subcontractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its rights under this clause 9.5.

## 10. AUTHORITY OBLIGATIONS

10.

10.1 The Authority shall perform the Authority Obligations in a timely manner to support the delivery of the Outcomes.

10.2 During the Agreement Term, the Authority shall not omit, delay or do anything, including enter into any contract or other arrangement for services, that may reasonably be expected to affect adversely the Contractor's ability to perform the Services or achieve the Outcomes or to make it materially more difficult or expensive for it to do so.

10.3 Nothing in this clause 10 shall fetter or constrain the Authority's discretion in the carrying out of its statutory functions.

## 11. AUTHORISED REPRESENTATIVES

### *The Authority's Authorised Representative*

11.

- 11.1 The Authority's Authorised Representative shall be *[INSERT NAME AND/OR TITLE]* or such other person appointed pursuant to this clause 11.
- 11.2 The Authority's Authorised Representative shall liaise with and give instructions to the Contractor and its officers, employees, agents or representatives in relation to all matters concerning the performance by the Contractor of its obligations under this Agreement and to determine any matters, or give any notices as may be the function of the Authority's Authorised Representative under this Agreement.
- 11.3 To the extent it is reasonably practicable the Authority shall not change the identity of the Authority's Authorised Representative without first discussing the matter with the Contractor and having reasonable regard to the views of the Contractor in relation to any proposed replacement.

### *The Contractor's Authorised Representative*

- 11.4 The Contractor's Authorised Representative shall be *[INSERT NAME AND/OR TITLE]* or such other person appointed pursuant to this clause 11.
- 11.5 The Contractor's Authorised Representative shall have the power to act on behalf of the Contractor in connection with any matter relating to the performance of the Services and exercise the rights, functions and obligations of the Contractor under this Agreement.
- 11.6 To the extent it is reasonably practicable the Contractor shall not change the identity of the Contractor's Authorised Representative without first discussing the matter with the Authority and having reasonable regard to the views of the Authority in relation to any proposed replacement.

## 12. REVIEW, MONITORING AND INFORMATION

12.

### *Review*

- 12.1.1 The Parties shall meet at least every three (3) months to review:
  - (a) the performance of the Services and progress towards achieving the Outcomes; and
  - (b) the effectiveness of the contract management arrangements
 in order to assess whether any improvements may be made and implemented by the Parties.
- 12.1.2 The Parties shall meet on or around each Contract Review Date (such meeting being a Review Meeting) to review:
  - (a) the performance to date of the Contractor, including whether a Negative Outcomes Assessment has arisen;
  - (b) the ongoing suitability of the Services and the delivery of the Outcomes to achieve the Objective; and
  - (c) the terms of this Agreement and its effect upon the Outcomes, the Parties and the Service Users.
- 12.1.3 If the Parties conclude that a Negative Outcomes Assessment has arisen, clause 24.1.1 shall apply.

- 12.1.4 The Parties shall consider in good faith whether amendments may be made to this Agreement, the Services or the Outcomes which would improve the prospect of achieving the Objective without having a material adverse effect on the Parties, the Investor or the Service Users.
- 12.1.5 If the Parties agree there are amendments as described in clause 12.1.4 they shall be implemented in accordance with clause 14 and Schedule 6. If the Parties cannot so agree, no such changes shall be made.
- 12.1.6 Each Party shall provide, not less than ten (10) Days before a Contract Review Date, all information it reasonably believes to be relevant and any other information reasonably requested by the other Party (in each case within its possession or control) to inform the review processes to be conducted pursuant to this clause 12.1.
- 12.2 *Monitoring*
- 12.2.1 The Contractor shall comply with the management information requirements set out in Schedule 8 (*Management Information*).
- 12.2.2 The Contractor shall keep and maintain such data and information and shall provide such assistance as the Authority may reasonably require by written notice to the Contractor to enable the Authority:
- (a) to complete all official returns, including, but without limitation the following:
    - (i) returns to any central government body or properly authorised agency of central government; and
    - (ii) information required by any statutory body or compliance with any statute or statutory instrument; and
  - (b) to comply with its statutory duties relating to the Services;
- provided in each case the nature of such data and information and the format for the same has been agreed by the Parties (acting reasonably).
- 11.2.3 Subject to clause 12.2.4, the Contractor shall, not more than three (3) times per annum, use reasonable endeavours to procure the Authority's Authorised Representative (or his or her nominee) and/or any elected member of the Authority access on reasonable notice during normal working hours (save where the Contractor, acting reasonably, believes such access may have a detrimental impact on Service Users) to any premises used by the Contractor or a Subcontractor for the provision of the Services for the purpose of:
- (a) monitoring and inspecting performance of the Services;
  - (b) inspecting any or all records and documents in the possession, custody or control or held by the Contractor in connection with the provision of the Services;
  - (c) interviewing Contractor employees, officers, agents and any Subcontractors in connection with the provision of the Services; and
  - (d) inspecting equipment (including any Contractor assets), systems and procedures used by the Contractor to provide the Services.

Notice for such access shall not be required in cases of emergency.

- 12.2.4 The Authority may be entitled to access premises used by the Contractor or a Subcontractor for the provision of the Services more than three (3) times per annum where such additional access is necessary to monitor compliance with statutory obligations of the Parties or to establish that a Performance Improvement Plan has been implemented in accordance with clause 24.1.3.
- 12.3 *Information*
- 12.3.1 The Contractor shall maintain separate records of the information in accordance with Schedule 8 (*Management Information*) and retain them for a period of at least [six (6)] years after the Contractor's obligations under this Agreement have come to an end.
- 12.3.2 All information referred to in this clause 12.3 is subject to the obligations set out in clause 17 (*Confidentiality*).
- 12.3.3 The Authority shall promptly supply accurate and relevant data held by the Authority to the Contractor to determine whether the Outcomes have been delivered and the Outcomes Payments triggered and any other relevant data within its control which is required to comply with Schedule 8 (*Management Information*). In the case where a Mediator is appointed as set out in clause 29 (*Dispute Resolution Procedure*), the Authority shall promptly supply any data reasonably requested by the Mediator, including access to any primary data sources held by the Authority insofar as the Authority is legally permitted to do so and subject where appropriate to confidentiality measures being agreed.
- 12.4 *Audit*
- 12.4.1 On up to two (2) occasions per annum, the Contractor shall permit and procure for the internal and external auditors of the Authority access to all such locations, staff, property and Information of the Contractor and its agents, consultants and Subcontractors (excluding Commercially Sensitive Information) as those auditors may properly require for the purpose of testing audit and investigation on behalf of the Authority notwithstanding whether such purposes relate to periods prior to the Commencement Date or require access to information which may relate to parties other than the Authority but the Contractor may not be required to act in breach of any obligation of confidentiality lawfully undertaken prior to the date of this Agreement toward any third party as a condition of the supply of the Information.
- 12.4.2 The Contractor shall provide to the Authority's internal and/or external auditors within five (5) Days of request such complete and up-to-date files and other documents as those auditors could have inspected by personal attendance under the provisions of this Agreement and those auditors may retain and copy the same for up to five (5) Days and shall return the same by making them available for collection by the Contractor.

### 13. PAYMENT PROVISIONS

#### 13.

##### 13.1 *Payment of [the Services Fee and] the Outcomes Payment*

[The Authority shall pay the Contractor the Services Fee in consideration of delivery of the Services.] In consideration of the achievement of the Outcomes, the Authority shall pay the Contractor the Outcomes Payments, calculated in accordance with Schedule 2 (*Payment Schedule*).

##### 13.2 *Report and Invoice*

- 13.2.1 The Contractor shall submit to the Authority an invoice for the Services Fee and for any VAT payable in respect of that amount at the start of each month (the first invoice being submitted following the Services Commencement Date).

- 13.2.2 At the times prescribed in Schedule 2 (*Payment Schedule*), the Contractor shall submit to the Authority:
- (a) a report detailing the Outcomes Payment sought and each item taken into account in calculating that Outcomes Payment pursuant to Schedule 2 (*Payment Schedule*); and
  - (b) an invoice for the amount shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.

### 13.3 *Payment*

Subject to clause 13.4 (*Disputed Amounts*), the Authority shall pay the amount stated in any invoice submitted under clause 13.2 (*Report and Invoice*) within twenty (20) Days of receipt of the invoice in question.

### 13.4 *Disputed Amounts*

- 13.4.1 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to clause 13.2 (*Report and Invoice*) in respect of any invoice the provisions of this clause 13.4 shall apply.
- 13.4.2 Within ten (10) Days of receipt by the Authority of the relevant invoice and supporting report, the Authority shall notify the Contractor in writing of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority (acting in good faith) disputes (**a "Disputed Amount"**) and shall submit to the Contractor such supporting evidence as the Authority may have.
- 13.4.3 The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts.

### 13.5 *Response to Authority Notice*

Within five (5) Days following receipt by the Contractor of any notice served by the Authority pursuant to clause 13.4.2 (*Disputed Amounts*), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled to retain on a permanent basis any amounts withheld pursuant to clause 13.4.3 (*Disputed Amounts*).

### 13.6 *Dispute*

If the Contractor responds (pursuant to clause 13.5 (*Response to Authority Notice*)) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to clause 13.4.2 (*Disputed Amounts*), the matter or matters in question shall be determined under the Dispute Resolution Procedure.

### 13.7 *Determination of Dispute*

If the determination of any dispute conducted pursuant to clause 13.6 (*Dispute*) shows that the Authority has withheld any amount which the Contractor was entitled to be paid the Authority shall pay such amount to the Contractor with interest on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made until all relevant monies have been paid in full and whether before or after judgment. Relevant monies should be paid within ten (10) Days of the determination of dispute.



13.8 *Rights of Set Off*

Any Party may retain or set off any amount owed to it under this Agreement that has fallen due and payable against any amount due and payable under this Agreement, provided that no amount due and payable as a result of a Party's breach of this Agreement or pursuant to clause 20 (*Indemnities*) may be set off or retained from any other amount due and payable under this Agreement unless the Parties agree or unless such amount is finally judicially determined as due and payable. A Party shall notify the other Party as soon as reasonably practicable of any such retention or set off and provide particulars of the reasons for it.

13.9 *Set Off and Disputed Amounts*

If the payment or deduction of any amount referred to in clause 13.8 (*Rights of Set Off*) is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

13.10 *VAT on Payments*

## 13.10.1 All amounts due under this Agreement are exclusive of VAT.

13.10.2 If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply (**the "Recipient"**) shall in addition pay the person making the supply (**the "Supplier"**) the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

## 13.10.3 Where under this Agreement any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.

## 13.10.4 The Contractor shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Authority to the Contractor.

13.11 *Late Payment and Interest*

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment.

12.12 *Payments following expiry or termination*

For the avoidance of doubt, the Contractor may submit invoices following expiry or termination of this Agreement where payments properly fall due in accordance with Schedule 2 (*Payment Schedule*) and the provisions of this clause 13 shall apply to any amounts which are the subject of such invoices.

**14. CHANGE PROCEDURE**

## 14.

## 14.1 Each of the Contractor and the Authority may request a change to this Agreement in accordance with the Change Procedure. The Parties shall act in good faith in proposing and considering any changes to this Agreement, including not making any frivolous proposals.

- 14.2 In the eventuality that the Authority requests a change which would increase the capacity of the Services and would result in the Contractor having to obtain additional finance, the Contractor shall present the financial proposal for the requested change to the Authority for review and testing to ensure that this presents value for money and is affordable:
- 14.2.1 The additional increases (or reductions), in the costs of financing will be shared using the same principles outlined in the payment mechanism as set out at Schedule 2 (*Payment Schedule*);
- 14.2.2 The Authority and the Contractor shall undertake a financial remodelling exercise to re-calculate the investor returns and associated ceiling on investor returns; and
- 14.2.3 The Authority or the Contractor may in its absolute discretion decide not to proceed with any change following the re-modelling exercise set out in clause 14.2.2 above.
- 14.3 This Agreement can only be varied or amended where such variation or amendment is agreed in writing by the Parties in accordance with paragraph 3 of the Change Procedure.

## **15. DATA PROTECTION**

- 15.1 The Contractor shall comply with its obligations under the 1998 Act and the Computer Misuse Act 1990 insofar as performance of this Agreement gives rise to obligations under those Acts. The Contractor shall also comply with the Caldicott Principles set out in Schedule 10 (*The Caldicott Principles*).
- 15.2 Notwithstanding the general obligations in clause 15.1 above, where it is processing personal data (as defined by the 1998 Act) as a data processor for the Authority (as defined by the 1998 Act) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the 1998 Act. The Contractor shall:
- 15.2.1 provide the Authority with such Information as the Authority may reasonably require to satisfy itself that the Contractor is complying with its obligations under the 1998 Act;
- 15.2.2 promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 15.2; and
- 15.2.3 ensure that it does nothing knowingly or negligently which places the Authority in breach of the Authority's obligations under the 1998 Act.
- 15.3 The Contractor shall and will ensure that any Subcontractor shall implement, maintain and administer the Data Sharing Policy or such equivalent policy which is acceptable to the Authority and meets its minimum standards from time to time.

## **16. FREEDOM OF INFORMATION**

- 16.
- 16.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at the Contractor's expense) to enable the Authority to comply with relevant Requests for Information.
- 16.2 The Contractor shall and shall use reasonable endeavours to procure that its Subcontractors shall:
- 16.2.1 transfer a Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Days of receiving a Request for Information;

- 16.2.2 provide the Authority with a copy of all Information in its possession or power that the Authority reasonably requires to enable the Authority to respond to a Request for Information in accordance with the FOIA within five (5) Days (or such other longer period as the Authority may specify) of the Authority requesting that Information, such Information to be provided in the form reasonably required by the Authority; and
- 16.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 16.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
  - 16.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; or
  - 16.3.2 is to be disclosed in response to a Request for Information, in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 16.4 The Authority acknowledges that the Confidential Information is *prima facie* likely to be exempt from disclosure under the provisions of the FOIA or the Environmental Information Regulations (although such acknowledgement does not prejudice the Authority's discretion as set out in clause 16.3). The Authority shall notify the Contractor prior to providing any Confidential Information as part of a response to a Request for Information unless prohibited by law.
- 16.5 The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of FOIA, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
  - 16.5.1 without consulting with the Contractor; or
  - 16.5.2 following consultation with the Contractor and having taken its views into account.
- 16.6 The Contractor shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure for a period of six years following the Agreement Term and shall permit the Authority to inspect such records as requested from time to time.

## **17. CONFIDENTIALITY**

17.

- 17.1 Each Party:
  - 17.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
  - 17.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.
- 17.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with this Agreement:

- 17.2.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement; and
- 17.2.2 is treated as confidential and not disclosed (without prior approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement.
- 17.3 The Contractor shall ensure that:
- 17.3.1 its staff (temporary or permanent), professional advisors and consultants are aware of the Contractor's confidentiality obligations under this Agreement and that, where requested by the Authority, such staff, professional advisors and consultants sign a confidentiality undertaking before commencing work in connection with this Agreement; and
- 17.3.2 where the Services include the provision or recruitment of temporary staff for the Authority, such staff are aware that they will be required to operate in accordance with the confidentiality and intellectual property obligations undertaken by the Contractor under this Agreement (including in particular those set out in clause 15 (*Data Protection*), clause 19 (*Intellectual Property*) and clause 24 (*Termination*)) and the Contractor shall, if so required by the Authority, obtain and furnish to the Authority a personal undertaking from such temporary employees directly to the Authority to this effect before such employees begin work in connection with this Agreement.
- 17.4 The Contractor shall not use any Confidential Information it receives from the Authority other than for the purposes of this Agreement.
- 17.5 The provisions of clauses 17.1 to 17.4 shall not apply to any Confidential Information received by either Party:
- 17.5.1 which is or becomes public knowledge (otherwise than by breach of this clause 17);
- 17.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- 17.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 17.5.4 is independently developed without access to the Confidential Information; or
- 17.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 16 (*Freedom of Information*).
- 17.6 Nothing in this clause shall prevent the Authority:
- 17.6.1 disclosing any Confidential Information (excluding Commercially Sensitive Information) for the purpose of:
- (a) the examination and certification of the Authority's accounts; or
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- 17.6.2 disclosing any Confidential Information (excluding the Commercially Sensitive Information) obtained from the Contractor:
- (a) to any government department or any other contracting authority. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose

the Confidential Information to other government departments or other contracting authorities on the basis that the Information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or

- (b) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to this Agreement,

provided that in disclosing information under this clause 17.6 the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 17.7 Nothing in this clause shall prevent any Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 17.8 The provisions under this clause are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- 17.9 The Parties recognise the potential social value in sharing with third parties information relating to the Services and the Outcomes (including, without limitation, data relating to the nature, volume and effectiveness of interventions with Service Users). Without prejudice to the other provisions of this Agreement, the Parties shall use reasonable endeavours to respond positively to reasonable requests for such information and where to do so would put one of the Parties in breach of this Agreement, the affected Party shall consider, at their discretion but acting in good faith, whether to give prior written consent to such an act on that occasion. In such circumstances, the Parties agree that no breach of this Agreement shall arise (provided that such consent shall be required on every occasion such information is sought).

## **18. PUBLICITY**

Except with the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, or otherwise in accordance with any publicity guidelines agreed in writing by the Parties from time to time, neither Party shall make any press announcement or publicise this Agreement or the Services in any way.

## **19. INTELLECTUAL PROPERTY**

19.

19.

19.1 The Contractor:

19.1.1 hereby grants to the Authority, free of charge, a non exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Agreement ) licence to use the Intellectual Property Rights which are or become vested in the Contractor; and

19.1.2 shall, where any Intellectual Property Rights are or become vested in a third party (and are not generally commercially available), use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 19.1.1 above to the Authority,

in both cases, solely for the purpose of the Authority carrying out its duties or exercising any of its rights or statutory functions relating to the Services.

- 19.2 The Contractor shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement vest, and remain vested throughout the term of this Agreement, in the Contractor and the Contractor shall enter into appropriate agreements with any Contractor Related Party (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.
- 19.3 Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any Intellectual Property Rights or because the use of any item infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement, the Contractor shall indemnify the Authority at all times from and against all Losses arising as a result of such claims and proceedings and the provisions of clause 20 (*Indemnities*) shall apply.
- 19.4 Where a claim or proceeding is made or brought against the Contractor which arises out of the infringement of any Intellectual Property Rights or because the use of any item infringes any rights in or to any Intellectual Property Rights of a third party then, if such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement and otherwise than as a result of a breach of this clause 19 by the Contractor then the Authority shall indemnify the Contractor at all times from and against all Losses arising as a result of such claims and proceedings.

## 20. INDEMNITIES

20.

### 20.1 *Contractor's Indemnity*

20.1.1 The Contractor shall, subject to clause 20.2 (*Contractor not Responsible*), be responsible for, and shall release and indemnify the Authority or any Authority Related Party on demand from and against all liability for Direct Losses arising from:

- (a) death or personal injury;
- (b) loss of or damage to property; and
- (c) third party actions, claims and/or demands (other than any which are the subject of the indemnity in clause 20.1.2) brought against the Authority or any Authority Related Party,

which may arise out of, or in consequence of, the performance or non-performance by the Contractor of its obligations under this Agreement.

20.1.2 The Contractor shall, subject to clause 20.2 (*Contractor not Responsible*), be responsible for, and shall release and indemnify the Authority or any Authority Related Party, on demand from and against all liability for Losses arising from third party actions, claims or demands brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Contractor of its obligations under this Agreement to the extent that there are no other remedies available to the Authority under this Agreement.

### 20.2 *Contractor not Responsible*

The Contractor shall not be responsible or be obliged to indemnify the Authority:

20.2.1 for any matter referred to in clause 20.1 (*Contractor's Indemnity*) that arises as a direct result of the Contractor acting on a written notice issued by the Authority;



20.2.2 for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any Authority Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Contractor of its obligations under this Agreement) or by the breach of the Authority of its obligations under this Agreement; or

20.2.3 in respect of any claim under this Agreement (other than any in respect of death or personal injury caused by its negligence, or fraud or fraudulent misrepresentation, where no limit shall apply) to the extent that, when taken together with any other claims made under this Agreement, the aggregate amount claimed exceeds the relevant amounts specified in the Required Insurances (and where no relevant amount is specified, the aggregate amount in respect of those claims exceeds *[amount to be inserted for uninsured losses]*)

#### 20.3 *Limitation of Indemnity*

An indemnity by either Party under any provision of this Agreement shall be without limitation to any indemnity by that Party under any other provision of this Agreement.

#### 20.4 *Notification of Claims*

Where either Party (**the "Indemnified Party"**) wishes to make a claim under this Agreement against the other (**the "Indemnifying Party"**) in relation to a claim made against it by a third party (**a "Third Party Claim"**), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

#### 20.5 *Conduct of Claims*

Subject to the rights of the insurers under the Required Insurances, the Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have conduct of the Third Party Claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the Third Party Claim within a reasonable period, take any action to settle or prosecute the Third Party Claim.

#### 20.6 *Costs of Claims*

The Indemnifying Party shall, if it wishes to have conduct of any Third Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third Party Claim by the Indemnifying Party.

#### 20.7 *Mitigation*

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Agreement.

### 21. **INSURANCE**

#### 21.

21.1 The Contractor shall during the Agreement Term take out and maintain or procure the maintenance of the Required Insurances with a reputable insurance company and in accordance with Good Industry Practice.

21.2 The Contractor shall note the interest of the Authority on each policy of Required Insurance referred to at paragraph 1 of Schedule 7 (*Required Insurances*).

- 21.3 The Contractor shall not do, or omit to do, anything that may result in any of the Required Insurances becoming void, voidable or unenforceable, or which would entitle any insurer to refuse to pay any claim under the Required Insurances.
- 21.4 The Contractor shall provide to the Authority evidence and copies on request of all insurance policies required under this clause 21 including but not limited to the name of the insurer and premium paid.
- 21.5 If the Contractor is in breach of this clause 21, the Authority may pay any premium required to keep such Required Insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
- 21.6 The Contractor shall give the Authority notification within ten (10) Days after any claim on any of the Required Insurance policies referred to in this clause accompanied by full details of the incident giving rise to the claim.
- 21.7 Failure to comply with the Required Insurance provisions of this Agreement shall not limit or relieve the Contractor of its liabilities and obligations under this Agreement.
- 21.8 The Contractor shall inform the Authority of any material changes in the Required Insurances.
- 21.9 The insurance premiums in respect of the Required Insurances shall be the responsibility of the Contractor.

## **22. FORCE MAJEURE**

22.

- 22.1 On the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.
- 22.2 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.
- 22.3 If no such terms are agreed on or before the date falling sixty (60) Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is unable to comply with its obligations under this Agreement for a further period of more than twenty (20) Days, then either Party may terminate this Agreement by giving written notice to the other Party.
- 22.4 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 22.5 No Party shall be entitled to bring a claim or exercise a contractual or common law right for a breach of obligations under this Agreement by the other Party, or shall incur any liability to the other Party for any Losses incurred by that other Party to the extent that a Force Majeure Event occurs and the Party is prevented from carrying out obligations by that Force Majeure Event.

**23. BRIBERY, CORRUPT, GIFTS AND FRAUD**

23.

23.1 The Contractor:

23.1.1 shall not, and shall procure that any Contractor Related Party shall not, in connection with this Agreement commit a Prohibited Act;

23.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.

23.2 The Contractor shall:

23.2.1 if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;

23.2.2 within ten (10) Days of the Commencement Date, and annually thereafter on request from the Authority, certify to the Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this clause by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

23.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any personnel or any Subcontractor from committing a Prohibited Act and shall enforce it where appropriate.

23.4 If any breach of clause 23.1.1 is suspected or known, the Contractor must notify the Authority immediately.

23.5 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of clause 23.1.1, the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for one year following the expiry or termination of this Agreement.

23.6 The Authority may terminate this Agreement by written notice with immediate effect if the Contractor or any Contractor Related Party (in all cases whether or not acting with the Contractor's knowledge) breaches clause 23.1.1. In determining whether to exercise the right of termination under this clause 23.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Subcontractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Subcontractor) means and shall be construed as acting with the authority or with the actual knowledge of any one or more of the directors of the Contractor or the Subcontractor (as the case may be), or in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.

23.7 Any notice of termination under clause 23.6 must specify:

23.7.1 the nature of the Prohibited Act;

23.7.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and

23.7.3 the date on which this Agreement will terminate.

- 23.8 Any dispute relating to the interpretation of clause 23 or the amount or value of any gift, consideration or commission, shall be determined by the Authority and its decision shall be final and conclusive.
- 23.9 Any termination under clause 23.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

## **24. DEFAULT**

24.

### *24.1 Performance Improvement Plan*

24.1.1 If during the Operational Period there is a Service Failure or Negative Outcomes Assessment then the Contractor shall:

- (a) notify the Authority promptly upon becoming aware of such Service Failure or Negative Outcomes Assessment; and
- (b) provide the Authority as soon as reasonably practicable and in any event within twenty (20) Days with a draft Performance Improvement Plan.

24.1.2 The Authority shall (acting reasonably) either approve the draft Performance Improvement Plan within twenty (20) Days of receipt or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Authority and the Contractor shall meet to discuss the Authority's concerns. The Contractor shall submit a revised Performance Improvement Plan to the Authority for approval within ten (10) Days of the meeting, which the Authority shall (acting reasonably) either approve or reject within ten (10) Days of receipt. If the Contractor does not receive notice from the Authority that it does not accept the draft Performance Improvement Plan within the twenty (20) Day time period or if applicable the further ten (10) Day time period, the Contractor's draft Performance Improvement Plan shall be deemed to be agreed.

24.1.3 Once agreed, the Contractor shall promptly start work on and comply fully with the terms of the Performance Improvement Plan.

24.1.4 If a Performance Improvement Plan cannot be agreed, then either Party may escalate the matter for resolution in accordance with the Dispute Resolution Procedure to resolve any disagreement over the terms of the Performance Improvement Plan or any disagreement over whether the Service Failure or a Negative Outcomes Assessment is one which is capable of being addressed through a Performance Improvement Plan.

### *24.2 Termination on Contractor Default*

24.3 Subject to clause 24.4 (*Rectification*), the Authority shall be entitled to terminate this Agreement by notice in writing to the Contractor if a Contractor Default has occurred.

### *24.4 Rectification*

24.4.1 If a Contractor Default has occurred and the Authority wishes to terminate this Agreement, it must serve a Termination Notice on the Contractor.

24.4.2 The Termination Notice must specify:

- (a) the type and nature of Contractor Default that has occurred, giving reasonable details; and
- (b) that in the case of any Contractor Default falling within limbs (e), (f) and (g) of the definition of

Contractor Default this Agreement will terminate on the Day falling forty (40) Days after the date the Contractor receives the Termination Notice, unless the Contractor rectifies the Contractor Default within forty (40) Days after the date the Contractor receives the Termination Notice; or

- (c) that in the case of any other Contractor Default (not being limbs (e), (f) or (g)), this Agreement will terminate on the date falling forty (40) Days after the date the Contractor receives the Termination Notice.

24.4.3 If the Contractor rectifies the Contractor Default within the time period specified in the Termination Notice, the Termination Notice will be deemed to be revoked and this Agreement will continue.

24.4.4 If in the case of a Contractor Default falling within limbs (e) (f) or (g) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice, the Authority may give notice stating that this Agreement will terminate on the date falling five (5) Days after the date of service of such notice.

#### 24.5 *Authority Default*

24.5.1 If an Authority Default has occurred and is continuing and the Contractor wishes to terminate this Agreement, it must serve a termination notice on the Authority.

24.5.2 The termination notice must specify the Authority Default which has occurred entitling it to terminate.

24.5.3 This Agreement shall terminate on the Day falling forty (40) Days after the date the Authority receives the termination notice, unless the Authority rectifies the Authority Default within twenty (20) Days of receipt of the termination notice.

#### 24.6 *Payment on Authority Default*

24.6.1 On termination of this Agreement pursuant to clause 24.5 (*Authority Default*), the Authority shall pay the Authority Default Termination Sum to the Contractor within twenty (20) Days of the Termination Date.

24.6.2 Any and all sums irrevocably paid by the Authority to the Contractor under clause 24.6.1 or clause 24.6.2 shall be in full and final settlement of each Party's rights and claims against the other for breaches and/or termination of this Agreement whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of the Contractor to the Authority which the Authority has been unable to set off pursuant to this Agreement;
- (b) any antecedent liability of either Party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Authority Default Termination Sum; and
- (c) any liabilities arising in respect of any breach by either Party of their obligations under clause 25 (*Continuing Obligations on Termination*) which arise or continue after the Termination Date to the extent not taken into account in the calculation of the Authority Default Termination Sum or other payment of compensation on termination pursuant to this Agreement.

#### 24.7 *Voluntary Termination*

24.7.1 Either Party may terminate this Agreement by service of not less than six (6) months' written notice upon the other provided no such notice may be served in the eighteen (18) months immediately following the Services Commencement Date.

- 24.7.2 Where the Authority serves a termination notice pursuant to this clause 24.7, it shall pay the Authority Default Termination Sum on the date this Agreement terminates pursuant to that notice.
- 24.7.3 Where the Contractor serves a termination notice pursuant to this clause 24.7, the Contractor shall be entitled to receive payments in respect of Outcomes achieved after the date of termination that relate directly to the delivery of the Services prior to that date but (subject to clause 25.1) not otherwise.

## 25. CONTINUING OBLIGATIONS ON TERMINATION

Save as otherwise expressly provided in this Agreement, and notwithstanding the provisions of clause 24.6.2:

25.

- 25.1 termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the date of termination; and
- 25.2 termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Authority under clause 16 (*Authority Obligations*) (to the extent necessary to enable the Contractor to submit accurate information and invoices for payment pursuant to clause 13.12 of this Agreement), clause 13 (*Payment Provisions*), clause 16 (*Freedom of Information*), clause 17 (*Confidentiality*), clause 19 (*Intellectual Property*), clause 20 (*Indemnities*), clause 21 (*Insurance*), clause 24.54 (*Authority Default*), clause 26 (*Transition to Another Contractor*), clause 27 (*TUPE and Employees*), clause 28 (*Pensions*), clause 29 (*Dispute Resolution Procedure*), clause 36 (*Notices*) and clause 38 (*Law and Jurisdiction*) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## 26. TRANSITION TO ANOTHER CONTRACTOR

26.

26.1 *Duty to Co-operate*

During the final six (6) months of the Operational Period (where this expires by effluxion of time) or during the period of any Termination Notice, and in either case for a reasonable period thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Services (or any of the Services) to the Authority or any Future Service Provider, and for the purposes of this clause 26 the meaning of the term "co-operate" shall include:

- 26.1.1 liaising with the Authority and/or any Future Service Provider, and providing reasonable assistance and advice concerning the Services and their transfer to the Authority or to such Future Service Provider;
- 26.1.2 subject always to the Contractor's obligations under the 1998 Data Protection Act, providing to the Authority and/or to any Future Service Provider all and any information concerning the Services which is reasonably required for the efficient transfer of responsibility for their performance but information which is commercially sensitive to the Contractor shall not be provided (and for the purposes of this clause 26.1.2, "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor but shall not include any information referred to in clause 27 (*TUPE and Employees*));
- 26.1.3 performing its obligations as set out in the Demobilisation Plan.

26.2 *Transfer of Responsibility*

The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of



responsibility for the Services to a Future Service Provider or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Operational Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

## 27. TUPE AND EMPLOYEES

### 27.

#### 27.1 *No Employee Transfer*

27.1.1 The Authority and the Contractor agree that there are no individuals presently employed whose contracts of employment will, by virtue of the transfer to the Contractor of responsibility for provision of (or procuring the provision by any Subcontractor of) any of the Services in accordance with this Agreement and in accordance with TUPE, have effect after the Services Commencement Date (or at any other time) as if originally made between those persons and the Contractor and/or relevant Subcontractor.

27.1.2 If it is subsequently agreed or determined that there are persons presently employed whose contracts of employment do have effect after the Services Commencement Date as if originally made between those persons and the Contractor and/or relevant Subcontractor (**the "Transferring Staff"**) then:

- (a) the Authority shall or shall procure that any Current Employer within ten (10) Days of the date on which it was so agreed or determined have the opportunity to offer a position as an employee of the Current Employer to some or all of the Transferring Staff;
- (b) the Contractor shall procure that no person to whom any Current Employer has offered a position in accordance with clause 27.1.2(a) shall be dismissed by reason of redundancy until the period for acceptance of the Current Employer's offer has expired and the person in question has not accepted the Current Employer's offer;
- (c) subject to clauses 27.1.2(a) and 27.1.2(b), the Contractor or any Subcontractor shall be entitled to dismiss any or all of the Transferring Staff by reason of redundancy or for some other substantial reason provided that the Contractor shall use and shall procure that any Subcontractor shall carry out in the required manner any obligation to consult with the Transferring Staff or any of them, or their respective representatives, and shall use all reasonable endeavours to mitigate the amount of any costs payable in respect of the Transferring Staff or their dismissal.

27.1.3 The Authority shall indemnify the Contractor against:

- (a) any costs referred to in clause 27.1.2(c) reasonably incurred by the Contractor (or by a relevant Subcontractor and for which the Contractor is responsible); and
- (b) any Losses incurred by the Contractor or any relevant Subcontractor in connection with any claim or demand by any Transferring Staff arising out of the employment of any Transferring Staff. This indemnity shall apply provided that it arises from any act, fault or omission of the Authority in relation to any Transferring Staff prior to the Services Commencement Date (except where such act, fault or omission arises as a result of the Contractor or any relevant Subcontractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Services Commencement Date.

#### 27.2 *Compliance with Legislation and Authorities' Policies*

27.2.1 The Contractor shall comply and shall procure that each Subcontractor and all persons employed

or engaged by a Subcontractor in connection with the provision of any Service shall comply at all times with Legislation, including on health and safety at work and on anti-discrimination and equal opportunities.

- 27.2.2 The Contractor shall procure that each Subcontractor takes all reasonable steps to procure that all persons including any employed or engaged by a Subcontractor in connection with the provision of any Service shall, so far as applicable, comply with the Authority Policies as regards health and safety at work and with those relating to anti-discrimination and equal opportunities.

### 27.3 *Contractor Indemnities*

- 27.3.1 The Contractor shall indemnify and keep indemnified in full the Authority and, at the Authority's request, each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Agreement (a **"Future Service Provider"**) against:

- (a) claims in respect of all emoluments and all other contractual or statutory payments unpaid by the Contractor or a Subcontractor to any person entitled to such payments from the Contractor or a Subcontractor who is or has been employed or engaged by the Contractor or any Subcontractor in connection with the provision of any of the Services which relate to any period of employment or engagement with the Contractor or any Subcontractor on or after the Service Transfer Date but prior to the date of expiry or termination of this Agreement, and all income tax and pension and national insurance contributions payable thereon; and
- (b) insofar as clause 27.3.1(a) does not apply, all Direct Losses incurred by the Authority as a result of any claim against the Authority and/or the Current Employer in respect of any liability to any person who is or has been employed or engaged (whether as a consequence of TUPE or of the provisions of this clause 27) by the Contractor or any Subcontractor in connection with the provision of any of the Services, where such claim arises as a result of any act or omission of the Contractor or the Subcontractor occurring after the Service Transfer Date and before the expiry or termination of this Agreement,

but the indemnities in clauses 27.3.1(a) and 27.3.1(b) shall not apply to the extent that the claim arises from a wrongful act or omission of the Current Employer or the Authority.

### 27.4 *Retendering*

- 27.4.1 Subject always to the Contractor's obligations under the 1998 Act, the Contractor shall (and shall procure that any subcontractor shall) within the period of twelve (12) months immediately preceding the Operational Period End Date or following the service of a Termination Notice or as a consequence of the Authority notifying the Contractor of its intention to retender this Agreement:

- (a) on receiving a written request from the Authority provide in respect of any person engaged or employed by the Contractor or any Subcontractor in the provision of the Services (**the "Assigned Employees"**) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters<sup>11</sup> affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any Subcontractor as the case may be until immediately before the Termination Date or the Operational Period End Date (as appropriate), would be Transferring Employees (**the "Retendering Information"**);
- (b) provide the Retendering Information promptly and at no cost to the Authority;

<sup>11</sup> The list would normally show - Staff ref no; DoB; Age; Job Title; Start Date; Continuous Service Date - length of reckonable service; Contracted hours; Sex (M/F); Site; Department; NI letter (A or D); Scale and point; Salary; Superannuation (including contribution rates, length of reckonable pensionable service, etc.); and Allow/deduction code. N.B. This is not necessarily an exhaustive list.

- (c) notify the Authority in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- (d) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in accordance with the Demobilisation Plan, the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed);
- (e) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed); and
- (f) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services other than in accordance with the Demobilisation Plan or with the Authority's prior written consent (such consent not be unreasonably withheld or delayed).

27.4.2 The Contractor shall indemnify and shall keep indemnified in full the Authority and at the Authority's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor or Subcontractor failing to provide or promptly to provide the Authority and/or any Future Service Provider where requested by the Authority with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply to the extent that such information was originally provided to the Contractor or Subcontractor by the Authority and was materially inaccurate or incomplete when originally provided.

#### 27.5 *Expiry, Termination or a Transfer Change*

27.5.1 On the expiry or earlier termination of this Agreement, the Authority and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the law at the Operational Period End Date or the Termination Date as the case may be and this clause is without prejudice to such determination.

27.5.2 For the purposes of this clause 27 "**Transferring Employees**" shall mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the Operational Period End Date or the Termination Date whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. Upon expiry or earlier termination of this Agreement for whatever reason (such date being termed the "**Service Transfer Date**"), the provisions of this clause 27.5.2 will apply:

- (a) the Contractor shall or shall procure that all wages, salaries and other benefits of the Transferring Employees and other employees or former employees of the Contractor or the Subcontractors (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees and such other employees or former employees of the Contractor or Subcontractors up to the Service Transfer Date are satisfied;
- (b) the Authority shall ensure or shall procure that all wages, salaries and other benefits of the Transferring Employees (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees on and after the Service Transfer Date are satisfied;

(c) without prejudice to clause 27.5.2(a), the Contractor shall:

- (iii) remain (and procure that Subcontractors shall remain) (as relevant) responsible for all the Contractor's or Subcontractor's employees (other than the Transferring Employees) on or after the Operational Period End Date or the Termination Date and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever from or connected with any failure by the Contractor (or any relevant Subcontractor) to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise (save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider) whether arising before on or after the Service Transfer Date by or on behalf of any of the Contractor's or Subcontractor's employees who do not constitute the Transferring Employees; and
- (iv) in respect of those employees who constitute Transferring Employees the Contractor shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Transferring Employees in respect of the period after the Service Transfer Date but on or before the Service Transfer Date (whether any such claim, attributable to the period up to and on the Service Transfer Date, arises before, on or after the Service Transfer Date) where such claim arises out of any act, fault or omission of the Contractor and/or any Subcontractor including but not limited to any failure by the Contractor or any Subcontractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider.

27.5.3 The Authority shall be entitled to assign the benefit of the indemnities set out in clause 27.5.2 to any Future Service Provider.

27.5.4 The Authority shall indemnify the Contractor (for itself and for the benefit of each relevant Subcontractor) in respect of those employees who constitute Transferring Employees against all Direct Losses incurred by the Contractor or any relevant Subcontractor in connection with or as a result of any failure by the Authority or any Future Service Provider to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact so apply save to the extent that any such failure arises as a result of any act or omission of the Contractor or any relevant Subcontractor.

## 27.6 *Subcontractors*

In the event that the Contractor enters into any subcontract in connection with this Agreement, it shall impose obligations on its Subcontractors in the same terms as those imposed on it pursuant to this clause 27 and shall procure that the Subcontractor complies with such terms. The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred by the Authority or any Future Service Provider as a result of or in connection with any failure on the part of the Contractor to comply with this clause and/or the Subcontractor's failure to comply with such terms.

## 27.7 *Conduct of Claims*

Clause 20.5 of this Agreement shall apply where any claim is made in respect of the indemnities given under this clause 27.

**28. PENSIONS**

28.

28.1 *No Employee Transfer*

The Authority and the Contractor agree that there are no individuals presently employed by the Current Employer who are, or who are eligible to be, prior to the Commencement Date, members of the Local Government Pension Scheme whose contracts of employment will, by virtue of the transfer to the Contractor of responsibility for provision of (or procuring the provision by any Subcontractor of) any of the Services in accordance with this Agreement and in accordance with TUPE, have effect after the Services Commencement Date (or at any other time) as if originally made between those persons and the Contractor and/or relevant Subcontractor.

28.2 *Co-operation on Expiry or Termination*

On the termination or expiry of this Agreement (for whatever reason) for a reasonable period both before and after such termination or expiry, the Contractor undertakes to co-operate fully with the Authority (and any successor that provides to the Authority services in the nature of any of or any part of the Services) in order to achieve a smooth transfer of the ongoing pension liabilities for future service whereby any employee transferring to such successor are provided with pension benefits which are broadly similar to or better than those with which they were provided under this Agreement.

**29. DISPUTE RESOLUTION PROCEDURE**

29.

29.1 Any dispute or difference arising out of or in connection with this Agreement (whether such disputes are in contract or tort or arise out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this clause 29.

29.2 The Parties shall each use reasonable endeavours to resolve a dispute by means of a prompt, bona fide discussion at a managerial level appropriate to the dispute in question.

29.3 In the event that a dispute is not resolved within five (5) Days of it having been referred to a managerial level for discussion then any Party may refer it to the Chief Executive or equivalent officer of each Party for resolution and the same shall meet for discussion within ten (10) Days thereafter or such longer period as the Parties may agree.

29.4 If the dispute is not resolved within ten (10) Days of escalation of the dispute in accordance with clauses 29.2 or 29.3, the Parties shall refer the dispute to mediation in accordance with the CEDR Model Mediation Procedure.

29.5 If the Parties cannot agree on a mediator, the Parties shall appoint a mediator nominated by CEDR.

29.6 The Parties shall use their reasonable endeavours to conclude the mediation within twenty (20) Days of referral of the dispute to mediation.

29.7 If:

29.7.1 any Party is dissatisfied with or otherwise wishes to challenge the mediator's decision; or

29.7.2 all Parties agree then any Party may, within twenty (20) Days of the conclusion of the mediation, notify the other Party of its intention to refer the dispute to litigation and for such purposes the Parties agree that the courts shall have exclusive jurisdiction in relation to all matters in respect of this Agreement.

- 29.8 Where any Dispute is referred to litigation pursuant to clause 29.7, the courts shall have full power to disregard, open-up, review and/or revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, to vary or cancel the recommendations or the mediator and, where appropriate, to order financial compensation to be paid by one Party to the other.
- 29.9 The Parties shall continue to comply with, observe and perform all of their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause and shall give effect to every recommendation of the mediator and the courts delivered under this clause, provided that the Contractor shall not be obliged to accept new referrals from the date on which a dispute has been formally notified by one Party to the other where the dispute has arisen in respect of a breach of the Authority's Obligations under this Agreement. For the avoidance of doubt the Contractor shall at all times continue to provide the Services in relation to referrals that are already receiving the Services irrespective of the subject matter of the dispute.

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

30.

- 30.1 The Contractor shall not assign all or any benefit, right or interest under this Agreement.
- 30.2 Save to the Initial Subcontractors (and subject to clause 30.4 below), the Contractor shall not subcontract any of the Services, in whole or in part, or replace the Initial Subcontractors except with the prior written consent of the Authority. The Authority shall not withhold or delay its consent to any subcontracting conducted in accordance with this clause 30. By entering into this Agreement the Authority approves the Initial Subcontractors.
- 30.3 Notwithstanding any subcontracting permitted under this Agreement, the Contractor shall remain responsible for the acts and omissions of its Subcontractors as though they were its own.
- 30.4 Notwithstanding clause 30.2, where the Tender Submission indicates that delivery of the Services will involve engagement of Specialist Subcontractors, the Contractor shall use its best endeavours to engage such subcontractors to provide not less than the proportion of the Services indicated in the Tender Submission in accordance with the terms of this clause 30.
- 30.5 Other than in relation to the Initial Subcontractors, where the Contractor did not specify in the Tender Submission how it may use Subcontractors to deliver the Services, but intends to enter into a subcontract in connection with this Agreement, the Contractor shall, if reasonably possible, ensure:
- 30.5.1 that at least one potential Subcontractor with an operational or administrative location in the area of the Authority is invited to tender for such subcontract on the same terms as all the other parties invited to tender and that such invitation is made in the same manner as the invitation(s) to all other parties; and
- 30.5.2 that social, economic and environmental considerations are taken into account in selecting the subcontractor;
- 30.6 In all circumstances where the Contractor is subcontracting any part or all of the Services, it shall act in good faith and in a fair and reasonable manner and a manner consistent with how it has committed to act with the Authority pursuant to clauses 2 and 8 of this Agreement. In particular (and without prejudice to the foregoing) it shall ensure that any subcontract contains terms which:
- 30.6.1 allocate risks fairly and appropriately as between the Contractor and the subcontractor, having regard to the respective abilities of the parties to manage and bear the relevant risks taking into account, inter alia, the services each are providing under the subcontract and the resources each has at their disposal;



- 30.6.2 do not make payment to a Specialist Subcontractor conditional upon achievement of the Outcomes or the receipt of payment by the Contractor from the Authority;
- 30.6.3 require the Contractor to pay all sums due thereunder to the Subcontractor within a specified period from the date of receipt of a valid invoice as defined by the terms of the subcontract not to exceed twenty (20) Days;
- 30.6.4 allow for performance monitoring management and review consistent with the provisions of this Agreement;
- 30.6.5 relate to data monitoring and audit consistent with the provisions of this Agreement;
- 30.6.6 oblige the Subcontractor to take out and maintain the relevant Required Subcontractor Insurances;
- 30.6.7 impose equivalent obligations on the Subcontractor to those contained in clauses 27 and 28 regarding TUPE and Pensions mutatis mutandis; and
- 30.6.8 require any Principal Subcontractor to enter into a Deed of Assurance.
- 30.7 Within twenty (20) Days of the respective appointment, the Contractor shall procure the provision of a Deed of Assurance in favour of the Authority from any Principal Subcontractor who has not been appointed at the time of this Agreement substantially in the form set out in Schedule 3 (*Deed of Assurance*).
- 30.8 The Contractor shall on request provide a copy of any subcontracts awarded in accordance with this clause within five (5) Days of request.
- 30.9 The Authority shall be entitled to:
  - 30.9.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement either in whole or part to any contracting authority (as defined in Regulation 3(1) of the Public Contracts Regulations 2006); or
  - 30.9.2 transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or relevant part of the Authority's statutory functions.

## **31. CHANGE IN OWNERSHIP**

31.

### *31.1 Restricted Share Transfer*

- 31.1.1 A Change in Ownership may only occur to a Suitable Third Party.
- 31.1.2 A Change in Ownership may only occur with the prior written consent of the Authority.
- 31.1.3 The Authority shall not withhold or delay its consent to a Change in Ownership save where:
  - (a) (in the case of the Contractor being majority owned by the Investor) the Change in Ownership (either individually or cumulatively when taken into account with previous Changes in Ownership) amounts to a change in control of the Contractor compared to the position at the date of this Agreement;
  - (b) (in the case of the Contractor being majority owned by Sub-contractors) the Change In Ownership is to a party that does not comprise either an Investor or Sub-contractor, or is to such a party but amounts to a change in control of the Contractor compared to the position at the date of this Agreement;

- (c) (in the case of the Contractor being majority owned by parties that are neither Investor nor Sub-contractors) it is a transfer of shares in the Contractor that are not listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000) where the Change in Ownership (either individually or cumulatively when taken into account with previous Changes in Ownership) amounts to a change in control of the Contractor compared to the position at the date of this Agreement.

#### 31.2 *Notification*

The Contractor shall provide the Authority with at least ten (10) Days' prior written notice of any Change in Ownership.

### 32. **ENTIRE AGREEMENT**

The Parties acknowledge that this Agreement sets forth the entire agreement between them with respect to the provision of the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties.

### 33. **NO PARTNERSHIP OR AGENCY**

33.

33.

33.1 Nothing in this Agreement shall be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Authority and the Contractor or the Sponsor [and the Authority and the Agent].

33.2 Save as expressly provided otherwise in this Agreement, the Contractor and the Sponsor shall not be, or be deemed to be, an agent of the Authority and the Contractor and the Sponsor shall not hold themselves out as having authority or power to bind the Authority in any way.

### 34. **NO WAIVER**

34.

34.1 Failure by any Party at any time or for any period to enforce any one or more of the provisions of this Agreement or to require performance by any Party of any of the provisions of this Agreement shall not:

34.1.1 constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement; nor

34.1.2 affect the validity of the Agreement or any part thereof or the right of the Parties to enforce any provision in accordance with its terms.

34.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 36 (*Notices*).

**35. SEVERANCE**

35.

35.1 Each provision of this Agreement is severable and distinct from the others and the Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law.

35.2 If any provision of this Agreement is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the Agreement but (except to the extent in the case of that provision) it and all other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired, provided that the operation of this Agreement would not negate the commercial intent and purpose of the Parties under this Agreement.

35.3 If any provision of this Agreement is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a regulatory authority, that provision shall take effect within a time period that is acceptable to the relevant regulatory authorities subject to it not negating the commercial intent of the Parties under this Agreement.

**36. NOTICES**

36.

36.1 Any notice required by this Agreement to be given by any Party to any other Party shall be in writing and shall be served personally, by fax or by sending the same by registered post or recorded delivery to the following:

	Contractor	Authority
Address:		
For the attention of:		
Tel:		
Fax:		
Email:		

36.2 Any notice served personally will be deemed to have been served on the Day of delivery, any notice sent by post will be deemed to have been served forty-eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty-four (24) hours after it was despatched.

**37. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Parties agree that this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

### 38. LAW AND JURISDICTION

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS** whereof the Parties have executed this Agreement as a deed and delivered it on the date first written.

Execution by the **AUTHORITY**

The common seal of

*[NAME]*

was hereunto affixed in the presence of:

Attesting Officer

Execution by the **CONTRACTOR**

Signed as a deed on behalf of

*[NAME]*

acting by:

.....

Director

.....

Director

**Schedule 1      Authority Requirements and Obligations**

- Part 1.      **Services Specification**
- Part 2.      **Authority Policies**
- Part 3.      **Authority Obligations**
- Part 4.      **Authority Mobilisation Obligations**

**Schedule 2**

**Payment Schedule**

**Basis of Payment**



**Schedule 3      Deed of Assurance**

**DATED**

**20**

**[SUB CONTRACTOR] (1)**

**[AUTHORITY] (2)**

**[CONTRACTOR] (3)**

**DUTY OF CARE DEED**

**relating to**

THIS DEED OF ASSURANCE is made on the                      day of                      20

**BETWEEN:**

- (1)            **[SUB CONTRACTOR]** (Company No.                      ) whose registered office is at  
(the **Sub Contractor**)
- (2)            **[AUTHORITY]** of                      (the **Authority**), (which  
expression includes its permitted successors in title and assigns); and
- (3)            **[CONTRACTOR]** (Company No.                      ) whose registered office is at  
(the **Contractor**)

**BACKGROUND**

- (A)            By a services agreement dated [                      ] (the Services Agreement) the Authority has  
appointed the Contractor to carry out the services set out in that agreement in order to deliver the  
Outcomes.
- (B)            The Sub Contractor has been appointed by the Contractor under a contract dated [                      ] (the Sub  
Contract) to carry out the Services.
- (C)            The Sub Contractor is obliged under the Sub Contract to give a warranty in this form in favour of the  
Authority.
- (D)            The Sub Contractor and the Contractor have agreed to execute this Deed in favour of the Authority.

**1. DEFINITIONS AND INTERPRETATIONS**

Unless expressly defined otherwise in this Deed any defined term in this Deed shall have the same meaning given to such term in the Sub Contract.

<b>“Intellectual Property Rights”</b>	any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in design, know how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attaching thereto which is created, brought into existence, acquired, used or intended to be used by the Sub Contractor for the purpose of carrying out the Services;
<b>“Lender(s)”</b>	means any organisation providing funding to the Contractor in connection with the Services Agreement;

## 2. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Authority to the Sub Contractor, receipt of which the Sub Contractor acknowledges:

### 3. WARRANTY

- 3.1 The Sub Contractor warrants to the Authority that it has carried out and will continue to carry out all its obligations and duties under the Sub Contract in accordance with and to the standard required by the Sub Contract, provided always that the Sub Contractor has no liability hereunder which is greater or of a longer duration than that it owes to the Contractor under the Sub Contract.
- 3.2 The Sub Contractor shall have no liability under clauses 3.1 and 11 of this Deed that is greater or of longer duration than it would have had, and shall be entitled in any proceedings by the Authority to rely on any limitation in the Sub Contract and to raise equivalent rights in defence of liability as it would have against the Contractor under the Sub Contract.
- 3.3 Notwithstanding anything in this Deed and notwithstanding any payments which may be made by the Authority to the Sub Contractor, the Authority and the Sub Contractor will not be under any obligation to each other nor will any party have any claim or cause of action against the others unless and until the Authority has given written notice to the Sub Contractor pursuant to clause 7.1 or clause 7.3.

### 4. INTELLECTUAL PROPERTY

The Sub Contractor shall comply with the obligations in the Sub Contract relating to Intellectual Property Rights.

### 5. ASSIGNMENT

The benefit of and the rights of the Authority under this Deed shall not be exercised during the subsistence of the Services Agreement. They may be assigned without the consent of the Sub Contractor on two (2) occasions only and the Authority will notify the Sub Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Sub Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

### 6. AUTHORITY'S REMEDIES

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Sub Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

### 7. STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY

- 7.1 The Sub Contractor will not exercise or seek to exercise any right which may be or becomes available to it to terminate or treat as terminated or repudiated the Sub Contract or its employment under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than thirty (30) Days' prior written notice specifying the Sub Contractor's ground for terminating or treating as terminated or repudiated the Sub Contract or its employment under it or discontinuing or suspending its performance of it and stating the amount (if any) of monies outstanding under the Sub Contract. Within such period of notice:
  - (a) the Authority may give written notice to the Sub Contractor that the Authority will become the client under the Sub Contract to the exclusion of the Contractor. On receipt of such notice, the

Sub Contractor will admit that the Authority as its client under the Sub Contract and the Sub Contract will be and remain in full force and effect notwithstanding any of the said grounds;

- (b) if the Authority has given notice under clause 7.1(a) or under clause 7.3, the Authority shall accept liability for the Contractor's obligations under the Sub Contract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor including for the avoidance of doubt any non-payment of sums due to the Sub Contractor that properly has been included in the Sub Contractor's specified grounds pursuant to clause 7.1 (and which has been notified to the Authority) and which is capable of remedy; and
- (c) if the Authority has given such notice under clause 7.1(a) or under clause 7.3, the Authority will from the service of such notice become responsible for all sums properly payable to the Sub Contractor under the Sub Contract accruing due after the service of the Sub Contractor's notice but the Authority will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Sub Contract.

7.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Sub Contractor, the Sub Contractor will not be under any duty to obey any direction or instruction from the Authority unless and until the Authority has given notice under clauses 7.1(a) and 7.3.

7.3 The Sub Contractor further covenants with the Authority that if the employment of the Contractor under the Services Agreement is terminated or if the Services Agreement is terminated by the Authority the Sub Contractor, if requested by the Authority by notice in writing and subject to clause 7.1(b) and clause 7.1(c), will accept the instructions of the Authority to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the Sub Contract and will if so requested in writing enter into a novation agreement in the form set out in Appendix 1 to this Deed whereby the Authority is substituted for the Contractor under the Sub Contract.

7.4 If the Sub Contractor is requested to enter into a novation agreement pursuant to clause 7.3, the Contractor agrees to enter into the same at the request of the Authority.

7.5 Where the Sub Contractor has given rights in relation to the Sub Contract similar to those contained in this clause to the Lender then if both the Authority and the Lender serve notice under clause 7.1(a) or clause 7.3 or its equivalent the notice served by the Authority will not prevail over any notice served by the Lender but will prevail over any notice served by any other person.

7.6 The Contractor acknowledges that the Sub Contractor will be entitled to rely on a notice given to the Sub Contractor by the Authority under clause 7.3 as conclusive evidence that the Contractor's employment under the Services Agreement has been terminated or that the Services Agreement has been terminated by the Authority.

7.7 The Authority may by notice in writing to the Sub Contractor appoint another person to exercise its rights under this clause 7 subject to the Authority remaining liable to the Sub Contractor as guarantor for its appointee in respect of its obligations under this Deed.

## **8. LIMITATION**

Without prejudice to the provisions of clause 7.1, the Authority shall not be entitled to take any action or proceedings against the Sub Contractor pursuant to this Deed unless and until the Services Agreement has been terminated.

## **9. INDEPENDENT ENQUIRY CLAUSE**

The liability of the Sub Contractor under this Deed shall not be modified released, diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by or for the Authority nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Authority of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Authority in respect of the Services nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Authority provided always that nothing in this clause shall modify or affect any rights which the Sub Contractor might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

## **10. NO VARIATION TO SUB CONTRACT WITHOUT AUTHORITY'S CONSENT**

The Contractor and the Sub Contractor undertake with the Authority not to vary or depart from the terms and conditions of the Sub Contract without the prior written consent of the Authority (such consent to be sought in accordance with the Services Agreement), and agree that no such variation or departure made without such consent shall be binding upon the Authority, or affect or prejudice the Authority's rights hereunder, or under the Sub Contract or in any other way.

## **11. SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

## **12. WAIVER**

12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

12.2 No waiver under clause 12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

## **13. THE CONTRACTOR'S INCLUSION AS PARTY**

The Contractor has agreed to be a party to this Deed for the purpose of clause 8 and for acknowledging that the Sub Contractor shall not be in breach of the Sub Contract by complying with the obligations imposed on it by this Deed.

## **14. COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

## **15. GOVERNING LAW AND JURISDICTION**

This Deed and all non-contractual obligations in connection with this Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

## **16. THIRD PARTY RIGHTS**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed. This clause does not affect any right or remedy of any person that exists or is available

otherwise than pursuant to that Act.

## **17. NOTICES**

Any notice to be given by either party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be served on the next Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty-eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Day and otherwise on the next Day.

**IN WITNESS** whereof this document is executed by the parties as a Deed and delivered on the date stated at the beginning of this Deed

**EXECUTED** as a Deed

by the **SUB CONTRACTOR**

acting by two of its directors or a

director and its secretary:

.....

Director

.....

Director/Secretary

**EXECUTED AS A DEED**

by the **Authority**

acting by two authorised signatories:

.....

Authorised Signatory

.....

Authorised Signatory

**EXECUTED** as a Deed by

**[CONTRACTOR]**

acting by two of its directors or a

director and its secretary:

.....

Director

.....

Director/Secretary



## Appendix 1

### Form of Deed of Novation

**THIS DEED** is made on 20

#### BETWEEN:

- (1) **[CONTRACTOR'S SUB CONTRACTOR]** (Company No. ) whose registered office is at (the **Sub Contractor**);
- (2) **[AUTHORITY]** of (the **Authority**), which expression includes its permitted successors in title and assigns); and
- (3) **CONTRACTOR** (Company No. ) whose registered office is at (the **Contractor**).

#### WHEREAS

- (A) By a services agreement dated [ ] (the **Services Agreement**) the Authority has appointed the Contractor to carry out the services set out in that agreement in order to deliver the Outcomes.
- (B) The Sub Contractor has been appointed by the Contractor under a contract dated [ ] (the **Sub Contract**) to carry out the Services (as defined in the Sub Contract).
- (C) The Services Agreement has been terminated by the Authority.
- (D) The parties have agreed to novate the Sub Contract to the Authority on the terms set out below.

#### IT IS AGREED

##### 1. Novation of Sub Contract

The Sub Contract is hereby novated from the Contractor and the Sub Contractor to the Authority and the Sub Contractor.

##### 2. Release of the Contractor

The Contractor shall no longer owe any duty or obligation to the Sub Contractor under or in respect of the Sub Contract whether by virtue of its terms or by virtue of any breach or otherwise.

##### 3. Release of the Sub Contractor

The Sub Contractor shall no longer owe any duty or obligation to the Contractor under or in respect of the Sub Contract whether by virtue of its terms or by virtue of any breach or otherwise.

##### 4. Binding of the Sub Contractor to the Authority

- 4.1 The Sub Contractor binds itself to the Authority in the terms of the Sub Contract as if the Authority were and always had been named in the Sub Contract in place of the Contractor.
- 4.2 The Sub Contractor warrants to the Authority that prior to the date of this Deed it has performed and that it will continue to perform its duties and obligations as required by and in accordance with the terms of the Sub Contract.

4.3 The Authority shall not be precluded from recovering any losses incurred by the Authority or the Contractor resulting from any breach of clause 4.2 by reason that (if it be the case) the acts or omissions causing such breach occurred before this Deed took effect, or that the Contractor will not incur or has not or would not have incurred any such losses. No waiver by the Contractor, either express or implied, will affect the Sub Contractor's liability to the Authority pursuant to this clause.

#### **5. Binding of the Authority to the Sub Contractor**

The Authority binds itself to the Sub Contractor in the terms of the Sub Contract as if the Authority were and always had been named in the Sub Contract in place of the Contractor and as if all acts and omissions of the Contractor (including any wrongful acts or omissions) under and in respect of the Sub Contract were the acts and omissions of the Authority.

#### **6. Vesting of remedies in the Authority**

All rights of action and remedies vested in the Contractor against the Sub Contractor under and in respect of the Sub Contract shall hereupon vest in the Authority.

#### **7. Vesting of remedies against the Authority**

All rights of action and remedies vested in the Sub Contractor against the Contractor under and in respect of the Sub Contract shall hereinafter lie against the Authority.

#### **8. Affirmation of Sub Contract**

Subject to the terms of this Deed the Sub Contract shall remain in full force and effect.

#### **9. Third Party Rights**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

#### **10. Governing Law and Interpretation**

This Deed and all non-contractual obligations in connection with this Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

**IN WITNESS** of which this document is executed as a deed and is delivered on the date first set out above

**EXECUTED AS A DEED**

by the Sub Contractor acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

**EXECUTED AS A DEED**

by the Contractor acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

**EXECUTED AS A DEED**

by the Authority acting by

two authorised signatories:

Authorised Signatory

Authorised Signatory

**Schedule 4      Data Sharing Policy**

The Contractor and the Subcontractor shall comply with the following policies in delivering the Services so far as they are relevant.

*Indicative content:*

- 11. **Data Security Policy**
- 12. **Data Security Procedure**
- 13. **Information Sharing Policy**

<b>Schedule 5</b>	<b>Mobilisation and Demobilisation Plans</b>
Part 1.	Mobilisation Plan
Part 2.	Demobilisation Plan

## Schedule 6      Change Procedure

### 1.      Principles

- 1.1      Each of the Contractor and the Authority may at any time request a change to this Agreement in accordance with the procedure set out in paragraph 2 below.
- 1.2      The obligations of the Parties shall not be effected until a change note in the form attached to this Schedule 6 has been signed by the authorised signatory of the Contractor and the Authority.
- 1.3      The Authority shall not be responsible for the cost of any work undertaken or goods or materials ordered by the Contractor or its Subcontractors relating to a change which has not been authorised in advance by an Authorised Change Note.

### 2.      Procedure

- 2.1      The Authority and the Contractor shall discuss any changes proposed by a Party to this Agreement and such discussion shall result in:
  - (a) a decision not to proceed further; or
  - (b) a written request for a change by the Authority; or
  - (c) a recommendation for a change by the Contractor.
- 2.2      Each Proposed Change Note shall contain details of the change including, where applicable:
  - (a) the title of the change;
  - (b) the originator and the date of the request or recommendation for the change;
  - (c) the reason for the change;
  - (d) full details of the change including any specifications;
  - (e) the price, if any, of the change;
  - (f) a timetable for implementation together with any proposals for acceptance of the change;
  - (g) a schedule of payments, if applicable;
  - (h) the impact, if any, of the change on other aspects of the Agreement;
  - (i) the date of expiry of validity of the Proposed Change Note; and
  - (j) provision for signature by the Authority if the change is agreed.
- 2.3      Where a written request for a change is received from the Authority, the Contractor shall within the period of the validity of the Proposed Change Note, evaluate the Proposed Change Note and, as appropriate:
  - (a) sign the Proposed Change Note to indicate acceptance of it;
  - (b) request further information from the Authority in which case the Authority shall provide such information as soon as reasonably practicable and in any event within five (5) Days. The request for

information and the information once provided shall be deemed to be part of the Proposed Change Note, and the Contractor may approve or reject the Proposed Change Note upon receipt of the new information; or

(c) notify the Authority of the rejection of the Proposed Change Note.

2.4 For each Proposed Change Note submitted to the Authority, the Authority shall, within the period of the validity of the Proposed Change Note, evaluate the Proposed Change Note and, as appropriate:

(a) sign the Proposed Change Note to indicate acceptance of it;

(b) request further information from the Contractor in which case the Contractor shall provide such information as soon as reasonably practicable and in any event within five (5) Days. The request for information and the information once provided shall be deemed to be part of the Proposed Change Note, and the Authority may approve or reject the Proposed Change Note upon receipt of the new information; or

(c) notify the Contractor of the rejection of the Proposed Change Note.

2.5 A Proposed Change Note signed by both Parties shall constitute an Authorised Change Note and shall effect a variation to this Agreement in accordance with the terms of clause 14 of this Agreement.

### **3. Authorised Signatories**

3.1 The authorised signatory for the Authority will be the Authority's Authorised Representative in the absence of any written notification to the contrary from the Authority to the Contractor.

3.2 The authorised signatory for the Contractor shall be deemed to be the Contractor's Authorised Representative or a duly authorised Director of the Contractor in the absence of any written notification to the contrary from the Contractor to the Authority.



**Change Note****Ref No:****Date:****Title of Change:****Details of Change:****Reasons for Change:****Impact of Change:****Timetable:****Price:****Contractor:****Signed:****Authority Response: Accept/Reject****Signed:**

**Note:** The format of the Change Note may vary from time to time in circumstances where additional information is deemed necessary by the Authority or the Contractor in order to accurately reflect the nature of the change.

## **Schedule 7      Required Insurances**

*Levels of cover to be reviewed on project by project basis*

### **1. The Contractor Insurances**

The Contractor shall procure and maintain the following insurances (Contractor Insurances):

- 1.1 professional indemnity insurance to provide an indemnity of not less than two (2) million pounds (£2,000,000) in respect of any one claim or series of claims arising out of one incident;
- 1.2 employer's liability insurance to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident; and
- 1.3 third party public liability to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident.

### **2. The Subcontractor Insurances**

The Contractor shall ensure that Subcontractors shall procure and maintain the following Insurances (Subcontractor Insurances):

- 2.1 professional indemnity insurance to provide an indemnity of not less than five (5) million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident;
- 2.2 employer's liability insurance to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident; and
- 2.3 third party public liability to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident.

Any other insurances that may be required by law.

**Schedule 8      Management Information**

In accordance with clause 12 of the Agreement and in addition to the other provisions of this Agreement the Contractor shall comply with the following specific management Reporting Requirements:

It is required that at specified intervals the following reports are produced subject to the necessary source data being available:

**Monthly**

**Quarterly**

**Annually**

**Schedule 9      Commercially Sensitive Information****Part 1.      Commercially Sensitive Contractual Provisions**

Contractual Provision	Time Period	Reason for Confidentiality

**Part 2.      Commercially Sensitive Material**

Material	Time Period	Reason for Confidentiality

**Schedule 10      The Caldicott Principles**

1. The purpose must be justified. Every proposed use or transfer of personal data within or from the organisation should be clearly defined and scrutinised, with continuing uses regularly reviewed by an appropriate guardian.
2. Personal data must not be used unless it is absolutely necessary. Personal data should not be used unless there is no alternative.
3. The minimum necessary personal data information is to be used. Where use of personal data is considered essential, each individual item of information should be justified with the aim of reducing identifiability.
4. Access to personal data should be on a strict need to know basis. Only those individuals who need access to personal data should have access to it, and they should only have access to the data that they need to see.
5. Everyone should be aware of their responsibilities. Those handling personal data – both frontline and support staff – must be aware of their responsibilities and obligations to respect personal confidentiality.
6. All persons handling personal data must understand and comply with the law. Every use of personal data information must be lawful.

### 6.1.1.1. GUIDANCE ON TEMPLATE CONTRACT FOR SOCIAL IMPACT BONDS AND PAYMENT BY RESULTS

Source: (Centre for Social Impact Bonds, 2017a)

#### To accompany template contract for payment by results, including social impact bonds

##### Introduction

These guidance notes have been prepared to assist users of the DCMS template contract. The guidance notes and the template contract have been prepared following consultation with commissioners, investors, intermediaries and service providers.

##### Background

The government is committed to enabling new forms of commissioning and contracting that improve both the outcomes derived from delivery of public services and the value for money achieved by public expenditure.

There has also been increasing use of mechanisms such as payments by results contracts, seeking to change the emphasis and risk profile of services contracts let by public bodies. There have been encouraging examples of innovation taking place in this area, such as the use of social impact bonds to create the space in which new approaches can be explored.

To encourage and support the increased use of these new approaches, the DCMS has developed a template contract for use by public sector commissioners. It is designed as a starting point for a range of different approaches and this guidance, which accompanies the template contract, offers advice on how to adapt the contract to suit the detail of the approach adopted by any particular commissioner and its partners.

##### How to use this guidance

This first part of the guidance (Part A) highlights the critical issues to be borne in mind by parties contemplating this form of commissioning and contracting. These include:

- what a social impact bond is, its relationship to payment by results contracts and the performance and payment risk spectrum that these contracts fall within the drafting principles that have been applied in developing the template contract
- the way in which it is suggested the template contract is used
- some of the structures that may be adopted by service providers and their investors to deliver these contracts
- the commissioning process to be adopted.

Two of the critical messages to take from this section include:

- The importance of commissioners making a conscious decision of where they wish to position themselves on the performance and payment risk spectrum and being confident in their reasons for doing so
- The importance of the relationship between the template contract, the specification for the outcomes and services to be commissioned and the payment mechanism via which the service provider shall be reimbursed.

This guidance uses ordinary language to describe the contract and related arrangements. The term 'authority' or 'commissioner' is used to describe the commissioning body, 'contractor' is used to describe the party which is signing up to the template contract, 'service provider' is used to describe a party delivering a service as part of the arrangements (whether as contractor or as a subcontractor), 'investor' is used to describe a party financing

a contractor and 'intermediary' is used to describe a party providing advice and other related services to one or more parties.

The second part of this guidance (Part B) provides a clause by clause commentary on the contract and any issues that should be taken into account in choosing whether or not to adapt each clause.

## Part A: Commissioning and contracting social impact bonds

### Social impact bonds

A social impact bond ("SIB") is a funding mechanism which enables:

- A public authority to commission innovative services that attempt new approaches to delivering desirable social outcomes and to share the risk of exploring those new approaches.
- Service providers to benefit from increased flexibility in delivering agreed outcomes. It will not bear the cash-flow impact of payment being deferred until the outcomes are known, but may (potentially) take a share of the risk and/or reward in respect of whether the services it provides deliver the desired outcomes. It is anticipated that the service provider will be a voluntary, community or social enterprise organisation with the technical skills, but not the capital reserves, to deliver a contract on a wholly, or largely, payments for outcomes basis.
- Investors to finance activity designed to achieve significant social outcomes by providing working capital to voluntary, community and social enterprise providers to deliver services. Investors assume a large part of the risk that the interventions they fund will be successful. If interventions succeed, the investors will, in addition to enabling these outcomes, receive a financial return on their investment.

It follows that social impact bonds are likely to be most relevant where a public authority is seeking to commission fundamentally new approaches to deliver particular social outcomes.

The template contract is the contract between the public authority and the contractor with primary responsibility for delivery of those social outcomes, providing the framework for what that authority is commissioning and how it will pay for it. The social impact bond is the means by which the contractor funds the activities it undertakes to achieve those outcomes. The contract will establish the minimum expected outcomes the contractor is required to deliver - i.e. how many outcomes are expected to be achieved, as a minimum, in a given week / month / year during the life of the social impact bond.

There are various ways in which such projects may be funded. It is not felt appropriate to be prescriptive, certainly at this stage of the markets development, about the detail of how such funding may be put together, so no templates have been developed in relation to financing agreements. The template contract should assist, however, by offering funders a large degree of consistency in the terms upon which their potential investees will be measured and paid.

It should also be helpful for public authorities, investors, intermediaries and service providers to use a template contract knowing that the majority of its terms are standardised, leaving only genuinely project specific elements in need of development. Savings of time and money should be possible as a result.

This template contract is drafted on the basis that by the time the contract signature takes place, the commissioning authority will have satisfied itself (through a combination of the procurement process and due diligence undertaken on the contractor's documentation) that the contractor has everything in place – both in terms of finance to pay, initially, for the service provision, and a supply chain – to meet all the contractual obligations to the authority that it is assuming under the contract.

This being the case, the template contract does not anticipate that authorities will need to obtain commitments directly from investors in relation to the financing of the contractor, though there may be limited circumstances in specific situations where an authority feels this is appropriate.



Similarly, rather than be prescriptive about the precise terms upon which a contractor is funded, or engages with its supply chain, service providers and investors are free to come up with the structures they regard as the most favourable, with the benefit of knowing, in broad terms, the basis upon which they will be expected to contract with an authority.

We recognise that whilst there will be circumstances where a public authority is looking to procure something very innovative and wishes to pay purely on an outcomes basis, there are also increasingly frequent situations where public authorities are interested in paying for services with an element of the fee dependent on delivery of outcomes.

There is, of course, substantial overlap (though also some significant points of departure) between those contracts where the full payment is deferred and dependent on achievement of outcomes and those where the majority of the payment is made as the service is provided (e.g. as a service fee), but a proportion of the payment is deferred, and dependent on outcomes.

The template contract is suitable for use in both circumstances, subject to noting where in this guidance we distinguish particular provisions as more appropriate to one or the other approach.

It is important that parties to these contracts are clear about the extent to which the risk relating to performance and payment is being allocated (and the reasons for this) and that the relevant contract provisions are consistent with and reflect this.

### **Drafting Principles**

The underlying aims in producing this template include:

- Providing a balanced document that should be broadly acceptable to commissioners, service providers and investors.
- Striking a balance between simplicity, materiality and proportionality.
- Providing a clear position on substantive issues (to limit time spent negotiating those) but leaving it open for genuine project specifics or issues of particular concern to commissioners, service providers and investors (if any) to be added in.

The issues addressed in this template are those regarded as relevant to all or the great majority of payment by results service contracts, whether funded via a SIB or not. Parties may feel in relation to specific projects that some provisions are not required, or alternative approaches are more suitable. Generally, these options are anticipated in this guidance.

The template contract has been subject to consultation and is informed by the responses to that consultation. As such, it is believed to be largely acceptable to commissioners, intermediaries and investors. It is acknowledged that some adaptation will be necessary to the template, particularly to reflect:

- The particular extent to which the commissioner is seeking to transfer performance and payment risk
- The means by which service provision is being financed
- Integration of the proposed payment mechanism and specification into the contract
- Other issues specific to the project.

The first two of these have, to a large extent been anticipated in the template contract and identified in this guidance. Beyond this, however, commissioners are advised to consider carefully whether further departures from the template will achieve sufficient benefit to justify the potential cost of increased negotiation.

## The performance and payment risk spectrum

It is helpful to think of these contracts as sitting on a spectrum. At one end, there are contracts where payments are wholly dependent on outcomes. The contractor will, it is anticipated, fund the work it carries out to deliver those outcomes through a social impact bond (although these could also be delivered by organisations bearing the risk on their own balance sheets, if they are sufficiently capitalised to do so). In these circumstances, it is appropriate that the specification does little more than identify the target outcomes and any statutory and regulatory requirements that must be met in engaging with the target user groups. The contract should contain limited rights only for the authority to intervene in how it is being performed, given that the contractor will be taking on the risk that outcomes may not be achieved and that, as a result, payments may not be made.

Where an authority commissions on a combined fee for service and payment by results basis (so makes a partial payment as services are being delivered, with the remainder deferred and subject to achievement of certain outcomes), it may feel it requires more say in how those services are performed, leading to more detail in the specification and more rights in the contract. Even then, however, it should be remembered that the more prescriptive an authority is, the less appropriate it is to expect the contractor to accept the performance risk. Proportionality should be a guiding principle in relation to any adaptation of the template contract.

The legal terms sit alongside and have to be integrated with two other aspects of the contract that cannot be standardised to the same extent as the legal terms: the specification and the payment mechanism (i.e. the process by which the parties shall measure whether and when payments fall due and accompanying evidential requirements). Reference has already been made to the importance of the commissioner understanding where it wishes to be on the spectrum of risk transfer around performance and payment and the specification and the payment mechanism need to be developed with that in mind, so a consistent position is presented throughout the contract. Some further principles on the approach to take to payments are contained in Part B.

## Parties

This contract focuses on the services being commissioned and the outcomes being sought. As such, it is between the contracting authority and the lead contractor. To the extent a SIB may be required and there may be an intermediary involved in the project, bringing service provider(s) and investor(s) together, we anticipate any contractual arrangements directly with the intermediary and/or investors that are felt desirable may be dealt with separately.

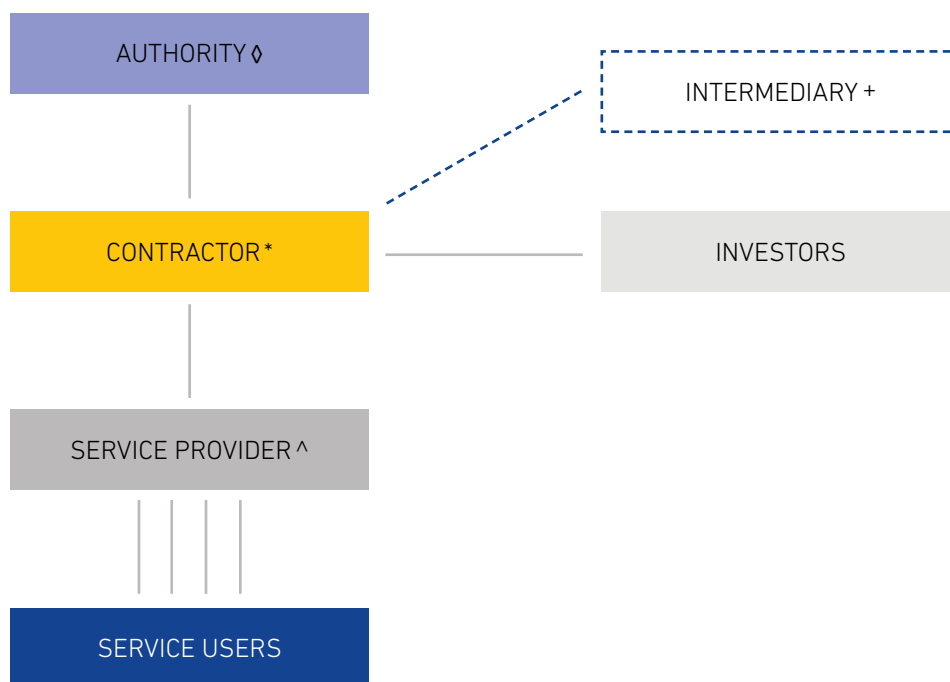
In the context of a SIB, in many cases we anticipate that the lead contractor may be a special purpose vehicle ("SPV") set up to manage this contract specifically. This will have the advantage, for the investors and the service provider(s), of reducing the prospect of the other activities of the service provider(s) impacting adversely upon what is being done in relation to this project and on the creditworthiness of the entity receiving the funding. It also creates the possibility of various stakeholders sharing the risks and rewards of the project through participating in the ownership and control of the SPV (including the service provider(s) and, possibly, the authority if it so wished).

Where there is an SPV, it will subcontract all the substantive obligations to one or a number of specialist service providers. Where this happens, the SPV shall remain primarily responsible to the authority for the performance of the contractual obligations, but will only, itself, have to observe them to the extent they relate to the SPV's own (very limited) administrative and contract management activities.

Where an SPV is not used, some of the provisions in the template agreement (for example the Deed of Assurance) may not be required. These provisions are identified in this guidance.

Similarly, the nature of the contractor (whether an SPV or not) and the supply chain it uses will inform the position adopted in relation to matters such as subcontracting and changes in ownership. These issues are also addressed in this guidance.

### Some examples of possible contract structures



*Possible structures where a SIB is used:*

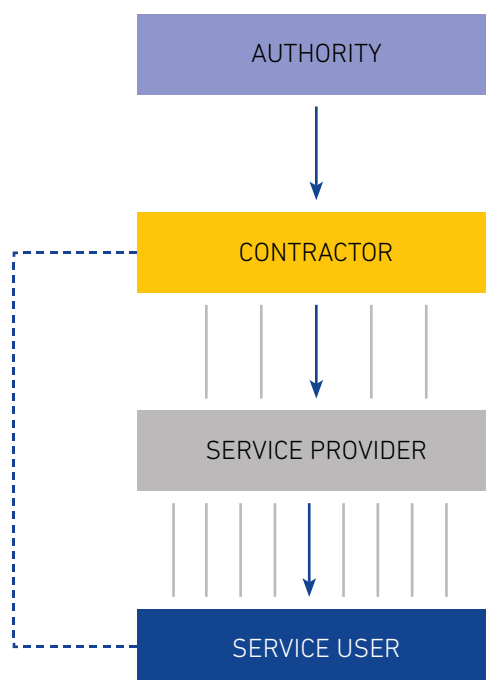
- ◇ It is possible that more than one authority may commission a service and outcomes, or that the authority will be the lead commissioner, but receive payments from other public sector bodies interested in seeing the services delivered and the outcomes achieved.
- \* The contractor may be:
  - An intermediary – i.e. an entity funded by the investors to procure and manage a supply chain to deliver the outcomes.
  - An SPV – i.e. a new company set up specifically for the project in question. This may be owned by the investors, but the main service provider(s) may also invest in the SPV to bear some of the performance risk associated with the project – and share in the potential rewards of success (as, in theory, might the commissioning authority).
  - The main service provider – i.e. the investors provide the funding directly to the party primarily responsible for delivering the outcomes.
- ^ There are a number of approaches the contractor may adopt to perform the Services and deliver the Outcomes:
  - The contractor may subcontract all (or substantially all) of the obligations under the contract it has with the authority to one service provider. This service provider may perform the contract in its entirety itself.
  - The contractor may subcontract all the obligations under the Services Agreement to one service provider. It may perform most or some of the obligations itself, but subcontract parts to third parties.
  - The contractor may subcontract all the obligations under the Services Agreement to one service provider. It may perform none of the substantive services itself, but subcontract all such obligations to third parties and co-ordinate

their activities. (This may be less likely in practice as there may be duplication of roles between the contractor and service provider).

- The contractor may subcontract the obligations under the Services Agreement to a variety of service providers, coordinating their input to deliver the Services and Outcomes as a whole.

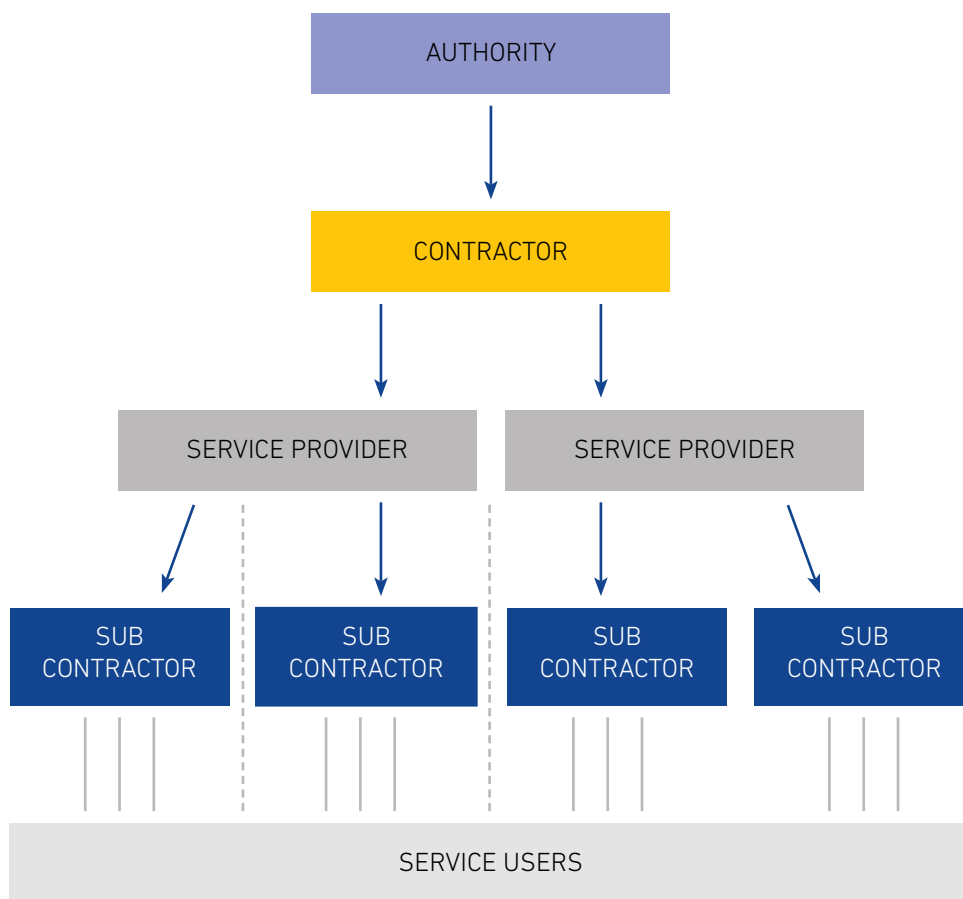
+ An intermediary may be involved, particularly where a contract is being created in a new sector, or there is a need for specialist support to raise investment capital for the project. It may provide advisory services to the contractor. Potentially, an intermediary may also provide advice to an authority, or investors, though not on the same project (unless all parties were satisfied any conflicts of interest could be appropriately managed). There have been cases previously of the intermediary essentially fulfilling the role of contractor, though this may be less likely to happen as the market matures.

*Possible structures where a SIB is not required:*



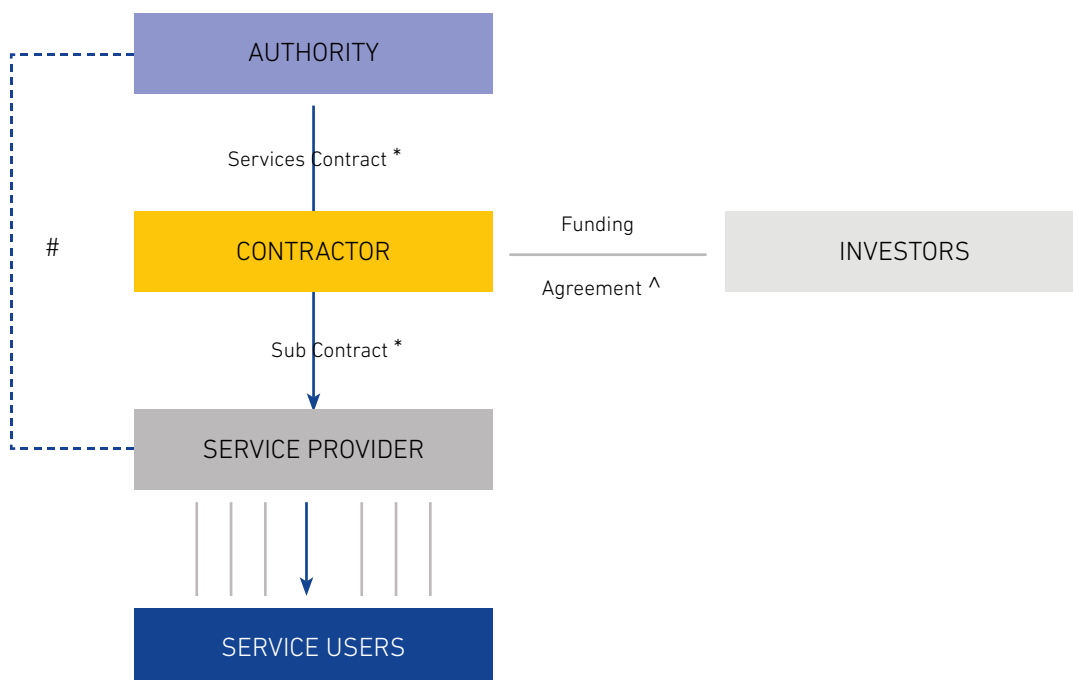
These structures are more likely to arise where there are service fees payable and the financing requirements are therefore less significant.

- The authority contracts with a main ("prime") contractor.
- The contractor subcontracts the obligations to a number of service providers who deliver services to service users.
- The dotted line acknowledges that the contractor may also deliver some services direct to service users itself.
- The contractor does not seek external funding through the social impact bond, because payment for outcomes is only part of the payment structure, and/or because it relies on its own reserves or loans outside of the social impact bond structure to address the delay in payments.



The difference between this structure and the previous one is that the prime contractor contracts with a limited number of service providers (which may be only one) who, in turn, subcontract to third parties to engage with the service users. The service provider(s) may also provide an element of the services themselves.

*Typical main contractual documents required where a SIB is utilised:*



\*The Services Contract would be based upon the template, with specification and payment mechanism relating to the project attached as schedules.

^ Where the investors provide debt funding, there will be a loan agreement and there may be security documents. There may also be a subscription agreement between the investors and the contractor if the contractor is an SPV that the investors invest by way of equity.

# A Deed of Assurance may be appropriate from a main subcontractor to the authority where there is an SPV in the structure and one or more material subcontractors. See Part B, paragraph 4 for more details on this.

+ There will be one subcontract entered into with each service provider.

## **The Approach to Commissioning**

This approach to commissioning offers great potential to improve the outcomes delivered through public expenditure. The template contract is an attempt to simplify part of that process. However, by their nature, these projects are challenging. They are often attempting to address some of the most complex social issues in innovative ways and with a relatively new commissioning approach.

This requires innovation in how the public authority approaches the whole process (not just how the bidders respond to it). A lot of thought and research may well be required in advance of embarking upon a project to establish important matters, such as:

- what the most desirable outcomes may be (and how much the authority is prepared to pay for such outcomes)
- what the best means of measuring whether they have been achieved are (and when this measurement should take place)
- whether there may be additional benefits (or undesirable consequences) resulting from this approach

There may be significant value in the commissioner engaging with current or past users of the service and/or service providers, to understand better what is likely to be effective, before designing its project. Alternatively, an authority may elect to build that sort of input into the procurement process itself, engaging in a form of competitive dialogue with its bidders.

### *The procurement process*

The commissioner needs to have clarity around how it will run the procurement process before it embarks upon it. Is it confident it knows exactly what it wants and so can run a restricted procedure where it is essentially asking bidders to accept the terms offered and to price them? This will mean having great confidence that the specification, the payment mechanism and the contract (the template, adapted to reflect the particular project and the authority's requirements) will work, individually and collectively, to encourage the optimal response from the successful bidder. It may also limit the ability of all the parties in the contract to depart from the proposed approach once the process begins.

Or is the commissioner intending to use the procurement process to engage in dialogue with bidders to give it confidence that when it contracts it is doing so informed by the outcome of a competitive process and will have a robust basis upon which to proceed? This may involve a more protracted and intensive procurement process, but allows greater flexibility.

It is critical that the authority considers these issues and takes a deliberate decision over the most appropriate approach to adopt at the very outset of the project and does not find itself already committed to a particular path before engaging seriously with these fundamental questions.

### *Some considerations for commissioners*

Payment by results is not appropriate in many circumstances. Adopting it without care may lead to:

- paying too much for something that could be achieved by other, cheaper means
- paying too little to incentivise the desired level of performance
- paying for outcomes that would have happened anyway
- paying for the wrong outcomes through mis-specification
- paying significant set-up costs that are not merited by the outcomes achieved
- creating perverse incentives in service delivery, (if what is most remunerative for the service provider and what delivers the best outcomes as a whole are different)
- procuring a service whose outcomes cannot be measured objectively
- exposure to undue reputational risk

Commissioners need to understand which form of commissioning is appropriate for which outcomes. For example:

If parties know what works and are already achieving wholly positive outcomes in a cost effective way, then commissioners should probably be using 'fee for services' contracts to pay for and get what works best without paying for risk transfer and investor cost of capital.

If parties do not know what may work, payment for outcomes may be more appropriate – though it needs to be understood that this involves risk (and the prospect of failure) which needs to be allocated appropriately.

Commissioners need to be clear where they are expecting innovation to take place and attach the risk payments to that. For example, if the view is that the services currently being delivered locally are the right services but what needs to be different is the co-ordination of those services by a lead contractor who has case management and supply chain management skills, then it may make sense to use a structure where the service deliverers are paid a fee for those services and the lead contractor a risk adjusted price to reflect its success in coordinating the services to achieve the desired outcome.

A significant amount of innovation needs to be done at commissioning level in terms of pooling budgets and working collaboratively across departments to focus on optimising outcomes. This is consistent with the desire to personalise services where individuals may have needs spanning a wide range of services.

To assess whether a payment for outcomes approach is appropriate, a commissioner should know the following:

- The counterfactual (i.e. the dataset against which performance will be assessed)
- That the outcomes are measurable and attributable
- That the complexity of the approach is not disproportionate to the anticipated benefit from adopting it
- That the payments work appropriately to reward the service providers at all levels of outcome delivery (i.e. there are no points where it ceases to make economic sense for a party).



## Part B: Template contract clause commentary

Capitalised terms used in Part B of this guidance are as defined in the Template Contract.

### Statement of shared aims

As stated, these contracts, particularly where involving SIBs and the services that are funded by them represent a new approach to delivering each of social outcomes, public services and financial investment. The best outcomes will be achieved where the parties' relationship is collaborative in working towards achieving the common outcomes they aspire to commission, deliver, and fund, rather than purely transactional. Clause 2 offers a framework for understanding, interpreting and applying the obligations of the parties in the template contract.

### Term

There is provision in Clause 3 for conditions precedent, though in practice these should rarely be relevant and may often be deleted (i.e. 3.2 and 3.3).

There is also drafting for an option to extend / renew the agreement (cf 3.4-3.6). Authorities will need to make specific reference to this in their procurement documentation in order to take advantage of this approach. Their contract should then reflect that decision by including, amending, or deleting those clauses.

The template contract contains an indicative term of 5 years – see definition of Operational Period. Each Authority will need to consider the length of an appropriate contract period to achieve the desired outcomes and adapt the contract appropriately. It should also be noted that the term is in respect of the active provision of services by the Contractor. There is likely to be a subsequent period during which outcomes shall be monitored (and payments may be due) that also needs to be taken into account.

### Mobilisation

It may often be the case that preparatory work needs to be undertaken to achieve a point at which the new Services can begin to be delivered effectively. This is addressed by Clause 4. This assumes that both parties (the Authority and the Contractor) will have obligations to perform during this period and that these will be set out in a Mobilisation Plan. This plan will be project specific and will work on the basis that everything that needs to be done will be in place to enable an anticipated start to the full Services on a defined Services Commencement Date. If it becomes apparent this will not be achieved, the parties will meet to agree an appropriate response. The template anticipates this may include resetting the Service Commencement Date and thus preserving the full length of the Operational Period during which the Services are to be provided.

Thought should also be given to the optimal time to commence service delivery, taking into account the impact of seasonality on proposed interventions; for example, beginning a contract in October to place clients in work, in a location highly dependent on summer tourism, may be less than ideal.

### Deed of assurance

As indicated, where SIBs are used, the general assumption is that an SPV may be utilised and performance of the Services subcontracted by the SPV to a specialist service provider (possibly, itself, a co-investor in the SPV), though this may not always be the case. As the SPV will have limited resources, the Authority may want to have confidence that material subcontractors will deliver. This serves a dual purpose for the Authority. If the SPV defaults, leading to termination, but has insufficient assets itself, the Authority may then (but only then) look to the service provider to ensure that there is no discontinuity of service provision.

It should be noted that the Deed of Assurance does not give the Authority any additional rights to performance manage the service provider or to exercise any rights against the service provider during the subsistence of the main contract with the SPV.

Where an SPV is not used, it is not anticipated a Deed of Assurance will be necessary, as the Authority should be able to rely on its direct contractual relationship with the Contractor. However, even where an SPV is not used, a Deed of Assurance may be relevant where a Contractor is not, itself, providing any or many of the services but relying upon one or more subcontractors to do so to a material degree.

### **Warranties and representations**

Clause 6 contains some standard warranties and representations that an Authority would seek when entering into a contract with a third party to provide reassurance that the position at contract signature is as it has been led to believe.

### **Conflicts of interest**

Clause 7 acknowledges the possibility of conflicts of interest arising and provides a very high level means of addressing these. An Authority should consider carefully the circumstances relating to the project in question and related matters which may make such a provision more or less appropriate. Depending on the project, an Authority may feel it can dispense with this provision (or may want to make it more specific).

### **Co-operation**

Clause 8 sets out mutual obligations to act in good faith and to co-operate, but also puts some parameters around those obligations to provide clarity in terms of what the parties may expect from one another during the Agreement Term.

### **The services**

Clause 9 contains the primary obligations upon the Contractor around performance of the Services. This provides that the Services will be carried out in accordance with:

**The Services Specification** – it is anticipated this will be focused heavily on the outcomes sought and not how these are to be achieved.

**All applicable legislation** – rather than include detailed provisions in the contract in relation to some of the relevant pieces of legislation, this agreement simply places the obligation upon the Contractor to ensure all relevant law is complied with. An SPV will step this down in its entirety to the specialist service provider, who should know what this means for them (and it will only remain relevant to the SPV in the context of its contract management and administrative function).

**The Authority Policies** – the Agreement anticipates that the Authority will identify in the procurement process which of their policies they specifically wish to see adhered to in the performance of the Services and for these to be referenced in Schedule 1 part 2. Where there are specific provisions in the contract dealing with an issue, it is not intended that Authority Policies are used to supplement the contract drafting, imposing additional obligations on the Contractor. The Contractor will have the opportunity as part of the procurement process and contract finalisation to identify any it feels are not appropriate. Where an SPV is used, the expectation is it will step this down in its entirety to the specialist service provider, who should know what this means for them (and it will only remain relevant to the SPV in the context of its contract management and administrative function).

**Good Industry Practice** – as defined in the contract.

The effect of the above, together with the focus on payment for the outcomes achieved, encourages the view that the Authority should not expect to specify how the Services are performed. In this agreement, there are some high level requirements included in relation to engaging sufficient numbers of personnel and that they are suitably qualified. There is also an obligation to have an appropriate quality assurance system in place. These are intended to give the Authority something to reference if they have specific concerns about how the Service is being delivered, whilst avoiding being prescriptive where possible.

The contract terms addressing the Contractor's obligations in relation to the Services and the Authority's rights to specify how these are performed are an area where the spectrum referred to in paragraph 2.3 above is relevant in assessing the level of prescription appropriate.

### **Authority obligations**

It is assumed that there may be specific acts on the part of the Authority (for example making referrals and provision of data and information) that are necessary to enable the Contractor to deliver the Services effectively. These will be described in Schedule 1 part 3 and will be project specific.

Clause 10.2 also contains a commitment from the Authority not to do anything that may jeopardise the ability of the Contractor to perform the service or achieve the Outcomes.

### **Representatives**

Clause 11 provides a mechanism for the parties to identify individuals who shall be authorised to act in the name of the parties in the performance of the contract.

### **Review, monitoring and obligations**

Clause 12.1.2 is an attempt to recognise that if contracts are designed with the genuine aim to encourage innovation and attempt to find new solutions to social problems, it is inevitable that not all contracts will be perfectly structured from the outset. This clause attempts to give the parties the comfort that there is a mechanism through which they can work to calibrate the contract further, if necessary, with a view to ensuring the project achieves its overall objective, defined as 'the Objective' in the template agreement. This is intended to be the ultimate aim of the parties, which the outcomes metrics provide the means of measuring. By way of example, the Objective the parties are seeking to achieve with a project may be to return individuals to the workforce and the contract may identify outcomes triggering payments for things like service users attending sessions on preparing CVs, references and for interviews. The purpose of the review mechanism is to establish whether the chosen outcomes are proving effective in achieving the Objective; whether different outcomes might be more effective; or the same outcomes with different calibrations (e.g. because the calibrations are driving behaviours that achieve the contractual goals / payments, but do not have the expected effect on the service users' prospects of employment in the relevant location and with the relevant demographic).

The obligation in clause 12.1.2 is only an obligation to consider the position. This is because it is recognised that the parties (and the investors) have taken significant decisions on the basis of the signed agreement. This provision requires the parties to explore if there are ways to improve the effectiveness of the contract without detriment to the parties and Service Users, but requires unanimity for action to flow from it. (It is assumed that the Contractor shall not agree to any change without the approval of its investors).

The Contract Review Date provides identifiable moments during the Agreement Term when the parties shall come together in a review meeting to consider these issues and how to respond to them. It is suggested the review dates occur six months into the contract to identify and address any teething troubles and then on an annual basis.

There is clearly a balance to be struck between restricting the bureaucratic burden on the Contractor and obliging it to keep and make available information relating to the performance of the Services in sufficient detail to enable the Authority to understand whether the Outcomes are likely to be achieved; whether payments should be made; and whether this is an effective way of seeking to deliver such outcomes in the future. The Authority will also have responsibilities in terms of audit that it needs to comply with. Clause 12.2 – 12.4 and Schedule 8 attempt to reflect this balance, leaving scope for an Authority to identify in Schedule 8 the level of information it feels appropriate to require in relation to the particular project in question.

Again, where the contract sits on the spectrum of performance and payment risk being passed to the Contractor is relevant, to a degree, to the level of information it may be appropriate for the Authority to require.

## Payments

This template contract operates on the assumption that there will be two payments made: one a Services Fee for the ongoing provision of services by the Contractor and the other an Outcomes Payment, which will be dependent on achieving the proposed results. Where a contract has payments wholly dependent on achievement of outcomes, the drafting may be modified accordingly.

Clause 13 in the agreement deals with the mechanics of making payments. The details of what will be paid when and the triggers for those payments are assumed to be contained in a payment mechanism included in Schedule 2 to the agreement.

A payment mechanism has not been proposed, as this will to a large extent be particular to each project and will depend on the outcomes, evidential requirements and underlying nature of the intervention. However, a starting point might be:

- the Services Fee comprises a regular monthly payment in arrears in respect of the basic service
- the balance is payable on the Authority being satisfied
- the agreed Outcomes have been delivered it may be more nuanced than this. A project may be structured so that the risk allocation is tiered and different parties are accepting different risks, consistent with what the risks each is considered best placed to manage.

Evidence from projects already operating on payments by results lines suggests the (easy to say, but difficult to achieve) objective is a mechanism that manages to align the interests of the commissioning authority, the service provider, the investors and the service users – hence the references in the contract to shared aims and opportunities to review whether improvements can be introduced. Appropriate risk allocation, so that each risk rests with the party best able to manage it, is critical.

There are technical challenges to be faced in terms of addressing issues such as attribution (i.e. is the Contractor responsible for the Outcomes achieved, or is the Authority paying for something that would have happened anyway) and how the design of the payment structure translates back into the contract. This involves addressing questions such as:

- How will the parties know when the Outcomes have been achieved?
- Can this be evidenced and how robust is the quality of the data, and the data collection and management systems?
- Can it be evidenced without burdening service users?
- To what extent might Outcomes be time critical?
- What rights are appropriate so the Authority may satisfy itself with the evidence, to challenge it if necessary and to address recurring issues?

In establishing the Outcomes and the payment mechanism, a balance needs to be struck between:

- simplicity (e.g. not having too many different targets and being able to establish easily whether they have been met)
- commerciality (e.g. recognising the costs attached to delaying payments)
- certainty (e.g. clarity of definition and objectivity of assessment)
- relevance (e.g. measuring what will make a difference to the service users and achieve the Objective)

- avoidance of perverse incentives (e.g. not creating a mechanism that drives behaviours towards working with only some service users, or only working with service users in certain ways).

However, a message coming from the consultation was the importance of ensuring that compliance with the contract does not have a negative effect on the ability to deliver the Outcomes. The evidence and documentation required should be relevant and inform analysis of the contract's effectiveness without creating an unnecessary bureaucratic burden or leading to disengagement with the service by its users. Once again, this indicates the benefit of a collaborative approach in the design of the contract overall, involving those with the relevant experience and specialities.

There is no provision in the template contract for payments to be indexed. This means that either service providers (and, potentially, Investors) will have to build into their pricing the effect of inflation over the term of the agreement, or the payment mechanism might have the anticipated effect of inflation taken into account in any proposed uplifts in fees over that time. Alternatively, indexation could be applied to the payments under the contract on an annual basis and drafting included to this effect. The Authority should be clear which approach it wishes to adopt as part of its procurement exercise.

Clause 13.12 anticipates the possibility of payments falling due after the agreement has terminated. This may well happen where measurement of the Outcomes can only take place at some future date. Clause 25 (Continuation) means that this obligation on the Authority to make any such payments survives the expiry of the agreement.

### **Change procedure**

The contract contains a simple procedure by which the parties may propose and seek to agree changes to the contract. This is contained in Clause 14 and Schedule 6. It anticipates changes around the scale of the service to be delivered or who it is targeting (whereas the review at clause 12.1 is more about whether the contract structure (for example the metrics chosen, the means and frequency of assessing them or the payment profile) are, in practice, proving the most effective way to encourage delivery of the outcomes and achieve value for money). Delivering the best outcomes and achieving value for money are not necessarily mutually exclusive. Both are dependent upon the cooperation and good faith (and are ultimately at the discretion) of the parties. Where there are external Investors, it is assumed the Contractor will not agree any change to the contract without investor approval.

### **Data protection**

Protection of data is likely to be relevant to many contracts of this nature, although to differing degrees depending upon the nature of the Service. The drafting proposed in Clause 15 is basic rather than exhaustive.

The Authority can include its specific requirements around data sharing in Schedule 4.

Authorities may wish to consider whether and to what extent the Parties should commit to making publicly available information (that is not commercially sensitive) around the Services and the Outcomes, so that others can learn from the work undertaken. – compare clause 17.9. The presumption is towards publishing outcomes achieved and other information not established to be commercially sensitive.

There is an expectation on the part of the Cabinet Office that parties that use this template contract as a starting point or for key aspects of their agreement will share a redacted version of their executed agreement with the Cabinet Office to inform and improve future commissioning of public services.

## Freedom of information, confidential information and publicity

These matters are addressed in Clauses 16 to 18 using standard approaches for local authorities. Depending on the nature of the project and local sensitivities, authorities may wish to adapt these provisions, but in doing so should be mindful of the impact of moving away from the template and potentially increasing the administrative burden associated with the project.

The clause on publicity attempts to retain a simple approach and anticipates there will be guidelines developed between the parties, along standard lines used by them in their business generally, to address the details of how this should be dealt with. (This allows for flexibility between more and less sensitive types of project). The clause is drafted to address proactive attempts on the part of the parties to promote their involvement in the project (eg press releases and conferences). It is not intended to constrain, for example, the ability to respond to any questions about the project or requests for information coming from the press.

## Intellectual property

The intent of the drafting in Clause 19 is to strike a balance between the Contractor's commercial interests and those of the Authority around being able to procure the service (or an equivalent) following expiry or termination of this agreement. Assuming the contract is a success, the aim is that it can be repeated and this should not be inhibited, unreasonably, by a party's claims to intellectual property rights ("IPR").

The obligation is on the Contractor to ensure it has all necessary IPR to perform the Services and to grant sufficient rights for the Authority to use the intellectual property in accordance with the agreement.

The obligation is on the Authority not to use the intellectual property in a way that infringes third party rights that it has been made aware of.

## Indemnities

The Contractor indemnifies the Authority, in Clause 20, against:

- direct losses relating to death or personal injury; property damage; and third party claims arising from the performance of the Contractor's obligations
- losses relating to third party claims for breach of statutory duty arising from breaches by the Contractor (where there are no other remedies under the agreement)

The indemnities do not apply where the Contractor is acting on the written instruction of the Authority or where caused by negligence, wilful misconduct or breach by the Authority.

A limit on liability is proposed equivalent to the levels of insurance cover required to be maintained under the agreement. In respect of uninsured losses, a figure that is proportionate both to the value of the contract and the likely losses arising under this head, should be inserted on a project specific basis.

## Insurance

The requirement for the Contractor to take out insurance (and to procure its subcontractor does) is to give the Authority comfort that if it has a claim against those parties there is likely to be funds available to meet them.

The required insurance schedule and the insurance clause may be reviewed by insurance brokers to ensure they reflect what is available in the market and current practice (in terms, e.g. of noting on policies etc) for the nature of the services to be provided.

## **Force majeure**

This clause provides a means for the parties to suspend the terms of the agreement where events outside their control prevent them from fulfilling their contractual obligations. If these events persist for three months and the parties cannot agree a way of dealing with such circumstances, either may terminate the agreement.

## **Bribery, corrupt gifts and fraud**

This clause contains standard provisions enabling the Authority to guard against any acts of bribery, corruption or fraud occurring within the Contractor or its supply chain and permitting the Authority to terminate the agreement in the event of breach.

## **Default and termination**

This clause sets out the different levels of response to breaches of contract by the parties. It is another part of the agreement where different approaches may be appropriate, depending upon the amount of risk that has been transferred to the Contractor for performance delivery.

Where the Contractor is in default, this may take a number of forms. It is a Service Failure where there is a material failure to deliver the Services. This triggers a requirement on the Contractor to propose a Performance Improvement Plan to remedy the default (or avoid its repetition).

If, during the periodic contract review undertaken in accordance with Clause 12.1.2, the Parties establish that improvements are required if the Satisfactory Level of Outcomes is to be achieved, a Negative Outcomes Assessment is triggered. The Satisfactory Level of Outcomes is the level which all parties, (the Authority, the Contractor, Investors and Service Users) would be expected to regard as acceptable, but which is by no means the best that could be achieved. It is to be defined on a project specific basis, (possibly by reference to a proportion – to be agreed – of the maximum outcomes achievable / funded under the contract).

(As with a Service Failure) where there is a Negative Outcome Assessment, the Contractor must propose a Performance Improvement Plan to remedy the failure in question. Clause 24.1 contains a process for agreeing the detail of this plan with the Authority. The Contractor must then implement the plan.

Where there is a failure to implement a Performance Improvement Plan within the agreed timescale, or a Service Failure or Negative Outcome Assessment that is not capable of being addressed through a Performance Improvement Plan, there is a Contractor Default. This also arises in certain other cases, for example, the insolvency of the Contractor or for specific contractual breaches such as of the subcontracting, change in ownership or insurance provisions. The default trigger for contracts with high levels of Service Fee may focus more on immediate service delivery, rather than prospective achievement of outcomes.

The Authority serves notice on the Contractor where there is a Contractor Default and, depending upon the default, this will either trigger termination of the agreement, or give the Contractor a period in which to remedy the breach.

Clause 24 also addresses default on the part of the Authority. The Authority has the ability to undermine the Contractor's efforts to meet its obligations – either by failing to pay the Contractor or by not fulfilling its own contractual obligations.

The proposal, in such circumstances, is (if the Authority does not remedy such defaults when notified of them) that the Contractor can terminate the contract. Where it has taken on significant risk in relation to achieving Outcomes, particularly where it has had to take on external funding, it should receive appropriate compensation, as having assumed that risk it is now being denied the opportunity to gain the reward associated with doing so.

This should provide significant reassurance to Investors that the risk of contracting with the Authority is reduced.



And though it is potentially costly for an Authority, it is something it is within its control to manage, so it should not materialise.

The compensation referred to above is defined as the Authority Default Termination Sum. The definition of this at present simply sets out the principle that in such circumstances the Contractor should be left in the position it would have been in if the contract had continued to the Expiry Date and it had achieved all of the Outcomes (as the actions of the Authority are denying it this opportunity). It may be an alternative basis upon which compensation should be calculated is preferred, such as paying, say, an amount reflecting the Contractor's achievement of the Outcomes to date for the remainder of the contract period, possibly with some uplift to reflect the lost opportunity for improvement. Either way, it will be necessary to add more detail around how this would be calculated. The detail of this is likely to depend upon the means by which the Contractor is funded and the financial model used by the Contractor and Investors to estimate returns over the life of the contract.

Either Party has the right to terminate the agreement at any time, once 18 months have elapsed since the Service Commencement Date, on six months' notice. This means that if the Contractor (or its Investors) is clear it will be unable to deliver the outcomes so will never be paid fully for the Services, it can cut its losses, being paid for any Outcomes achieved by the Services delivered, but nothing further. It also means that if the Authority decides (possibly for political reasons) that it no longer wishes to pay for the Services or have the contractual commitment in respect of the Outcomes, it can bring the arrangement to an end. Again, because this is within its control, the Authority will be liable for the Authority Default Termination Sum in such circumstances.

### **Continuation**

This clause identifies those provisions that shall survive termination or expiry of the agreement. It is particularly relevant in the context of outcomes being assessed and payments made, potentially, for some time after expiry or termination of the agreement.

### **Transition**

This clause requires the Contractor to co-operate with the Authority to ensure the smooth transition of the Service at the end of the contract to a new service provider.

This includes transferring all information that is required in order to deliver the services and achieve the outcomes effectively, though the Contractor is not required to transfer commercially sensitive information.

### **Employment and pensions**

The template assumes that, as this is likely to be a new service, there will not be existing employees transferring to the Contractor under TUPE when it commences delivering the Services. The contract will be priced on that basis and the contract acknowledges this position in Clause 27.1 providing clarity to all parties on this point.

The remainder of Clause 27 and Clause 28 deal with the situation when the contract comes to an end, placing obligations upon the Contractor to facilitate a smooth transition of the Services to a third party if appropriate.

It will be important for the parties on each transaction to establish whether TUPE will be applicable on service commencement and to address this, if necessary, in the drafting.

### **Dispute resolution procedure**

Clause 29 contains a relatively straightforward process for resolving disputes. Matters that cannot be resolved by the staff of the parties shall first be escalated to the chief executives. If they remain unresolved, they may be referred either to mediation or the courts.

## Assignment and subcontracting

The Authority may assign the agreement to another contracting authority or a body succeeding to its statutory functions. The Contractor is prohibited from assigning the agreement.

The Contractor requires the prior written consent of the Authority in order to subcontract. This is provided in the agreement itself in relation to initial subcontractors (on the basis the Authority will have satisfied itself with those arrangements before signing the agreement). Such consent must not be unreasonably withheld or delayed where the rest of Clause 30 is complied with.

In terms of future subcontracting, the assumption is that a service financed through a SIB is likely to be delivered through an SPV and one main subcontractor.

The agreement, however, also anticipates arrangements that may be more typical in a payment by results scenario where a 'prime' contractor may be using an extended supply chain to provide services and deliver results. These include requiring the Contractor to conform to its Tender Submission in terms of use of the proposed supply chain; it includes specifying the manner in which future subcontractors may be procured; and it specifies some of the terms on which the Contractor is expected to subcontract with third parties.

It may be appropriate to adapt clause 30 depending upon the extent of the risk allocation proposed and the actual composition of both the Contractor and its supply chain.

## Change in ownership

This clause places restrictions on the ability of the Contractor to undergo changes in its ownership or control.

Certain parties are always proscribed as unsuitable.

The consent of the Authority is always required. Subject to 27.2 above, the Authority may withhold its consent only where the effect is to change the overall control of the Contractor compared to the position at the date of the agreement.

## Boilerplate provisions

Clauses 32 to 38 are regarded as standard terms.

## 6.1.2. Agreement between the Commissioner and Fund Manager of the Koto-SIB (FIN)

Annex 1 TEM/2126/02.03.02/2015 24.3.2016

### CONTRACT

**Ministry of Economic Affairs and  
Employment**

**X Company**

**Impact investing project – Speeding up  
immigrant employment**

This contract was translated from Finnish into English by Paula Heineker.

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## 1 CONTRACTING PARTIES AND CONTACT PERSONS

### 1.1 Contracting parties are:

1. Ministry of Economic Affairs and Employment TEM (later: contracting authority)

Address

Business identity code

2. Company X [and group built with company Y] (later: Administrator)

Address

Business identity code

1.2 The contact persons of both parties, their areas of responsibility [and the point of contact for companies operating as a group] are mentioned in the annex [5]. A contracting party must inform the other contracting party in advance and in writing if a contact person changes.

## 2 DEFINITIONS

2.1 The present contract uses the following terms, unless otherwise explicitly agreed elsewhere in the contract, or unless another use becomes apparent from the context. In addition, the definitions included in the General Terms of Public Procurement in Service Contracts (JYSE 2014 SERVICES) are applied, unless explicitly agreed otherwise.

2.2 **Subcontractor** refers to all such third parties who participate in meeting obligations specified in this contract on behalf of the contracting party.

2.3 **Workday** refers to working days specified in the Finnish calendar (8:00 am - 4:15 pm) excluding ordinary Saturdays, Sundays, church holidays, Independence Day, Christmas Eve, Midsummer Day, Easter Saturday and May 1st.

2.4 **Client** refers to a person belonging to the target group of this contract i.e. jobseekers registered at the Public employment and business office (TE Office), targeted by services provided according to this contract.

2.5 **JYSE 2014 SERVICES** refer to the **General Terms of Public Procurement in Service Contracts**. "Customer", as defined in the general terms, is equivalent to the term "contracting authority" in this contract, and "service provider" is equivalent to the term "Administrator", likewise defined in the present contract.

2.6 **Written or in writing** refers to a combination of words or numbers which can be read, reproduced and, subsequently, delivered; the written information can entail data sent and saved in electronic form, excepting text messages.

2.7 **Service or services** refers to services or set of services which are subject to this contract and which improve the employment prospects of the target groups.

2.8 **Service provider** refers to a company or other actor providing services, in accordance with the definition in this contract, for or on behalf of the Administrator.

2.9 **Contract** refers to this contract document, including its annexes. "Procurement contract", defined in the terms of JYSE 2014 SERVICES, is equivalent to contract.

### 3 THE SUBJECT OF THE CONTRACT

- 3.1 The subject of the contract is the **Impact investing project – Speeding up immigrant employment**.
- 3.2 The Administrator appointed as the Project Administrator for the impact investing project coordinates the whole project designed to speed up the employment among immigrants. The aim of the project is to speed up access to employment by immigrants, to explore new employment and training schemes, and to make it possible for immigrants to combine training and work flexibly.
- 3.3 The duties of the Project Administrator include the following key tasks [the list is not exhaustive]:
- the planning and coordination of the present project
  - the establishment of the financing instrument for the impact investing project (Fund)
  - the raising of funds for the Fund and management of the Fund
  - organizing immigrant employment and training interventions in cooperation with the service providers according to the project objectives
  - Monitoring, interim reporting and final reporting.
- 3.4 The subject of the procurement is described in more detail in Annex [1] Description of the subject of the procurement.
- 3.5 This contract does not give the Administrator an exclusive right to the production of services which constitute the subject of the procurement.
- 3.6 When needed, the contracting authority may make an agreement on project-related payment transactions with the Fund established by the Administrator.
- 3.7 For the service properties, chapter four of the JYSE 2014 SERVICES will be applied.

### 4 CONTRACT PERIOD AND SERVICES TIMETABLE

- 4.1 The contract will take effect on xx.xx.201x *[To be completed later. The contract will not take effect before the procurement decision is legally binding and the waiting period has ended]*. The contract will be valid until the obligations stated in this contract have been met, however no later than December 31, 2021.
- 4.2 The indicative dates for the commencement of service production, measuring points and auditing of the results are defined in Annex [1] Description of the subject of the procurement. The timetable for service production can be specified in more detail at the beginning of the contract period.
- 4.3 Service production starts in 2016, but no later than January 1, 2017. Service production ends on December 31, 2019.
- 4.4 Possible payment of return to the Fund will be carried out between 2020 and 2021, depending on the date when the 2019 tax data, the impact of the experiment and the savings made by the State have been calculated.
- 4.5 The termination of the contract has been agreed upon in Paragraph 20.

## 5 GENERAL OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTING PARTIES

### Administrator

- 5.1 The Administrator commits to providing the contracting authority with the service specified in this contract according to the terms agreed in this contract and must otherwise adhere to the terms of this contract.
- 5.2 The service must correspond to the specifications agreed in this contract throughout the entire contract period. The service must also correspond to the information provided for the contracting authority regarding the content, performance and other issues related to service quality.
- 5.3 The Administrator must comply with the laws, decrees, and standards concerning the contract, as well as with the regulations issued by the authorities, including norms, standards and specifications which are defined either within these regulations or separately.
- 5.4 The Administrator shall ensure that, when the service is provided, personal data is processed in accordance with the statutes of the Finnish Personal Data Act valid at the time of service provision.
- 5.5 The Administrator shall provide the services specified in this contract in a qualified and expert manner, paying special attention to data protection, and with such expertise that can reasonably be assumed from an experienced expert Administrator.
- 5.6 The Administrator shall insure that it has adequate expertise and experience in regard to the nature of the service.
- 5.7 The Administrator must have a valid license corresponding to the Act on Alternative Investment Fund Managers or be a publicly registered alternative investment fund manager for the entire contract period (Act on Alternative Investment Fund Managers (162/2014)).
- 5.8 All communication and reporting with the contracting authority shall be conducted in the Finnish language.
- 5.9 More specific obligations and responsibilities of the Administrator have been agreed upon in this contract.

### Contracting authority

- 5.10 The contracting authority shall cooperate, in all ways within its competence, in the fulfilling of the aims of this contract.
- 5.11 The contracting authority is responsible for carrying out the tasks assigned to the contracting authority as stated in the contract.
- 5.12 The contracting authority must give the Administrator sufficient and correct information for the provision of the service so that the Administrator can fulfil its responsibilities as stated in the contract.
- 5.13 The contracting authority is responsible for the information, instructions and regulations it gives to the Administrator.
- 5.14 In addition, the terms in chapter 8 of JYSE 2014 SERVICES are applied to the obligations and responsibilities of the contracting authority.



## **6 PERSONNEL AND RESSOURCES OF THE ADMINISTRATOR**

- 6.1 The Administrator shall use individuals possessing suitable competence and experience for providing the service. For the provision of services, the Administrator shall keep a sufficient number of personnel and their substitutes at the disposal of the contracting authority, as well as other personnel.
- 6.2 The Administrator ensures that the individuals identified in Annex [2] are available for the contracting authority to the extent required by the given task. Necessary changes in personnel shall be negotiated in cooperation. The Administrator can replace an identified person with another who possesses the corresponding expertise and meets with the contracting authority's approval.
- 6.3 In case a person identified in Annex [2] is not available for providing the service as stated in the contract (e.g. due to termination of employment for the Administrator), the Administrator is responsible for naming another person with corresponding competence and expertise as replacement. The Administrator must by all reasonable means avoid such changes of identified personnel that might impair service quality or service standard. The Administrator is responsible for training the new personnel.
- 6.4 If the Administrator replaces a person named in Annex [2] without a force majeure accepted by the contracting authority, the contracting authority shall have the right to impose a contractual penalty on the Administrator as follows:
- change of Project Manager 10 000 € per person,
  - change of financial expert 10 000 € per person and
  - change of person in charge of service production 10 000 € per person.

These terms will not be applied in cases where the named person is no longer employed by the Administrator or when the personnel change is not caused by the Administrator due to other reasons (sick leave, maternity leave, army etc.). The contracting authority may also refrain from collecting the contractual penalty if a separate agreement is reached together with the Administrator.

- 6.5 In addition, if the Administrator is unable to provide the contracting authority with a person that the contracting authority can approve, the contracting authority shall have the right to terminate the contract to the extent of the assignment which has not been fulfilled. Also, if the contracting authority does not approve of a substitute proposed by the Administrator for a person named in Annex [2], the contracting authority shall have the right to terminate the contract to the extent of the assignment which has not been fulfilled.

Termination of the contract is discussed in paragraph 20.

## **7 OVERALL RESPONSIBILITY OF THE ADMINISTRATOR AND SUBCONTRACTING**

- 7.1 The Administrator bears overall responsibility towards the contracting authority for meeting the obligations under this contract.
- 7.2 The Administrator has the right to use the subcontractors named in Annex [4] "Subcontractors" in providing the service specified in this contract.
- 7.3 The Administrator shall be responsible for the work of the subcontractor as if it were its own and for ensuring the subcontractor's compliance with obligations placed on the Administrator and the subcontractor. The agreements in this contract pertaining to personnel working for the Administrator shall also apply for the personnel employed by the subcontractor.

- 7.4 The Administrator may add, replace or dismiss subcontractors during the contract period. Such changes in subcontracting shall not cause any fundamental changes in the contract.
- 7.5 The Administrator shall inform the contracting authority of any subcontractor changes. However, the contracting authority has the right to refuse, for a justified reason, to accept a subcontractor proposed by the Administrator for the provision of services as stated in this contract. The Administrator is not allowed to use a subcontractor which has been refused by the contracting authority.
- 7.6 The use of subcontractors requires, among other things, that the subcontractor fulfils the same criteria as those posed on the Administrator during the invitation to tender, concerning trade register entries, tax and social security contributions, and credit ratings. Furthermore, the subcontractor in question shall not be subject to the criteria for exclusion referred to in section 53 or 54 § of the Act on Public Contracts (348/2007) [or equivalent statutes in more recent law]. If the Administrator's subcontractor named in Annex [4] does not meet the above mentioned requirements or it is subject to the criteria for exclusion referred to in section 53 or 54 § of the Act on Public Contracts (348/2007) [or equivalent statutes in more recent law] or its management is directly or indirectly conducted by a person who is under a ban of business operation, the Administrator must dismiss or exchange said subcontractor in a manner specified together with the contracting authority.
- 7.7 The contracting authority shall have the right to use its own subcontractors to fulfil its contractual obligations as stated in this contract without the consent of the Administrator.
- 7.8 Chapter 3 of JYSE 2014 SERVICES shall not be applied.

## **8 GROUP OBLIGATIONS**

*[This chapter shall not be applied unless the tenderer is a group]*

- 8.1 Companies forming the group are jointly responsible for meeting the contractual obligations. For instance, if one or several companies belonging to the group commit a breach of contract, the contracting authority shall have the right to demand the fulfilling of the contractual obligation or the paying of damages or contractual penalty for losses arising from the breach of contract from any of the companies belonging to the group. The said company shall then be liable to meet the contractual obligations for itself and on behalf of the other companies in the group. When calculating the losses arising from a breach of contract, the group shall be considered one legal person, i.e. that contractual delay penalty, for instance, shall be collected only once.
- 8.2 Notifications shall be sent to the point of contact assigned by the group.
- 8.3 The group reports to the contracting authority via its point of contact.
- 8.4 In case one of the reasons for termination stated in this contract is applicable to one of the companies belonging to the group, the Client shall have the right to terminate the contract with the whole group.

## **9 COMPENSATION AND PAYMENT OF RETURN**

- 9.1 The contracting authority shall pay the Administrator compensation for the provision of specified service production as described in Annex [1] Description of the subject of the procurement, passage 3.1.
- 9.2 The payment of return on the impact of the project is described in Annex [1] Description of the subject of the procurement, chapter 4.
- 9.3 The Administrator shall have no right to levy invoicing charges or any other charges except those agreed on in this contract.

- 9.4 In case the contract is terminated or cancelled during the contract period, the Administrator shall have the right to receive compensation for the service provision implemented prior to the termination of the contract (implemented training). The reference period for the impact payment of return shall be the date of termination.

## **10 BILLING AND TERMS OF PAYMENT**

- 10.1 The due date of invoices is 30 days from the arrival of an acceptable invoice.
- 10.2 The compensation will be paid annually in February based on the billing. Invoices must include an itemisation of the grounds for invoicing. The Administrator shall send the contracting authority a consolidated invoice without further invoicing charges.
- 10.3 The Administrator shall use electronic invoices in billing the contracting authority. Electronic attachment files may be added to the eInvoice. The contracting authority shall inform the Administrator about billing details (references, allocation) after the signing of the contract.

eInvoice data:

Address of eInvoice:

Operator code:

Reference:

- 10.4 Chapter 10 of JYSE 2014 SERVICES shall otherwise be applicable to billing and terms of payment.

## **11 COOPERATION, MONITORING AND RIGHT OF INSPECTION**

### **Cooperation and monitoring**

- 11.1 The contracting authority and the Administrator shall agree at the beginning of the contract period on details relating to the service. The Administrator shall have no right to levy charges for attending meetings.
- 11.2 The Administrator shall monitor the implementation of the service and service quality. The contracting authority may perform quality monitoring in accordance with its own needs.
- 11.3 The contracting authority shall have the right to perform random inspections to investigate whether the impact of the experiment is based on employment.
- 11.4 The Administrator must deliver reports relating to contract monitoring as described in Annex [1] without extra charge by the agreed deadline.
- 11.5 The contracting parties commit to systematically monitoring, without extra charge, the implementation of the contract and its aims. The purpose of monitoring is to ensure that the service fulfils the regulations of mandatory legislation as well as regulations issued by the authorities and that the service complies with the contract. Also, monitoring shall ensure the availability and quality of services.
- 11.6 For the management and implementation of the contract, the contracting parties shall meet in service monitoring meetings. The Administrator shall attend said meetings without extra charge. In these meetings, the parties shall assess whether the implementation is in accordance with the contract and, when necessary in specific circumstances, agree on minor exceptions from the contract regulations. Between monitoring meetings, the contracting parties shall keep in touch, when needed, in matters relating to contract implementation. In the meetings, the contracting parties shall process matters

relating, for example, to service implementation, quality, changes in personnel or subcontractors, client feedback and future service needs.

## **Right of inspection**

- 11.7 The impact of the efforts overseen by the Administrator shall be audited by an external auditor as described in Annex [1].
- 11.8 During the contract period, the contracting authority shall also have the right to inspect and, at its own cost, commission through an independent third party inspections to investigate whether the service complies with requirements and whether the Administrator has operated in accordance with the contract. The contracting authority or the contracting authority's representative shall have the right to access premises in which the service is provided as well as to interview personnel involved in providing the service and to familiarise itself with those documents of the Administrator in respect of which familiarisation is necessary to evaluate the minimum requirements set for operations and the quality of the service. The contracting authority shall have the right to inspect only information that relates to the fulfilment of the contractual obligations of this contract.
- 11.9 The contracting authority must provide advance notification of an inspection visit. The Administrator shall have the right, for a justified reason, to postpone an inspection visit by maximum 14 days from the date proposed by the the contracting authority.
- 11.10 The Administrator shall have the right to demand that the party performing the inspection signs a confidentiality agreement relating to the inspection. The confidentiality agreement shall not prevent the reporting of the results of the inspection to the contracting authority.
- 11.11 The right of inspection shall in no way restrict the contractual rights of the Client, and it shall not discharge the Administrator from any of its contractual obligations.
- 11.12 The right of inspection, as described in this contract, may also be extended to the Administrator's subcontractor. The Administrator must secure that the inspection of the subcontractor is possible and that the inspection can be implemented in accordance with this contract.
- 11.13 Upon request of the contracting authority and the inspector, the Administrator shall provide an account of tax and statutory payments.
- 11.14 Chapter 5 of JYSE 2014 SERVICES shall otherwise be applicable here.

## **12 FORCE MAJEURE**

- 12.1 Force majeure is determined by JYSE 2014 SERVICES, chapter 14.

## **13 INTELLECTUAL PROPERTY AND IMMATERIAL RIGHTS**

- 13.1 Intellectual property and immaterial rights are determined according to chapter 20 of JYSE 2014 SERVICES with following specifications.
- 13.2 All source material needed in the production of services that the contracting authority and the Administrator transfer to one another before or after the signing of the contract shall remain the property of the transferor, unless otherwise agreed in writing.
- 13.3 The Administrator shall keep the immaterial rights to all client reports and service documentation transferred to the contracting authority during services as well as to end reports and other material containing end results or of the service.

13.4 The contracting authority shall, however, have an unlimited right of use to the end results of the service as well as to other material transferred to it by the Administrator. Right of use shall include the right to use, copy, present and make changes in the material, as well as to disseminate said material.

13.5 The contracting authority shall have the right to use the know-how generated in the production of services in its own operations after the termination of the contact period.

#### **14 DISCLOSURE OF MATERIAL, DATA PROTECTION AND CONFIDENTIALITY**

14.1 The contracting authority must adhere to the Act of the Openness of Government Activities (621/1999). The contracting parties shall each ensure on their own part that, when the service is provided, confidentiality, obligation to observe confidentiality, data protection and valid statutes passed on the disclosure of confidential information are adhered to. In addition, the Administrator must adhere to instructions given by the contracting authority in handling and archiving documents and data.

14.2 This contract is confidential and may contain the contracting authority's or Administrator's business or professional secrets. The contracting authority and the Administrator must not disclose this contract or any information concerning this contract to third parties without the permission of the other contracting party, unless the transfer of information is based on an order by an authority or the disclosure is based on the law or, further, the transfer of information is necessary for the fulfilling of the aims and obligations determined in the contract, or for solving controversies concerning the contract. Subcontractors, as referred to earlier in passage 7, are not considered a third party.

14.3 The contracting parties shall commit to keeping secret such confidential material and information that they receive from each other and which under law must be kept secret, and to undertake not to use them for purposes other than in accordance with the contract. These regulations shall continue to be valid after the contract period.

14.4 The Administrator is the controller (register keeper) referred to in the Personal Data Act (523/1999). At the end of the contractual relationship, the personal data registers related to the provision of service, which are in the possession of the Administrator, shall be handed back to the contracting authority.

14.5 The Administrator is responsible for ensuring that no private or family secrets that come to its knowledge when the service is provided or otherwise in activities under the contract are divulged without permission.

14.6 The Administrator may not, without the contracting authority's permission, disclose information to third parties that may have to be kept secret or contain personal data in register format.

14.7 The Administrator must explain the contents of the obligation to maintain secrecy to personnel that provides the service.

14.8 The Administrator is responsible for ensuring that the subcontractors it uses adhere to these provisions relating to confidentiality.

14.9 The transfer of information to an authority or other party on the basis of an obligatory official order shall not be deemed a violation of the obligation to maintain secrecy.

14.10 The Administrator shall have the right to use the contracting authority's name in marketing with the contracting authority's consent.

14.11 Chapter 21 of JYSE 2014 SERVICES shall otherwise be applicable here.

**15 INFORMATION SECURITY**

- 15.1 The contracting authority is obliged, on the basis of relevant legislation, to adhere to implementing information security at basic level as determined in the Government Decree on information security in central government (681/2010).
- 15.2 The Administrator shall in the provision of service adhere to other demands pertaining to security as required by the contracting authority.
- 15.3 The contracting authority shall demand that personnel providing the service and named by the Administrator, or any other representatives, follow the obligation to maintain secrecy.
- 15.4 The Administrator shall take care that the security of the contracting authority's operations does not become endangered due to carelessness, defective working methods or other similar activity.

**16 SECURITY CLEARANCE**

- 16.1 The Administrator must comply with security clearances and other such regulations specifically agreed on with the contracting authority, concerning, for example, the personnel used in providing the service and named by the Administrator.

The contracting authority is responsible for obtaining clearances on the persons named in this contract as well as for the costs for such clearances according to the act on security clearance. In case a person named in the contract is replaced, the Administrator is liable to pay of the costs of the new clearance. However, in case of foreign citizens, the Administrator shall always be liable to pay the costs for the Personal Security Clearance.

- 16.2 The Administrator must secure that the clearances referred to in passage 16.1 can also be extended to its subcontractors and their personnel, if these are involved in the provision of services subjected to this contract.

**17 DEFECTS AND CLAIMS**

- 17.1 Defects and claims are determined according to chapter 13 of JYSE 2014 SERVICES with following specifications.
- 17.2 If the service does not meet the agreed requirements, it is defective.
- 17.3 If the service has a defect, the contracting authority must inform the Administrator about the defect within a reasonable period of the defect being detected or should have been detected. The notification must be given to the contact person named in Annex [5] in writing, for example via e-mail.
- 17.4 If the service has a defect, the Administrator shall examine the cause of the defect at its own expense and rectify it without delay. The Administrator may be released from liability by demonstrating that the defect did not arise from a factor within the Administrator's responsibility. In such a case, the Administrator is entitled to levy charges for investigating and rectifying the defect in accordance with the usual price list.
- 17.5 It shall be noted, for the sake of clarity, that the contracting authority also has the right to receive damages in accordance with chapter 19 of this contract, insofar as the amount of loss exceeds any contractual penalty payable to the contracting authority.
- 17.6 The Administrator shall determine measures to remove the causes of possible defects in order to prevent the occurrence of defects. Preventive measures must be appropriate in regard to the possible defects. The Administrator shall inform the contracting authority semi-annually about preventive

measures which it has determined and implemented.

## **18 DAMAGES**

- 18.1 Chapter 16 of JYSE 2014 SERVICES shall be applicable to damages with specifications mentioned later in this chapter.
- 18.2 It shall be noted, for the sake of clarity, that the Administrator is obliged to compensate any damages it causes in accordance with mandatory laws. For example, if damage has been caused by violating the competition laws, the compensation shall be in accordance with the Competition Act (948/2011).
- 18.3 The contracting authority shall not be obliged to compensate any damages for the premature ending of the contract, if a court of law declares this or the customized contract ineffective or abbreviates the contract period.

## **19 DAMAGES TO A THIRD PARTY**

- 19.1 The contracting authority shall not be obliged to compensate any damages caused by the service provision, regardless of the nature of the damage and regardless of whether the damage has been caused to the Administrator or to a third party.
- 19.2 If the contracting authority is made liable to compensate for bodily injury, material damage or any other damage caused by a defective product or service, negligent performance by the Administrator or other damage on account of the Administrator, the Administrator is obliged to pay the contracting authority as compensation the equal amount as paid by the contracting authority for damages or other costs caused by the claim

## **20 TERMINATION OF THE CONTRACT**

### **Specific grounds for termination**

- 20.1 The contracting authority has the right to terminate the contract partly or completely with immediate effect if the Administrator is burdened by criteria for exclusion referred to in the Act on Public Contracts, or if the Administrator:
- commits a substantial breach of contract,
  - acts in a way that endangers the fulfilling of contractual obligations,
  - initiates measures that may substantially affect service provision and this circumstance has a substantial impact on the fulfilling of the contract, and the Administrator was or should have been aware of this,
  - is not able to fulfil its obligations within the agreed schedule and this has a substantial effect on the other contracting party or the contracting party has a valid reason to believe so or the other contracting party's performance is repeatedly behind schedule,
  - the Administrator's performance has repeatedly been defective on grounds that are not caused by the party affected by the contract breach or by force majeure,
  - commits a substantial breach of contract and does not rectify it within thirty (30) days after dispatch of a corresponding written notice,
  - the Administrator's management or administrative tasks are performed, or its management is directly or indirectly conducted, by a person who is under a ban of business operation,

- the contracting authority cannot provide funding for the project,
- the parties reach no agreement on personnel changes or
- the parties reach no agreement on changes in subcontracting.

20.2 If a court of law orders that the contract period should be abbreviated, the contracting authority has the right to terminate the contract following a three (3) months' term of notice or a shorter term of notice if so imposed by the court.

20.3 The contract must be terminated by a written notice to the other contracting party.

## **21 THE ADMINISTRATOR'S DUTY TO HELP AND ASSIST AT THE END OF THE CONTRACT PERIOD**

21.1 Chapter 23 of JYSE 2014 SERVICES shall be applicable to the duty to help and assist.

## **22 TRANSFER OF THE CONTRACT**

22.1 The Administrator shall not have the right to transfer the contract to a third party, even partially, without a written consent by the contracting authority.

22.2 The contracting authority shall have the right to transfer the contract in full or partially to another government department or to a third party to whom the contracting authority's tasks are fully or partially transferred. Any other transfer requires the Administrator's consent.

22.3 Practical measures related to the transfer of the contract shall be separately agreed on between the contracting authority, the Administrator and the departments involved in the reorganization.

22.4 Passage 22.1 of JYSE 2014 SERVICES shall not be applied.

## **23 CHANGES TO THE CONTRACT**

23.1 All changes to the contract must be made in writing on a paper document and appropriately signed by both contracting parties. The changes will become effective after both contracting parties have with their signatures agreed to the changes, unless otherwise agreed in the change documents.

23.2 Passage 22.2 of JYSE 2014 SERVICES shall not be applied.

## **24 CONTRACT DOCUMENTS AND THEIR ORDER OF VALIDITY**

24.1 The present contract includes this contract document and the following annexes:

Annex 1 Description of the subject of the procurement *[from the invitation to tender]*

Annex 2 Experts *[from the invitation to tender]*

Annex 3 Project plan *[from the invitation to tender]*

Annex 4 Subcontractors *[from the invitation to tender]*

Annex 5 Contact persons *[from the invitation to tender]*

Annex 6 General Terms of Public Procurement in Service Contracts (JYSE 2014 SERVICES) *[from the invitation to tender]*



24.2 In case of contradiction between the contract document and the annexes, the wording of the contract document shall be valid. In case of contradiction between the annexes, their numerical order shall be followed, i.e. in case of contradiction, the annex with the lower number shall be followed.

24.3 It shall be noted, for the sake of clarity, that the terms of the JYSE 2014 contract annexed [6] to this contract shall be applied, unless otherwise agreed in this contract.

## **25 APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

25.1 The laws of Finland apply to this contract, excepting its rules concerning international conflict of law.

25.2 Disputes relating to the interpretation of the contract or to other possible issues will be resolved primarily through negotiations between the contracting parties. If a dispute cannot be resolved through negotiation, it will be submitted for resolution in a Court of First Instance, the District Court of Helsinki. Passages 24.1 and 24.2 of JYSE 2014 SERVICES shall not be applied

## **26 REVIEW OF THE CONTRACT**

26.1 Before signing the contract, the contract has been reviewed by the contracting parties, whereby the content and terms of the service have been discussed in order to ascertain that both parties share the same and correct understanding of the content and aims of the service.

## **27 EFFECTIVE DATE AND COPIES OF THE CONTRACT**

27.1 This contract will take effect as stated in passage 4.1.

27.2 There are two (2) identical copies of this contract, one (1) for each contracting party.

## **28 SIGNATURES**

Helsinki \_\_\_\_/\_\_\_\_ 2016

[Place] \_\_\_\_/\_\_\_\_ 2016

Ministry of Economic Affairs and  
Employment

[Administrator]

\_\_\_\_\_

[name]

[title]

\_\_\_\_\_

[name]

[title]

\_\_\_\_\_

[name]

[title]

\_\_\_\_\_

[name]

[title]

This contract was provided by Jussi Nykänen (Epiqus Ltd.)

### 6.1.3. Contract model of Kuntahankinnat Ltd, a Finnish municipalities' procurement unit (FIN)

INVITATION TO TENDER

KLKH 111/2016

Annex 5.2

15.06.2016

**CUSTOMIZED CONTRACT BETWEEN**

**[CONTRACTING AUTHORITY]**

**AND**

**[ADMINISTRATOR]**

This contract was translated from Finnish into English by Paula Heineker.

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## CUSTOMIZED CONTRACT

### CONTRACTING PARTIES

- (1) Contacting authority (business identity code) (**contracting authority**), address; and
  - (2) Administrator (business identity code) (**Administrator**), address
- (1) – (2) together: **contracting parties** and separately: **contracting party**

### BACKGROUND AND PURPOSE

- (A) The contracting authority of this contract can be any of the following: all Finnish municipalities, joint municipal authorities, public utilities, universities of applied sciences, as well as such subsidiaries of municipalities or joint municipal authorities that are governed by the municipalities or joint municipalities alone or together with organizations belonging to the local authority corporations as stated in the Accounting Act (1336/1997) chapter 1, § 5. Contracting authorities can also be organizations following public procurement through joint procurement contract, such as the organizations of the Finnish Evangelical Lutheran and Orthodox churches and the Church Resources Agency. Also, the Association of Finnish Local and Regional Authorities can act as contracting authority, as well as the corporations owned by it.

In the course of the healthcare, social welfare and regional government reform, the participation of counties and their subsidiary organizations in Kuntahankinnat [organization owned by the Association of Finnish Local and Regional Authorities, which procures framework agreements of goods and services on behalf of its clients] may become possible.

- (B) The Administrator is [general description of the business activities by the Administrator]
- (C) Kuntahankinnat and the Administrator signed a framework agreement [date] pertaining to the Project Administrator for the impact investing project (**framework agreement**). As part of it, and at the same time as commitment to its terms, the contracting authority and the Administrator composed this customized contract (**contract**). This contract determines the specific terms applicable to the provision of services ordered from the Administrator by the contracting authority.

In case of contradiction between the contract and the framework agreement, the wording of the framework agreement shall be valid. This contract can only specify the terms of the framework agreement. This contract must specifically point out the extent to which the framework agreement has been specified.

## 1 DEFINITIONS

**Project** refers to the contracting authority's set of measures, as part of which the Service is produced.

**Service** refers to all the services for children, youth and families which are subject to this contract and which have been described in Annex 1 of the framework agreement (Definition of the target area of the project) and identified in Annex 2 (Service description)

In this project, child and youth refer primarily to a person under 21 years of age. For the advantage of the young person, the age limit may be raised to 25 years, if his or her situation requires the continuation of the support at 21 years of age. For activities subject to the Youth Act (72/2006), such as outreach youth work, the maximum age may be 29 years, as determined in the above act, at the same time being the maximum age in the definition of youth for the projects conducted in the target area of

this procurement.

### **Service material**

refers to the documentation and other results, material and data produced in connection with the production of Service.

### **Economic modeling**

The economic modeling of the project helps to predict the potential savings achieved by the contracting party in the project, as well as the profitability of the project from the point of view of the various parties concerned. It determines the target group of the project (the basis of segmentation and the expected size of the segments), identifies the causes for the expected cost development as well as the root causes behind them, as well as which preventive measures could reduce the costs. On the basis of this, the output targets (in terms of well-being and/or economic output) and the service needs and their costs will be determined.

### **Requirements**

refer to the requirements placed on the Service, described in Annex 1 of the framework agreement concerning the target area, and otherwise in Annexes 1 and 2 of the contract.

### **Effective date**

Refers to the date when this contract takes effect as stated in passage 9.1.

Otherwise, this contract applies the definitions listed in the framework agreement.

## **2 THE SUBJECT OF THE CONTRACT**

- 2.1 The subject of this contract are the services ordered from the Administrator by the contracting authority.
- 2.2 The Service and the requirements placed on the Service as well as their definitions are described in more detail in the annexes of this contract.
- 2.3 The duties of the Administrator include especially the following, however not only the following, subtasks:
  - (a) The finalization of the project plans and of the Service modeling as well as the developing of the economic modeling together with the contracting authorities concerned, i.e. of the impact indicators determining the reimbursement;
  - (b) the establishment of the financing instrument for the Service;
  - (c) the raising of funds for the Service financing instrument and its continuing management;
  - (d) the planning and management of the Service's service production for children, youth and families;
  - (e) the organization of the service provision for the Service together with service providers and the contracting authority;
  - (f) the continuing monitoring of the Service and reporting to the contracting authority at least semi-annually;
  - (g) other tasks concerning the commencement and continuing production of the Service or tasks caused to the Administrator, according to its role, by regulatory legislation.

2.4 If needed, the contracting authority makes an agreement on the payment transactions concerning the Service with a private equity fund or similar financing instrument possibly established by the Administrator.

2.5 For Service properties, chapter 4 of the JYSE 2014 SERVICES shall be applied.

### **3 GENERAL DUTIES OF THE CONTRACTING PARTIES**

#### **3.1 Shared duties of the contracting parties**

3.1.1 If required by the Act on Public Procurement (348/2007) or other directive legislation, the contracting authority and the Administrator are responsible for the competitive tendering of the service provider or service providers (Service provider) who are, when needed, responsible for the content of the Service production.

3.1.2 It shall be noted, for the sake of clarity, that the Service provider may not act as an investor of the private equity fund or similar financing instrument related to the Service.

#### **3.2 Administrator**

3.2.1 The Administrator is responsible for the provision of Service to the contracting authority according to this contract and to the framework agreement. The Administrator is obliged to fulfil its obligations with care and with such expertise as is required by the tasks.

3.2.2 The Administrator and its employees performing the Service provision must commit to the information security methods and confidentiality obligations determined in this contract. The Administrator is responsible for processing personal data in course of Service provision according to the Finnish Personal Data Act valid at the given time.

3.2.3 The Administrator must comply with the laws, decrees, and standards concerning the Service, as well as with the regulations issued by the authorities, including norms, standards and specifications which are defined either within these regulations or separately.

#### **3.3 Contracting authority**

3.3.1 The contracting authority is responsible for the functional modeling of the processes involved in the services for children, youth and families subject to its project (functions, resources and instruments) up to a level that enables the Administrator to perform the economic modeling of the project as part of Annex 1.

3.3.2 The contracting authority shall cooperate, in all ways within its competence, in the fulfilling of the aims of this contract.

3.3.3 The contracting authority is responsible for carrying out the tasks assigned to the contracting authority as stated in the contract.

3.3.4 The contracting authority must give the Administrator sufficient and correct information for the provision of the Service so that the Administrator can fulfil its responsibilities as stated in the contract.

3.3.5 The contracting authority is responsible for the information, instructions and regulations it gives to the Administrator.

3.3.6 In addition, the terms in chapter 8 of JYSE 2014 SERVICES are applied to the obligations and responsibilities of the contracting authority.

#### **4 PAYMENT OF RETURN**

- 4.1 The principles and terms for the payment of return shall be determined between the Administrator and the contracting authority in Annex 2. The Administrator's share of the returns shall, however, be at least 40% and no more than 85% of the profit anticipated in the economic modeling of the project (savings, economic profit or the like made by the contracting authority as a direct effect of the project).

#### **5 MANAGEMENT MODEL**

- 5.1 For the development and coordination of the cooperation under the contract, a mutual management body (Management group) shall be founded between the contracting authority and the Administrator, as well as, if needed, other cooperation groups, unless otherwise noted by the contracting parties.
- 5.2 The contracting parties are each responsible for their respective contact persons' costs arising from the activities related to cooperation groups in the Service.
- 5.3 In case the development or alteration of the management model causes essential changes in the Administrator's tasks and/or responsibilities, the resulting cost effects shall be agreed on in writing and with a unanimous decision made by the Management group as described in passage 5.1.

#### **6 PERSONNEL OF THE ADMINISTRATOR**

- 6.1 The Administrator shall use individuals possessing suitable competence and experience for providing the Service. For the provision of services, the Administrator shall keep a sufficient number of personnel and their substitutes at the disposal of the contracting authority, as well as other personnel.
- 6.2 The Administrator ensures that the key individuals identified in Annex 3 of the contract are available for the Service provision to the extent it requires. Changes in key personnel have been agreed on in passage 3.4 of the framework agreement.
- 6.3 If the Administrator is unable to provide the contracting authority with a person that the contracting authority approves in accordance with passage 3.4 of the framework agreement, the contracting authority shall have the right to terminate the contract to the extent of the assignment which has not been fulfilled. Termination of the contract is discussed in paragraph 10.

#### **7 DEFECTS AND CLAIMS**

- 7.1 The contracting authority shall notify the Administrator about a defect without unnecessary delay and in writing. The Administrator is obliged to save all claims it receives.
- 7.2 The processing of claims is further described in Annex 1 (Management model) of the framework agreement.
- 7.3 For claims and defects in Service, chapter 13 of JYSE 2014 SERVICES shall be applied with following specifications:
- (a) If the service does not meet the agreed requirements, it is defective.
  - (b) If the service has a defect, the Administrator shall examine the cause of the defect at its own expense and rectify it without delay.
  - (c) The Administrator shall determine measures to remove the causes of possible defects in order to prevent the occurrence of defects. Preventive measures must be appropriate in regard to the possible defects. The Administrator shall inform the contracting authority on a regular basis, at least semi-annually, about preventive measures which it has determined and implemented.

## 8 AUDIT

- 8.1 The contracting authority shall have the right, at its own cost, to perform yearly inspections of the Service and to investigate whether the Administrator or its subcontractor has complied with the contract requirements when providing the Service for the contracting authority. The Administrator commits to assisting the contracting authority in auditing and is in charge of its own expenses.
- 8.2 The contracting authority shall have the right to commission a third party to perform the audit. However, the auditor commissioned by the contracting party must not be a competitor to the Administrator concerning the services under audit. The third party must, prior to the audit, commit to mutual confidentiality with the contracting parties, at least to the extent required in chapter 10 of the framework agreement.
- 8.3 The contracting authority must provide the Administrator with a written notification of the audit at least twenty (20) days prior to the audit.
- 8.4 The Administrator commits to cooperation with the auditing party and, unless eminently unreasonable, to providing it with all the material requested for the inspection by the auditor, including material and data relating to the Service provision, however without compromising the information security of the Administrator's other clients and other confidential material. In addition, the Administrator shall guarantee the auditing party the right to access premises in which the Service is provided as well as to interview personnel involved in providing the Service.
- 8.5 If the audit reveals deficiencies or defects in the Service, the Administrator must rectify these without delay.
- 8.6 The right of inspection, as described in **[Mistake. Source not found]**, must also apply to the Administrator's main subcontractors. The Administrator must secure with its agreements with the main subcontractors that each subcontractor is committed to observing the right to audit according to passage **[Mistake. Source not found]**.
- 8.7 The contracting parties may also agree on using the audit procedure described in the above passage 7 to assess the impact of the project at the end of the project. In this case, the contracting parties shall commit to using the audit results as basis for the payments of return resulting from the possible impact of the Service.

## 9 EFFECTIVE DATE OF THE CONTRACT

- 9.1 This contract will take effect after it has been signed by both contracting parties (**Effective date**).
- 9.2 The contract will be valid until the obligations stated in this contract have been met, however no later than dd.mm. 20yy.
- 9.3 The indicative dates for the commencement of Service production, measuring points and Service impact auditing of the results are defined in Annex 1 of the contract.
- 9.4 Service production starts in 201y, but no later than dd.mm.20yy. Service production ends on dd.mm.20yy.
- 9.5 Possible payment of return paid by the contracting party to the Fund or other financing instrument related to the Service and agreed on by the contracting parties will be carried out between 20yy and 20yy, depending on the date when the Service's impact calculation is finished.



## 10 TERMINATION AND CANCELLATION OF THE CONTRACT

- 10.1 The contracting authority has the right to terminate the contract partly or completely with immediate effect if the Administrator is burdened by criteria for exclusion referred to in the Act on Public Procurement, or if the Administrator:
- (a) commits a substantial breach of contract;
  - (b) acts in a way that endangers the fulfilling of contractual obligations;
  - (c) initiates measures that may substantially affect Service provision and this circumstance has a substantial impact on the fulfilling of the contract, and the Administrator was or should have been aware of this;
  - (d) is not able to fulfil its obligations within the agreed schedule and this has a substantial effect on the other contracting party or the contracting party has a valid reason to believe so or the other contracting party's performance is repeatedly behind schedule;
  - (e) the Administrator's performance has repeatedly been defective on grounds that are not caused by the party affected by the contract breach or by force majeure;
  - (f) the Administrator's management or administrative tasks are performed, or its management is directly or indirectly conducted, by a person who is under a ban of business operation;
  - (g) there is no funding available for the project;
  - (h) the parties reach no agreement on key personnel changes;
  - (i) the parties reach no agreement on changes in subcontracting;  
or
  - (j) the parties reach no agreement on the economic modeling or the Administrator fails to finish the economic modeling.
- 10.2 If a court of law orders that the contract period should be abbreviated, the contracting authority has the right to terminate the contract following a four (4) months' term of notice or a shorter term of notice if so imposed by the court.
- 10.3 The contract must be terminated by a written notice to the other contracting party.
- 10.4 A contracting party has the right to terminate the contract partly or completely with immediate effect if the other contracting party commits a substantial breach of the terms of this contract and does not rectify it within thirty (30) days after dispatch of a corresponding written notice.
- 10.5 A contracting party has the right to terminate the contract partly or completely with immediate effect by written notification, if the other contracting party is put into bankruptcy or liquidation or otherwise discontinues its payments.
- 10.6 Notwithstanding the termination of this contract, such terms of the contract shall remain valid which are, due to their nature or their explicit wording, intended to remain valid after the contract period has ended.

## 11 CHANGES TO THE CONTRACT

- 11.1 All changes to this contract must be made in writing on a paper document and appropriately signed

by both contracting parties. The changes will become effective after both contracting parties have with their signatures agreed to the changes.

11.2 Passage 22.2 of JYSE 2014 SERVICES shall not be applied.

## 12 ANNEXES TO THE CONTRACT AND THEIR ORDER OF VALIDITY

12.1 The present contract includes as its intrinsic parts the following annexes:

Annex 1 Service requirements and Service process descriptions

Annex 2 Service description [including the economic modeling of the Service]

Annex 3 The Key Persons of the Administrator

Annex 4 JYSE 2014 SERVICES

12.2 In case the content of this contract deviates from the content of the annexes, this contract shall be imperative.

12.3 In case of deviation between the annexes, their ascending numerical order shall be followed as order of validity.

12.4 It shall be noted, for the sake of clarity, that the terms of the JYSE 2014 contract in annex 4 of this contract shall be applied, unless otherwise agreed in the framework agreement or in this contract.

## 13 REVIEW OF THE CONTRACT

13.1 Before signing this contract, the contract has been reviewed by the contracting parties, whereby the content and terms of the Service have been discussed in order to ascertain that both parties share the same and correct understanding of the content and aims of the service.

## 14 SIGNATURES

14.1 There are two (2) identical copies of this contract, one for each contracting party.

[PLACE AND DATE]

[CONTRACTING AUTHORITY]

[ADMINISTRATOR]

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

Function

Function

This contract was provided by Jussi Nykänen (Epiqus Ltd.)

## 6.1.4. Agreement on the implementation of a Social Impact Bond (D)

Source: (Juvat gemeinnützige GmbH, 2016a)

*// Disclaimer //*

*The following agreement template on the implementation of a Social Impact Bonds is publicly accessible and can thus be used freely and without charge.*

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*This document is based on the Agreement on the Implementation of the first German Social Impact Bond developed between the Bavarian State Ministry of Labour and Social Affairs, Family and Integration and The Benckiser Stiftung Zukunft / Juvat Ltd.*

*The development and editing was supported pro bono by the law firm Oppenhoff & Partner.*

*// Disclaimer //*

*This contract was translated from German into English by Paula Heineker.*

## Agreement on the implementation of the Social Impact Bond

[TOPIC/TITEL]

between

[XXXX], represented by [XXXX]

(in the following: „Client“)

and

[XXXX], represented by [XXXX]

(in the following: „Intermediary“)

### Preamble

The Client and the Intermediary (in the following: „**Parties**“) want to develop and carry out a Pilot Project according to a performance-based concept to solve and finance a concrete problem in the social field (in the following: „**Pilot Project**“).

The Pilot Project shall be carried out in the form of a Social Impact Bond (in the following: „**SIB**“). In a SIB, the public sector, philanthropic sponsors (in the following: „**Funders**“) and social service providers (in the following: „**Project Partners**“) form a partnership coordinated by an Intermediary.

Here, the context is set by the public sector in terms of content and financial framework. The public sector determines the social issue to be addressed, as well as the target group. It also defines the criteria for target attainment and the conditions pertaining to the target bonus payable in case of target attainment.

The Intermediary secures the funding of the Project by the Funders and identifies and assists the operationally responsible Project Partners in the development and implementation of project measures.

In case target attainment is confirmed after an audit by an independent third party (in the following: „**Reviewer**“), a target bonus, as determined in the Agreement, is paid by the public sector to the Funders. Should target attainment not be confirmed, no payment will take place.

### § 1 Subject of the Agreement

1. In context of the Pilot Project, the Intermediary receives a target bonus from the Client, if the targets defined by the Client are met.
2. The Pilot Project entails the following:

The Client sets a measurable target according to § 4 of this Agreement and, if the Intermediary is successful, guarantees the disbursement of a target bonus.

The Intermediary bears the responsibility for the funding of the Pilot Project and identifies suitable Funders for it. The Intermediary also identifies, coordinates and supervises, in accordance with § 8 of this Agreement, the Project Partners (NGOs or other partners), who carry out appropriate measures with the target group. After the completion of the Pilot Project, the Reviewer evaluates whether the targets according to § 9 of this Agreement have been met. If the agreed conditions have been met, the Client disburses, in accordance with § 3 of this Agreement, the target bonus to the Intermediary, who in turn forwards the target bonus to the Funders.

## § 2 Obligations of the Intermediary

1. While enabling and accompanying the Pilot Project, the Intermediary is to pursue exclusively and directly non-profit aims.
2. The Intermediary is obliged to forward the target bonus, received from the Client in case of success according to § 3 par. 3 of this Agreement, minus own expenses according to the following clause 3, to the Funders.
3. The Intermediary receives in case of success [, if necessary, proportionally according to § 3 par. 2,] an expense allowance. This amounts to [XXXX] € (in words: [XXXX] euros). [Alternatively: The expense allowance covers the proportional personnel and material expenses for the support of the Pilot Project [if needed, however, to a maximum of [XXXX] € (in words: [XXXX] euros)]. The Reviewer verifies the amount of these expenses.
4. The Intermediary is obliged, in context of the Pilot Project, to make no financial profit whatsoever. As proof of non-profit results, the Intermediary shall provide the Client, within one month after the completion of the Pilot Project according to § 5 of this Agreement, a written record in form of a list of the following aspects, including relevant written evidence:
  - a) The amount of money received by the Intermediary from the Funders in context of the Pilot Project, as well as the amount of interest promised in this context.
  - b) Verification by the Reviewer of the proportional amount of personnel and material costs for the Intermediary in supporting the Pilot Project.
  - c) Amount of money paid by the Intermediary to the Project Partners in context of the Pilot Project and amount of any sums repaid by the Project Partners to the Intermediary.
  - d) Amount of any investment income received by the Intermediary, achieved with any money received by the Intermediary from the Funders and not completely or partially or temporarily paid out to the Project Partners, or with money repaid to the Intermediary by the Project Partners.
  - e) Confirmation of the Intermediary not receiving compensation from any third party in return for performing gratuitous services to fulfil this Agreement.
  - f) All Pilot Project relevant cash flow in form of received payments and cash disbursements by the Intermediary, listed by name of the payer and the beneficiary, as well as by the amount and date of each payment.

As long as the above-mentioned information and documents have not been received by the Client, no claim for the target bonus payment can be made. Costs caused to the Intermediary, which the Intermediary shall according to this Agreement bear alone, are not to be taken into consideration when calculating whether or not the Intermediary has made financial profit.

## § 3 Type and amount of the target bonus

1. In case the Pilot Project has been successful and this is confirmed according to § 4 of this Agreement, the Intermediary is entitled to receive a target bonus. The target bonus is graded – subject to the terms of the following par. 2 – and, in case of success according to § 4 of this Agreement, amounts to a maximum of [XXXX] € (in words: [XXXX] euros).
2. The target bonus is graded as follows:
  - Less than 50% of the target attainment criteria according to § 4 of this Agreement fulfilled: no target bonus
  - Between 50% and 74,9% of the target attainment criteria according to § 4 of this Agreement fulfilled: 50% payment of target bonus

- Between 75% and 89,9% of the target attainment criteria according to § 4 of this Agreement fulfilled: 75% payment of target bonus
  - Between 90% and 99,9% of the target attainment criteria according to § 4 of this Agreement fulfilled: 90% payment of target bonus
  - 100% of the target attainment criteria according to § 4 of this Agreement fulfilled, or target attainment criteria exceeded: 100% payment of target bonus
3. In case of success, the target bonus shall be transferred by the Client to the following bank account: IBAN: [XXXX] and BIC: [XXXX] in the name of [XXXX].
4. The complete and sole responsibility for handling the target bonus, held out by the Client in accordance with tax regulations, is carried by the Intermediary and the Funders.

#### **§ 4 Success case and target attainment criteria**

The success case occurs, when the following target attainment criteria are fulfilled.

**[DEFINITION TARGET GROUP and TARGET ATTAINMENT considering the terms according to § 3 of this Agreement]**

#### **§ 5 Duration of Pilot Project**

The duration of the Pilot Project begins on [XXXX] and ends on [XXXX].

#### **§ 6 General agreement and reporting obligations**

1. The Intermediary is obliged to carry out the Pilot Project in accordance with this Agreement and to involve then Client at an early stage in essential (planned) operations. Furthermore, the Intermediary is obliged to inform the Client without delay about essential incidents and circumstances in context of the Pilot Project.
2. The Client is entitled to receive information, at any given time, about the progress of the Intermediary's activities.
3. The Intermediary and the Client are obliged to discuss and agree on any public relations measures, as well as on any statements given to the press, concerning their content, form, and time. After a request of one of the Partners, an addition or comment to the suggested communication must be given within a period of ten working days. A constitutive project description summarizing the basic points of the Pilot Project shall be set up prior to the start of the Pilot Project as subject of the Agreement. The project description belonging to this Agreement may be used by both Partners without delay. The Intermediary shall bind all individuals involved in the implementation of this Agreement to comply with the communication guidelines stipulated between the Client and the Intermediary.

#### **§ 7 Funders**

1. The Intermediary is obliged to arrange for the complete financing of the Pilot Project.

For the financing of activities and measures by the Project Partners, the Intermediary shall utilize funds provided by the Funders.

2. In case the funds provided by the Funders are not sufficient to finance the activities and measures by the Project Partners, the Intermediary can, prior to project start, contribute own funds to secure the financing of the Pilot Project. In this case, to distinguish the expenses entitling the Intermediary to receive expense allowance in accordance with § 2 par. 3 of this Agreement, from the possible contribution by the Intermediary to the

pre-financing of the Pilot Project, a project account shall be set up solely for the purpose of conducting the pre-financing. No actions taken by the Intermediary to minister their share of the pre-financing shall be taken into consideration when calculating the expense allowance according to § 2 par. 3 of this Agreement; these expenses are to be paid by the Intermediary themselves.

3. The Intermediary is obliged to provide the Client with a final written listing of the planned Funders, as well as of the individual sums planned to be received by the Intermediary from the Funders, by the completion of the present Agreement at the latest and prior to the completion of individual contracts between the Intermediary and the Funders.
4. The Client can object to the involvement of individual Funders as well as to the utilization of funds from these said Funders. In case of objection by the Client, the objection shall be filed within ten working days after the listing is provided by the Intermediary.
5. The Intermediary may not accept and/or pay the Funders, for the funds provided by the Funders to the Intermediary, any higher interest than a total of [XX] per cent on the entire duration of the Pilot Project. A proportionate disbursement shall be carried out according to the terms of § 3 par. 2.

## **§ 8 Project Partners**

1. The Intermediary is obliged, in cooperation with the Project Partners, to carry out adequate measures to attain the targets regulated in § 4 of this Agreement. The Intermediary may utilize for the financing of these measures and projects only such funds that are in accordance with the regulations of § 7 of this Agreement.
2. The Intermediary is obliged to introduce to the Client, in good time and in writing, all Project Partners prior to their assignment, as well as all projects and/or measures prior to their implementation. The Client can object to the assignment of individual Project Partners and/or to the conducting of individual measures. In case of objection by the Client, the objection shall be filed within ten working days after the introduction by the Intermediary.
3. An agreement must be reached on assigning Project Partners, according to § 8 par. 2 of this Agreement, prior to the signing of the present Agreement.

## **§ 9 Establishment of the success case, specific reporting obligations**

1. After the end of the Pilot Project duration according to § 5 of this Agreement, the Reviewer evaluates whether the success case has taken place.
2. The Reviewer shall be jointly and unanimously chosen by the Client and the Intermediary. The Reviewer must guarantee neutrality and objectivity in evaluating and supporting the Pilot Project according to § 9 par. 1.
3. The Reviewer shall be commissioned by the Client, who also bears the costs for the Reviewer's activities.
4. In the context of commissioning the Reviewer, the Client is obliged to make an arrangement with the Reviewer to provide a written report on the results of an audit (in the following: „First Audit“) after the duration of the Pilot Project, as well as a second report (in the following: „Second Audit“) according to § 9 par. 5, par. 6 and par. 7 of this Agreement, and to deliver these to both Parties at the same time.

In the context of commissioning the Reviewer, the Client is obliged to make an arrangement with the Reviewer to keep written documentation of the progress and results of the audit and to grant both the Intermediary and the Client the exclusive rights of use, unrestricted in terms of time, place and content.

The Client and the Intermediary shall collaborate in the audit by the Reviewer, disclosing any information required for the assessment of the success case.

Prior to the completion of the contract with the Reviewer, the Client shall submit the respective contract draft to the Intermediary for perusal. The contract with the Reviewer must be available by the legally valid signing of the mutual Agreement at the latest, and it shall be a part of this Agreement.

5. The Reviewer shall provide the First Audit no later than one month after the completion of the Pilot Project according to § 5 of this Agreement. The Parties can raise objections against the First Audit. Objections shall be immediately communicated in writing to the respective other Party as well as to the Reviewer, however no later than within one month after the disclosure of the First Audit. After that, raising objections is no longer possible.
6. The Reviewer shall collect the objections and, when one month after the disclosure of the First Audit to the Parties has elapsed, examine whether the objections raised in due time cause changes to the First Audit. On this basis, the Reviewer shall provide a Second Audit. The Second Audit shall be submitted in writing, again, by the Reviewer to both Parties at the same time, at the latest within two months after the disclosure of the First Audit.
7. The Second Audit is binding and cannot be contested.

## **§ 10 Data protection**

1. The Intermediary is obliged to comply with the General Data Protection Regulation.
2. The Intermediary is obliged to ensure that personal data cannot be read, altered or deleted by unauthorized parties while being transmitted or transported on data media.
3. The Intermediary is obliged to commit all individuals involved in implementing the Agreement to comply with these regulations.

## **§ 11 Obligation of confidentiality**

1. The Parties are obliged to maintain secrecy towards third parties regarding all facts, information and circumstances disclosed to them by the respective other Party in implementing this Agreement, unless there has been a mutual written release thereof, or the said information is an object of mutually agreed public communication.
2. The Intermediary is obliged to disclose only to individuals who are essential for the implementation of this Agreement, and only to a necessary extent, any facts, information, circumstances, and results disclosed to them while implementing this Agreement.
3. The Intermediary is obliged to commit all individuals involved in implementing the Agreement to comply with these regulations.

## **§ 12 Begin of the Agreement and termination of the Agreement**

1. This Agreement will be valid from the time of signing by both Parties until no later than to the submission of the Second Audit according to § 9 of this Agreement.
2. This Agreement may be prematurely terminated on significant grounds only. The reason for termination shall be explained within a month of notice.

An especially significant ground for termination is on hand if either the Intermediary or the Client breach their obligations agreed here.

3. The Parties agree that in case of a legally effective termination without notice by the Client or by the Intermediary, the Intermediary shall have no monetary or other claims against the Client. There shall especially be neither claims on the target bonus nor obligation by the Client to compensate earlier payments by the



Intermediary.

4. The obligations to comply with regulations on data protection and on maintaining secrecy remain valid beyond the termination of this agreement.

### § 13 Final clause

1. The laws of the Federal Republic of Germany apply to this Agreement, excepting its rules concerning international conflict of law. Place of jurisdiction is [XXXX].
2. As far as it is required in this Agreement that reporting shall be done in writing, telefax and e-mail shall be sufficient, unless otherwise regulated. In these cases, a personal signature or its copy shall not be necessary.
3. Changes and supplements to the terms of this Agreement, as well as its termination, must be reported in writing (a signed telefax is sufficient). This also applies to changes in this clause on written form. The previous par. 2 shall not be applicable to contract amendments.
4. Should individual terms of this Agreement be or become ineffective or impracticable, the remaining terms shall remain unaffected by this. Ineffective or impracticable terms shall be replaced by such effective and practicable regulations whose effect comes closest to the aims followed by the Parties in setting said ineffective or impracticable terms. Sentence 2 likewise applies to possible gaps in this Agreement.

[PLACE AND DATE]

[CLIENT], **represented by [XXXX]**

[INTERMEDIARY], **represented by [XXXX]**

\_\_\_\_\_

\_\_\_\_\_

## 6.1.5. Social outcome contract (SWE) - Agreement between the Municipality of Norrköping and Leksell Social Ventures AB

Social outcome contract

**Improved school performance and reduced risk of replacement for children and young people in Norrköping Municipality placed in HVB / SiS**

*Agreement between the Municipality of Norrköping and Leksell Social Ventures AB*

*This contract was translated from Swedish into English by Dagulin Lorenzo.*

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## 1. Parties

Norrköping Municipality, org. no. 212 000-0456, City Hall, 601 81 Norrköping ("Outcome Responsible")

Leksell Social Ventures AB, org. no. 556947-2144, Slottsbacken 8, 111 30 Stockholm ("Financier")

The Municipality of Norrköping and Leksell Social Ventures are commonly called **"Parties"** and each of them **"Party"**.

## 2. Background

Within the framework of the Outcome Responsible work on social investments and the Financier work for social innovation, discussions have taken place between the Parties resulting in this agreement, which is described below as **"Agreement"**. The discussions have been assisted by SKL Uppdrag psykisk hälsa (Mission Mental Health) and Health Navigator AB.

There are no previous agreements that affect or are affected by the Agreement.

## 3. Scope

The agreement covers the financing and follow-up of an intervention (referred to in the Agreement as "intervention" or "action") for the target group of children and young people in Norrköping Municipality who are placed in the Home for Care and Housing (HVB) or in housing belonging to the Swedish National Board of Institutions (SiS) (in the Agreement called as "target group" or "target groups"). The aim of the initiative is to reduce the risk of replacement in HVB / SiS and to improve the target group's school performance, thereby achieving both human and economic benefits. The intervention is designed as an experimental activity for evaluation.

Through the Agreement, the Financier undertakes to finance the intervention up to a maximum of SEK 10 (ten) million in accordance with the terms and conditions set out in the Agreement. The Outcome Responsible is responsible for carrying out the action for the target group and thus undertakes to implement the action for the target group up to a maximum of SEK 10 (ten) million in accordance with the provisions that follow from the Agreement.

Action for the first included individual should begin no later than October 2016. Inclusion of individuals is ongoing until the inclusion of a total of 60 individuals or when 20 months have elapsed after the first individual has been included, whichever occurs first. Based on the agreement's limitation on funding and its design as an experimental activity, there is a need to limit the action to a determined number of individuals allowed by the funding.

## 4. Target group and action

### 1.1. *Target group*

The Parties agree on the target group as shown below.

The target group for the initiative is children and young people in the Municipality of Norrköping who receive a decision of placement in HVB or SiS.

In order to be offered the action, inclusion criteria apply as below.

- The individual approves participation in the action as a whole and gives his or her consent to the collection of the data required for the implementation, follow-up and evaluation of the action.
- Individual's expected care period in institution prior to placement is between zero to six (0-6) months.

- The individual's case is not handled by the unit for unaccompanied children and young people.
- The individual is older than seven years or has begun grade 1 in primary school.
- If the individual is enrolled in national programs in high school, the individual must have more than one (1) year for the planned degree.

## 1.2. *Action*

The action begins for an individual when s/he has received a decision of placement in HVB or SiS.

The action will include the activities described below and performed by two teams: Action Team and Tutoring Team. The action ends for an individual after its follow-up activities. Project management and ongoing monitoring is provided by local project managers and external intermediaries who assist local project managers.

### **Action Team**

The Outcome Responsible undertakes through the Agreement to appoint a divisional team (the "Action Team") that performs the activities on behalf of the Outcome Responsible. Requirement specifications for the recruitment of its members are agreed between the Parties prior to the start of the recruitment process.

The activities performed by the team are described below and in more detail in Annex 1:

- Assist social service officers to decide on which accommodation the individual is to be placed in, which includes taking into account the conditions for the individual's schooling during the placement.
- Create an action plan in collaboration with and for the individual him/herself, his/her network, the institution, the school and other actors that have a major impact on the individual's life.
- Inform the individual that the intervention, including the "tutoring", is an integrated whole and actively promotes the follow-up of the support initiative.
- Follow up the action plan during placement (at least once a week) and carry out preparations for the closing of the intervention.
- Perform regular follow-up after completion of placement (at least every 14th day).
- Ensure accessibility to the necessary documentation for follow-up and evaluation.
- Make proposals to social service officers for any other social service from the municipality based on assessment of the individual's needs. Ordinary social services are not otherwise affected by the Agreement.
- Document the implementation of the intervention continuously.

The purpose of the activities is to reduce the risk of replacement in HVB / SiS after completion of care action in HVB / SiS and to strengthen the individual's prerequisites for good schooling during and after placement.

The Outcome Responsible is responsible for staffing based on the influx of individuals taking part into the action. The preliminary staffing plan and estimated time per person for the action team are shown in Annex 1.

The Financier has no influence on the choice of the individuals to whom the contribution is granted.

In total, a maximum of SEK 5.6 million (SEK 93,333 per individual) shall be used for the action team.

## Tutoring Provider

Outcome Manager undertakes through the Agreement to procure external supplier that may carry out “tutoring” or equivalent school support actions for each included individual.

Activity performed by an external supplier contracted by the Outcome Responsible:

- “Tutoring” or equivalent school support actions immediately following the completed placement for individuals who give their approval.

The purpose of “tutoring” is to strengthen the school’s ability to reach the target group, which on average has significantly poorer school results than other students. An effective schooling is also considered to be an important factor for a successful inclusion after placement completion. The main activities in “Tutoring” is regular individual meetings in addition to school hours for a limited period of time in which the individual is given extra support in running regular school tasks, in order to strengthen development areas and fill knowledge gaps.

The procurement of the tutoring provider must be carried out as a quality procurement and include that part of the provider’s remuneration is conditional on the individuals having improved their school performance and to what extent the individuals have completed the effort.

The Financier undertakes under the Agreement not to have any legal or financial connection or other interest to the suppliers or providers that the Outcome Responsible shall procure for the performance of the Agreement during the time the Agreement is valid.

In total, a maximum of SEK 2.4 million (SEK 40,000 per individual) will be used for “tutoring”.

## Project management and follow-up

The Outcome Responsible is responsible for project management and follow-up of the project.

Project management and follow-up include ongoing support, counselling and data analysis to support the work of the team. Project management and follow-up are carried out by local project management service in Norrköping and partly by an external intermediary that assists the local project manager. The Parties agree that Sweden’s Local Authorities and County Council (SKL) shall be intermediary in this social outcome contract. Requirement specifications for local project management services are agreed between the Parties prior to the start of the recruitment process.

In total, a maximum of SEK 1.8 million will be used for project management and follow-up. This includes payroll costs for local project manager service in Norrköping on a part-time basis (total SEK 0.4 million, that is SEK 140,000 per year for 2.8 years), external costs for support for project management and follow-up performed by intermediaries (total SEK 1.4 million, that is SEK 350,000 per year for 4 years).

### 1.3. *Monitoring Committee for continuous monitoring*

In order to support implementation according to the Agreement, a Monitoring Committee is established. The Monitoring Committee is a forum for continuous monitoring and implementation of the initiative as well as decisions on continued funding of the initiative. The Committee’s first meeting shall take place when proposals for candidates are available. At this first meeting, the Financier is given the opportunity to verify that proposed candidates meet the requirements agreed between the Parties. The first Committee’s meeting also determines the social outcomes that will be followed up on an ongoing basis during the implementation of the intervention, in addition to those stipulated in the Agreement.

The second meeting of the Monitoring Committee takes place when the first individual is included and thereafter plans are scheduled for the Committee every quarter. The meetings 3-16 are running at the same frequency until the determined evaluation time according to paragraph 5.3. - Evaluation.

The Monitoring Committee consists of a representative with mandate from the Outcome Responsible and a representative with decision mandate from the Financier. The two representatives are the decision-making parties of the Monitoring Committee and both parties are required to implement the Monitoring Committee. At the Monitoring Committee, local project manager and representatives from the intermediaries participate as well as, if necessary, one or more members from the action team. These participants have a rapporteur and / or observing function.

Notwithstanding the foregoing, (i) each Party shall be entitled to summon the Monitoring Committee even between quarterly meetings if the Party considers that this is necessary and (ii) each Party has the right to request the presence of another person apart from the Financier and the Outcome Responsible or other external person, if the Party considers that this is appropriate or necessary.

The main purpose of the Monitoring Committee is to ensure continuous optimization of the implementation of the initiative. This is done by giving both Parties the opportunity to follow up on the implementation of the initiative and, on this basis, discuss any need for adjustment of the intervention to optimize implementation and efficiency. Adjustments that take place in the initiative require, in order to apply between the Parties, that the Parties agree on them in writing. Such written adjustments shall then apply as contractual content during the Agreement.

The Monitoring Committee's meetings follow a set agenda:

- a) Status Update
  - a. Overall status per time and activity plan
  - b. Activities completed during the past period
    - i. Number of individuals included
    - ii. Completed activities per individual - Action Team
    - iii. Completed activities per individual -Tutoring Provider
    - iv. Availability of data for evaluation per individual
  - c. Use of funding
- b) Follow-up of outcome evaluations and other agreed social outcomes
- c) Discussion on possible proposals for changes in the implementation of the initiative
- d) Discussion on efficiency in implementation, organization and expected staffing needs for the coming quarterly period
- e) The Financier's decision to approve continued funding of the initiative to the agreed amount for the coming period
- f) External communication of current results
- g) Other points
  - a. Discussion on suitability in the available target range for the target group
  - b. Discussion on any additional development needs / proposals
  - c. Other

Before the meeting of the Monitoring Committee, the Outcome Responsible is responsible for preparing the basis for paragraphs (a) to (d). On these bases, the Financier's decision concerns the continued funding of the intervention during the coming quarter, according to the proposed implementation of the project, expected staffing needs and planned project management and follow-up. The decision is the basis for payment for the coming quarter.

In the event that the Financier does not decide to continue financing the initiative during the coming quarter, the Agreement will be terminated. In this case, the agreement proceeds according to art. 9 - Term of validity and termination of the agreement.

## 5. Funding with outcome-based reimbursement

The Parties have agreed on a model for funding the initiative with outcome-based reimbursement.

The basic principle of the model is that the Financier *finances* the intervention to achieve defined *outcomes* that correspond to human and economic benefits for the Outcome Responsible. After the follow-up of the intervention, an *evaluation* is made of the outcomes that the intervention has led to. Based on these outcomes, *the outcome-based reimbursement is calculated* by the Outcome Manger to the Financier.

Description of the four parts of the model (5.1 - 5.4):

5.1 *Funding*

5.2 *Outcome*

5.3 *Evaluation*

5.4 *Outcome-based reimbursement*

5.1. *Funding*

The Financier pays funds to the Outcome Manger immediately following each decision to continue the funding at the Monitoring Committee.

Payment instalment 1 occurs no later than five (5) days after the first Monitoring Committee, which is held in connection with the approval of the project manager and the Action team.

Payment instalment 2 occurs no later than five (5) days after the second Monitoring Committee, which is held in connection with inclusion of the first individual.

Payment instalments 3-12 occur no later than five (5) days after the respective Monitoring Committees.

At each payment, the Financier pays the amount approved by each Monitoring Committee.

The Parties agree that the Financier is entitled to a guarantee refund equivalent to 40% of the total funded amount, according to the outcome-based reimbursement 5.4. The guarantee refund corresponds to a minimum amount of compensation for interventions financed by the Fund and takes place on three fixed occasions; fifth, ninth and thirteenth meeting of the Monitoring Committee. On these occasions, the guarantee refund is calculated so that the Financier receives a total repayment amounting to 40% of the total amount financed at the time. Payment will be made no later than five (5) days after each time.

The total amount financed can amount to a maximum of SEK ten (10) million and a guarantee refund of a maximum of 40% of the total funded amount.

Both Parties undertake to ensure that the Financier always pays financing in advance to the Outcome Responsible.



## 5.2. Outcome

The intervention is followed up on two outcomes which, in the event of a positive change, give human and economic benefits to the Outcome Responsible: (1) changed social service costs and (2) changed school performance as below.

### Outcome 1: Changed social services costs

Social service costs are defined in the Agreement:

- the individual's costs for placement in family homes, emergency homes, HVB or SiS institutions, as well as,
- the individual's costs for outpatient care

Costs in outpatient care that are not expensed on the individual but which arise in connection with the intervention, such as contributions to a family member or other person in the vicinity of the individual who are given after detection of otherwise unidentified needs, are not included.

Calculation of changed social service costs is done by comparing the individual's actual *social service costs* during and after the intervention at the individual level with *expected social service costs*.

*Actual social service costs* are the actual social services costs for the individual between the start of the action for two (2) years after the completion of the initiative (referred to as the *social service follow-up period*).

*Expected social service costs* are calculated on the basis of historical cost data with adjustment for price change of HVB / SiS care during the social service follow-up period. The individual's characteristics determine which of the four expected social services costs are used in the evaluation.

Individual characteristics	Expected social service costs less than 2 years after placement decision
6-17 years old, not previously placed	SEK 1,865,000
6-17 years old, previously placed	SEK 2,102,000
18 years old or older, not previously placed	SEK 1,009,000
18 years old or older, previously placed	SEK 1,238,000

The method and basis for calculating actual and expected social service costs are given in Annex 2.

In order for the social service costs to be considered to be reduced, the total actual social services costs should be lower than the total expected social services costs for the individuals who received the intervention.

### Outcome 2: Changed school performance

Calculation of changed school performance is done in two steps. In the first step, calculation is made for each individual, where the individual's school performance is measured before the start of the individual's performance.

The comparison at the individual level is based on a score system that measures school performance based on predefined criteria. The time period for comparison is from the start of the intervention to 1 year after the completion of the action (referred to as the *school follow-up period*). An individual who improves school achievement during the school follow-up period is counted as one, two or three plus points (+1, +2, +3) and an individual who downgrades school achievement is counted as one, two or three minus points (-1, -2, -3).

In the second step, the score for all individuals sums up to a total amount. In order for school performance to be considered improved, the total sum should be a positive value ( $> 0$ ).

The method for evaluating school performance is given in Annex 2.

### 5.3. *Evaluation*

Evaluation of fulfilment of contract terms and calculation of outcome-based reimbursement as described in the Agreement takes place on a fixed occasion. The evaluation event occurs two (2) years after the last individual has been included in the intervention. The results of the evaluation shall be communicated to the Parties on the same occasion within 14 days from the time of the evaluation, by an independent supplier that carried out the evaluation, presents the result to the Financier and the Outcome Responsible and submits a written report. The Parties shall jointly approve the report before it becomes public.

The evaluation is carried out by an independent external supplier in relation to the Parties. The intermediary SKL undertakes to propose which independent supplier will carry out the evaluation, including proposals for assignment description and budget for implementation of the evaluation assignment, by six (6) months before the Evaluation Date. The supplier, mission description and budget must be approved by both Financier and Outcome Responsible. The parties have the right to jointly reject four out of five proposals for suppliers to carry out the evaluation. SKL, Health Navigator AB or suppliers with a direct business relationship with SKL, Health Navigator AB or Financier may not be proposed.

Remuneration to the independent supplier is paid directly from Financier and amounts to a maximum of SEK 0.2 million.

### 5.4. *Outcome-based reimbursement*

Outcome-based reimbursement will be made at the following outcomes. Refund levels are calculated as below based on total funded amount. The maximum total funded amount is SEK ten (10) million.

#### **Reduced social services costs ( $\leq 40\%$ of total funded amount):**

Outcome Responsible repays 40% of the total financed amount (up to SEK four (4) million) of the guarantee repayment to the Financier. The guarantee refund corresponds to a minimum possible remuneration for contributions that the Financier has financed and is carried out on three specified occasions before the final evaluation date.

#### **Reduced social services costs ( $> 40\% - \leq 100\%$ of total funded amount):**

For each SEK in reduced social service costs (outcome 1), the Outcome Responsible will refund the corresponding amount to the Financier.

#### **Reduced social services costs ( $> 100\% - \leq 120\%$ of total funded amount) and improved school performance:**

For each SEK in reduced social service costs (outcome 1), the Outcome Responsible will refund the corresponding amount to the Financier, provided that school performance has improved (outcome 2).

#### **Reduced social services costs ( $> 120\%$ of total funded amount):**

Each SEK in reduced social service costs (outcome 1) as summed exceeds 120% of the total funded amount (maximum twelve (12) million) is due to the Outcome Responsible.

### **Summary**

Reimbursement from the Outcome Manger to the Financier may *amount to* at least 40% (maximum four (4) million) of the total funded amount.

Reimbursement from the Outcome Manager to the Financier may amount to the *maximum* total funded amount (SEK 10 million) plus 20% (2 million) of the total funded amount, i.e. a maximum of twelve (12) million.

Evaluation of the outcome of the initiative and calculation of outcome-based reimbursement takes place at the determined evaluation date as per 5.3 - Evaluation.

## 6. Agreement administration

Payment from Financier to the Outcome Responsible due to plan of financing in the Agreement shall be made at twelve fixed payment dates.

Outcome-based reimbursement from the Outcome Manager to the Financier due to the achieved outcomes as described in the Agreement, shall be made at the three determined times for guarantee refund and the determined evaluation time.

In all Monitoring Committees and on the evaluation occasion, the Outcome Responsible must report how much of the total funded amount has been used to carry out actions for the target group (amount used). In the event that the amount used is less than the total amount financed, the Outcome Responsible shall repay the part of the financed amount that has not been used to the Financier. This applies regardless of repayment according to the description of the outcome-based repayment in the Agreement.

The amount determined for the average contribution cost per individual is constant regardless of the number of individuals included (SEK 93,333 + SEK 40,000). If the contribution cost per individual exceeds the stipulated amount, the Outcome Responsible shall repay the excess amount to the Financier. This applies regardless of repayment according to the description of the outcome-based repayment in the Agreement.

It is the responsibility of the Outcome Responsible to ensure that the data needed to carry out the evaluation in accordance with the Agreement is delivered to the independent external operator who carries out the evaluation.

It is the responsibility of the Outcome Responsible to ensure accessibility to the data needed to be able to carry out continuous follow-up according to the Agreement.

Changes in the activities included in the initiative or otherwise changes in, or additions to, the Agreement may be made during the contract period following written approval between the Parties. Such written changes or additions shall then apply as contractual content under the Agreement.

## 7. Inspection

Within the framework of applicable laws and regulations, the Financier is entitled to assess the basis for the evaluation in connection with the Monitoring Committee's meetings, in order to be able to assess the accuracy of the figures that form the basis of forecasts and subsequently outcome-based reimbursement. All information that will be used to track outcomes 1 and 2 in accordance with the Agreement will be based on documentation from the Social Office and the Education Office's operating system in Norrköping Municipality.

The disclosure of information shall be conducted in accordance with the applicable rules on personal data and confidentiality. In accordance with these rules, the Financier will never be disclosed information that can directly or indirectly identify an individual.

## 8. Confidentiality

The main principle of the Agreement is that it is a public act to be handled accordingly.

To the extent possible under applicable law on publicity and confidentiality, each Party undertakes not to disclose information and knowledge that constitutes the other Party's confidential information to third parties.

In addition, the Parties undertake not to disclose information relating to the negotiations between the Parties, insofar as this is possible under applicable law on publicity and confidentiality.

The Outcome Responsible undertakes, as far as possible, in accordance with the applicable law on publicity and confidentiality, to keep confidential information such as that requested by the Financier.

## **9. Term of validity and termination of the Agreement**

The agreement period is from the date of entry into force of the Agreement until the evaluation and outcome-based reimbursement is completed or no later than 31 December 2020.

Each Party has the right to decide on termination of the Agreement, on the occasion of payment 5, individually if the Party considers that the initiative does not work. Outcome Responsible is responsible for providing the Financier prior to the payment with a status report in the same format before the Monitoring Committee, in addition to a complete follow-up of Outcome 1 changed social service costs for those individuals so far included (regardless of whether the individual's social services follow-up period is completed).

Each Party has the right to decide on the termination of the Agreement at any time if the other Party does not fulfil its obligations under the Agreement and any adjustment that has been decided by the Monitoring Committee.

Termination of the Agreement shall be made by written notification to the other Party.

Upon termination of the Agreement, the intervention, the Monitoring Committee, financing, evaluation and reimbursement shall continue according to Section 4 and 5 of the Agreement as well as any addition of the contract content during the Agreement regarding individuals already included in the intervention. New individuals are not included in the termination of the Agreement.

## **10. Other**

### *1.4. Communication about the Agreement*

All communications about the Agreement, its contents and terms shall be made in agreement between the Parties and preceded by discussion between the Parties.

Preliminary results should be communicated annually starting one year after inclusion of the first individual. External communication is a fixed item on the agenda at the Monitoring Committee.

The Parties will actively promote coherent communication. Upon termination of the Agreement, both Parties undertake to state in a public letter why the Agreement is terminated.

All messages and other contacts that will be made between the Parties under the Agreement shall be made between the respective representatives of the Parties with decision-makers in the Monitoring Committee and shall be sent by e-mail.

Contact persons for Outcome Responsible and Financier are listed in Annex 3.

### *1.5. Transfer of the Agreement*

A Party may not transfer the Agreement, or any rights or obligations arising out of the Agreement, unless the other Party has agreed in writing to such transfer.

### *1.6. Invalidity of provision*

Should any provision of the Agreement be found to be invalid, this shall not mean that the Agreement in its entirety is invalid, as far as Parts' commitments without the invalid part of the Agreement appear to be unreasonably burdensome.

### 1.7. *Written waiver*

The failure of any Party to exercise any right under the Agreement or failure to impose certain circumstances relating to the Agreement shall not mean that Party has waived its right in such respect. Should the Party wish to refrain from exercising certain rights or to impose certain circumstances, such waiver shall be made in writing in each single case.

## **11. Applicable law and dispute resolution**

Swedish law shall apply to the Agreement. Disputes arising from the Agreement shall be settled in the general court.

## **12. Force majeure**

The Parties are free from their respective commitments under the Agreement as this is prevented, delayed or obstructed by natural incident, fire, explosion, strike or other such relationship that the Party cannot afford. However, in the event of such events, it is the responsibility of the Party to do whatever is possible to minimize the resulting damage.

The agreement was drafted in two identical copies, received by Outcome Responsible and Financier.

Date and year: 2016-

Town:

Name in capital letters:

### **Municipality of Norrköping**

Date and year: 2016-

Town:

Name in capital letters:

### **Leksell Social Ventures**

## Annex 1 Action description

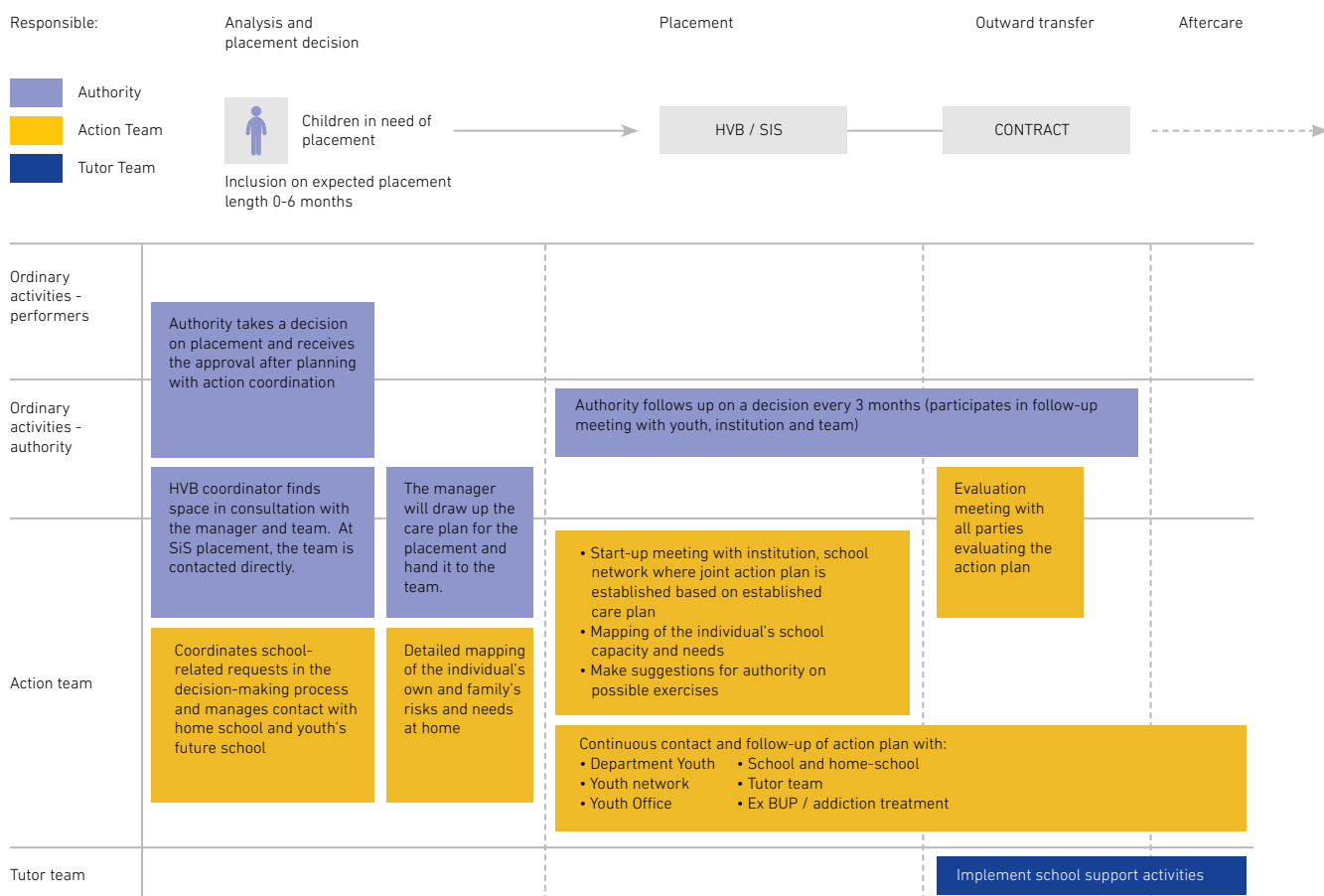
### Summary description of the target group action

#### Interventions

#### Performers

<p>1. Enhanced mapping and follow-up of social services and structured work for successful house placement</p>	<ul style="list-style-type: none"> <li>• <b>Enhanced follow-up and evaluation</b> <ul style="list-style-type: none"> <li>– At each selected HVB / SiS placement starts</li> </ul> </li> <li>• An individual mapping of risk and needs</li> <li>• Work for replacement           <ul style="list-style-type: none"> <li>– Continuous follow-up and coordination of the individual, the family and the institution's needs during the placement</li> </ul> </li> <li>• <b>School follow-up and-survey</b> <ul style="list-style-type: none"> <li>– Structured follow-up and evaluation</li> </ul> </li> <li>• <b>"Tutoring"</b> <ul style="list-style-type: none"> <li>– Regular individual meetings in addition to school hours where the student is given extra support in work with regular school assignments to strengthen development areas and fill knowledge closures</li> <li>– Particularly trained tutors</li> </ul> </li> </ul>	<p>Team specifically recruited by Norrköping Municipality (supported by the project management)</p> <p>External supplier (methodology documented by dissemination)</p>
<p>2. Enhanced school follow-up and mapping as well as individually adapted school support in the form of "tutoring" for enhanced school results</p>		

## Activities before, during and after placement





*Expected staffing team*

Necessary competences	Assessment resource per child					Total resource utilization at full capacity
	Phase 1:1w Start placement	Phase 2:26w During placement	Phase 3:1w Outward transfer	Phase 4:16w After placement	Sum per child	
Social Assistant	20 h	1 h	8 h	2 h	74 h	2 annual workforce
Occupational Specialist	8 h	1 h	4 h	1 h	54 h	1 workforce
Pedagogist / Teacher / Training Officer	22 h	1 h	4 h	1,5 h	62 h	2 workforce

*Provisional staffing plan for the team*

	Aug. 2016 to March 2017 (32 weeks)	March 2017 to April 2018 (56 weeks)	April 2018 to June 2018 (8 weeks)	March 2018 to February 2019 (35 weeks)
Number of Social workers/ Social assistants	1 workforce	2 workforce	2 workforce	1 workforce
Number of Occupational Specialists	1 workforce	1 workforce	1 workforce	1 workforce
Number of Pedagogists / Teachers / Training Officers	1 workforce	2 workforce	1 workforce	1 workforce

*Preliminary schedule / milestones*

The following bulleted list and illustration is a preliminary schedule of the social outcome contract from its entry into force until the end of the evaluation period.

The timetable is preliminary when start of action depends on when the first individual is included. The preliminary schedule as set out below assumes that the first individual will be included in August 2016 and that the evaluation will take place in April 2020, which should be the goal of the work.

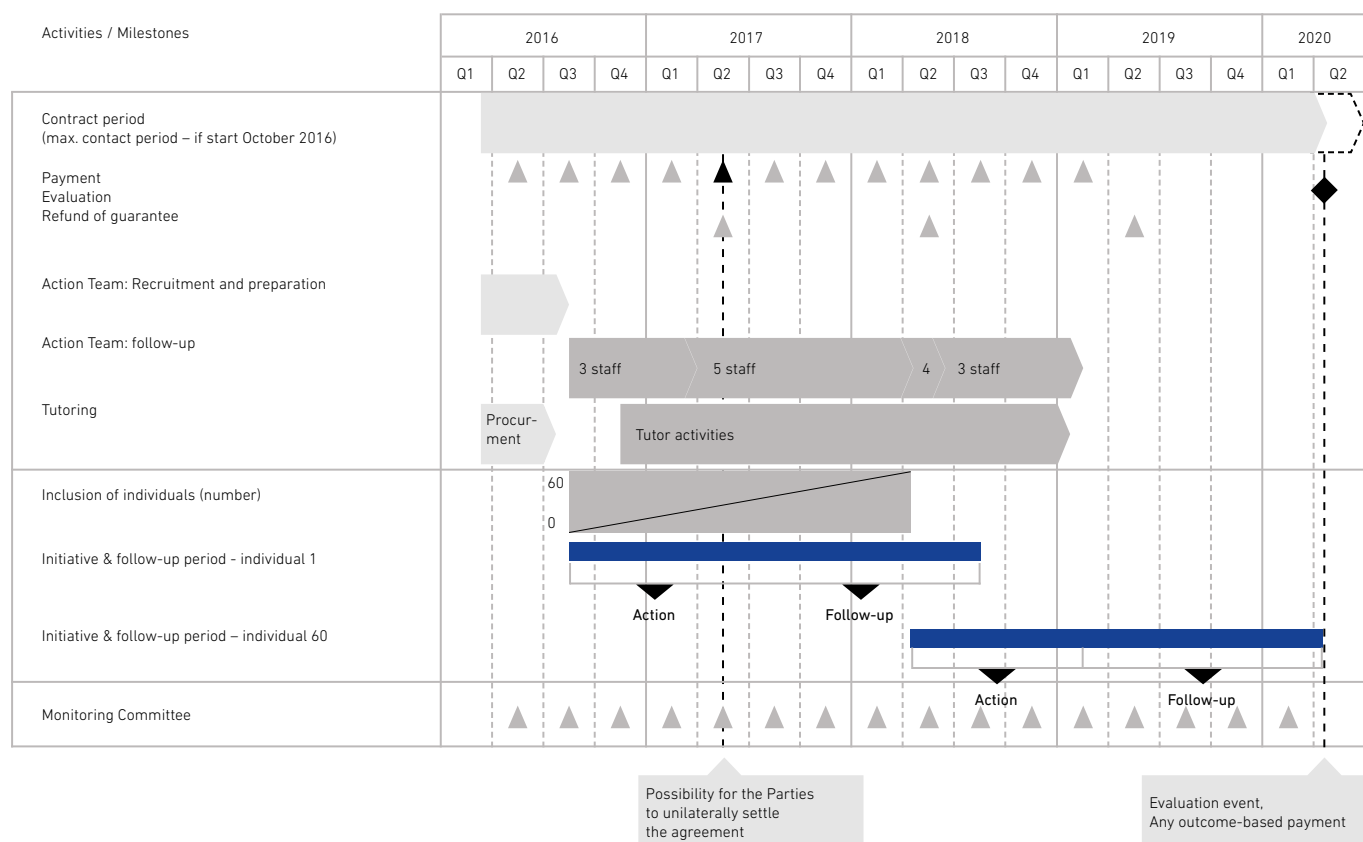
- March 2016 Contractual writing and entry into force
- April/May 2016 Recruitment team; First Monitoring Committee; Preparation of documentation
- June July 2016 Procurement for Tutoring action completed
- August 2016 Preparatory team work; First individual included; Second Monitoring Committee
- November 2016 First tutoring action begins
- May 2017 The parties have the possibility of deciding on individual dismissal; First refund of guarantee
- April 2018 Final date for inclusion of individuals
- May 2018 Second payment of guarantee
- January 2019 Full settlement of the action team within the framework of the social outcome contract
- May 2019 Third payment of guarantee
- April 2020 Evaluation session; Deduction refund

The payment date will take place immediately after each Monitoring Committee until the financing is completed.

In the event of the start of the initiative between August 2016 and October 2016, all activities in the schedule will be moved to the corresponding number of months.

The last possible month for inclusion of the first individual is according to the agreement October 2016. About the inclusion of the first individual in October 2016, the evaluation date will take place in July 2020.

Illustration of preliminary schedule for social outcome contract (based on inclusion of first individual in August 2016 and last individual April 2018):



## Annex 2 Method and basis for calculation of outcomes

The action is followed up on two outcomes that correspond to human and financial gains for the Outcome Responsible: (1) changed social services costs and (2) changed school performance. This annex describes the method and basis for calculating these outcomes.

### (1) *Changes in social services costs*

With social services costs referred to in the Agreement:

- the individual's expenses for placements in family homes, emergency homes, HVB or SiS institutions, as well as,
- the individual's expenses for outpatient actions

Costs in outpatient care that are not expensed on the individual but which arise in connection with the intervention, such as contributions to a family member or other person in the vicinity of the individual who are given after detection of otherwise unidentified needs, are not included.

Calculation of changed social services costs is done by comparing the individual's *actual social service costs* during and after the intervention at the individual level with *expected social service costs*.

In case of serious illness/death, the individual is excluded from the evaluation, and the cost of the individual is counted as 50% refundable to the Financier.

### *Calculation of actual social services costs*

*Actual social services costs* are actual social services costs for the individual between the start of the action for two (2) years after the completion of the operation (referred to as the *social service follow-up period*).

Calculation of actual costs is based on a follow-up per each individual who received the contribution. The follow-up includes costs for placements and expenses for outpatient activities that the individual had during the social service follow-up period.

Costs for individual placements are retrieved from the Social Office's invoice system where information is available on each individual investment cost.

An individual who, after his/her initial placement in HVB / SiS, is placed in the form of care instituted after the contract has been established, will receive a reduced social service charge corresponding to the total cost of insertion per individual (SEK 166,667).

Costs for individual outpatient actions are not available in the invoice system. Flat-rate costs based on budgeted costs for different types of outpatient interventions are therefore used to calculate the cost of outpatient activities as the individual received during the period. See table below. The standard costs are the same as used in the production of the standard cost-per-acquisition costs as shown below.

Standard cost for one (1) care day with outpatient intervention:

Outpatient intervention	Cost
Base class	SEK 858
NP-center**	SEK 837
Sesam*	SEK 685
Moa	SEK 685
Young parents	SEK 651
Young offenders *	SEK 651
Family treatment	SEK 617
ART	SEK 617
FFT	SEK 617
Resource Team BoU*	SEK 617
IHF team	SEK 617
Parental Treatment *	SEK 617
Resource Team Adult *	SEK 617
Norrköping youth residence	SEK 535
Family support	SEK 310
Youth Coordinator	SEK 234
Social Support	SEK 207
Management change	SEK 172
Contact Family BoU	SEK 164
Kris Norrköping	SEK 131
Networking	SEK 126
Contact person BoU	SEK 98
BUSS ***	SEK 0
Other	SEK 433

**Note:** The flat rate costs are calculated based on total budgeted cost for each action in 2015. Total budgeted cost has been divided by the expected number of individuals in 2015 for current outpatient care. The total number of individuals throughout the year 2015 has been calculated by extrapolating the number of actual individuals measured during January to September 2015 for a full year value.

\* Missing own budget area. Schedule for outpatient action with similar content has been used as below. Emergency response without own budget area and use standard:

- Sesame - uses standard for Moa
- Parental treatment - uses standard for family treatment
- Resource Team children and young people (BoU) – uses standard for family treatment
- Resource Team Adult - uses standard for family treatment
- Young offenders - use the standard for young parents

\*\* The NP Center lacks a special budget at the Social Office. Budget published for the specific social investment project associated with the initiative is used. This budget also includes healthcare registered at the Health and Care Office, so the total number of individuals for 2015 for this unit is included in the calculation.

\*\*\* The social office internally invoices the Education Office for the BUSS initiative. As the contract only deals with social services costs, a daily cost of this action of SEK 0 is calculated.

For the calculation of actual costs for outpatient care per individual, the care time for each outpatient intervention from the Viva database (care day) is multiplied by the standard cost for one (1) care day with the current outpatient intervention.

The care period for each outpatient intervention is obtained from Norrköping's Viva database. The following variables are retrieved:

- Decision
- Type
- Performers
- Length for each placement
- Length for each outpatient intervention

For the calculation of new outpatient interventions that are introduced during the follow-up period, the budgeted cost and the expected number of care days are used to calculate the daily costs in the first instance. In the second place, the daily cost is used for a similar action.

#### *Calculation of expected social services costs*

*Expected social services costs* are calculated based on historical cost data with adjustment for price change of placement care during the social service follow-up period.

#### Calculation of historical cost data

Historical cost data has been developed through analysis of historical placement and outpatient data in Norrköping Municipality for two years as shown below.

Information was obtained from Norrköping's Viva database to analyse investment costs for those individuals who received a placement decision for HVB / SiS in 2013 and who were over six years old. A total of 61 individuals received a placement decision for HVB / SiS in 2013.

The individuals were divided into four groups based on differences in characteristics (age and previous placement or not) as below.

Group	Individual characteristics
1	6-17 years old, not previously placed
2	6-17 years old, previously placed
3	18 years old or older, not previously placed
4	18 years old or older, previously placed

Placements that are both initiated and completed before 2013 are missing from the Viva database. Therefore, in order to check for previous placement before 2013, a special case study of Norrköping Municipality was carried out to investigate the placement history of these 61 persons. The Case Study was conducted through analyses of an older database and archive studies. At a first stage, data was studied in the older database from 2008 onwards for all individuals. Individuals who have not been placed from 2008 until the placement decision in 2013 are included in the group "not previously placed". Individuals who had one or more placement decisions from 2008 up to the placement decision in 2013 are included in the group "previously placed". For these individuals, supplementary studies were conducted to map the entire placement history.

Historical cost data per individual was calculated by monitoring the costs of placements and outpatient care for each individual during the next two years after the first placement. The costs for placement and outpatient care were calculated using daily costs for the different forms of care.

For the most common HVB and SiS houses, specific daily costs are used per accommodation as below. Specific daily costs are used to reflect the fact that the cost can vary widely between different HVB and SiS houses, while the compensation for family and home placements is equivalent for all housing. For other HVB and SiS housing, a general standard was used as below.

HVB-accommodations	Day Cost	SiS-accommodations	Day Cost
Elisabethgården	SEK 6,214	Folåsa	SEK 7,200
Egehem	SEK 5,515	Långanäs	SEK 5,814
Risingegården	SEK 4,817	Sundbo	SEK 5,590
HVB A.R.T	SEK 4,711	Margretelund	SEK 5,400
Hvilans Skolhem	SEK 4,650	Eknäs	SEK 5,200
Caremore	SEK 4,646	Nereby	SEK 5,200
Active Omsorg/HVB flickor/lgh	SEK 4,636	Fagered	SEK 5,200
Dammsdal	SEK 4,353	Öxnevalla	SEK 5,200
Korpberget	SEK 4,000	Vemyra	SEK 5,200
Gryning Vård/Skydd & heder	SEK 4,000	Klarälvsgråden	SEK 5,020
Vision Omsorg/Villa Andrum	SEK 4,000	Ljungbacken	SEK 5,000
Skäbo HVB	SEK 3,750	Ryds brunn	SEK 4,800
Jogersö - Gruppen HVB AB	SEK 3,486	Stigby	SEK 4,788
Skillstreaming/Börstils	SEK 3,295	Bergmansgården	SEK 4,343
Wij gård	SEK 3,250	Bärby	SEK 4,200
Slottshag	SEK 3,200	Rebecka	SEK 4,000
Meby Behandlingshem AB	SEK 3,192		
Jordnära omsorg	SEK 3,163	Other SiS	SEK 5,356
Pandion / Juno	SEK 3,030		
Ängby	SEK 3,000		
Båktorp	SEK 2,900		
Staple	SEK 2,900		
Hällekilsgård	SEK 2,886		
Hassela Gotland	SEK 2,771		
Gårdsjö	SEK 2,675		
Nya Nyhyttan	SEK 2,139		
Other HVB	SEK 4,000		

Costs for the individual's outpatient intervention are not available in the invoice system. Standard costs based on the budgeted cost for different types of outpatient intervention are therefore used for calculating the cost of the outpatient care that the individual has received during the period. See table above *Standard cost for one (1) care day with outpatient intervention*.

For calculating costs for placement and outpatient care, the length of time for each placement and outpatient intervention from the Viva database (care day) is multiplied by the standard cost for one (1) care day with the current placement / outpatient intervention.

The care period for each outpatient intervention was collected from Norrköping's Viva database. The following variables were retrieved:

- Decision
- Type
- Performers
- Length for each placement
- Length for each outpatient intervention

Per individual, cost was calculated in year 1 and year 2 respectively and was summed to a total cost. This is reported anonymously per individual in the table below, per group. Costs for year 2 for those individuals who on September 10, 2015 have not been placed in two full years are not included and are omitted in the table below.

Group no.	Individual no.	Cost SEK, year 1	Cost SEK, year 2	Total cost SEK
1	1	1,379,467	1,719,556	3,099,022
1	2	1,460,000	1,466,696	2,926,696
1	3	1,719,556	1,091,956	2,811,511
1	4	865,225	1,867,678	2,732,903
1	5	1,388,000	1,248,000	2,636,000
1	6	2,429,416		2,429,416
1	7	1,018,464	1,143,634	2,162,098
1	8	1,920,861		1,920,861
1	9	1,712,820		1,712,820
1	10	1,515,400		1,515,400
1	11	1,468,815		1,468,815
1	12	1,461,255		1,461,255
1	13	546,841	908,872	1,455,713
1	14	1,445,196		1,445,196
1	15	1,366,366		1,366,366
1	16	1360295		1,360,295
1	17	1,165,207		1,165,207
1	18	733,520	343,996	1,077,516
1	19	694,885	291,200	986,085
1	20	929,922		929,922
1	21	747,249		747,249
1	22	676,433		676,433
1	23	556,107	67,976	624,083
1	24	619,967		619,967
1	25	395,552	66,631	462,182
1	26	218,502	3,701	222,203
1	27	27,576	141,482	169,058
1	28	88,177		88,177
2	29	2,012,809	2,012,809	4,025,618
2	30	1,697,250	1,697,250	3,394,500
2	31	1,617,916	1,644,292	3,262,208



<i>Group no.</i>	<i>Individual no.</i>	<i>Cost SEK, year 1</i>	<i>Cost SEK, year 2</i>	<i>Total cost SEK</i>
2	32	1,457,214	1,460,000	2,917,214
2	33	1,105,950	1,196,532	2,302,482
2	34	1,804,596	180,651	1,985,247
2	35	585,400	1,262,070	1,847,470
2	36	673,400	1,000,660	1,674,060
2	37	713,176	874,079	1,587,255
2	38	62,400	1,008,990	1,071,390
2	39	663,783	114,558	778,342
2	40	380,000	0	380,000
3	41	1,460,000	1,504,000	2,964,000
3	42	1,104,000		1,104,000
3	43	920,433	0	920,433
3	44	849,975	0	849,975
3	45	843,104		843,104
3	46	192,000	480,000	672,000
3	47	44,000	0	44,000
3	48	16,000	0	16,000
4	49	1,391,751	2,027,891	3,419,642
4	50	1,588,845	1,053,426	2,642,271
4	51	541,417	1,460,000	2,001,417
4	52	1,272,286	669,758	1,942,044
4	53	1,460,000	461,000	1,921,000
4	54	752,719	357,689	1,110,409
4	55	292,000	308,230	600,230
4	56	509,486	0	509,486
4	57	294,150	60,477	354,627
4	58	344,000	0	344,000
4	59	304,777	0	304,777
4	60	220,000	0	220,000
4	61	185,802		185,802

The average total historical social service cost within each group was calculated by summing the total cost for each individual in each group per year divided by the number of individuals in each group per year.

Group	Individual characteristics	Historical social service costs under 2 years, SEK
1	6-17 years old, not previously placed	1,865,000
2	6-17 years old, previously placed	2,102,000
3	18 years old or older, not previously placed	1,009,000
4	18 years old or older, previously placed	1,238,000

At the start of the initiative, the individual's characteristics determine which of the four groups the individual belongs to in calculating historical social service costs.

### Calculation of price change of placement care

Historically expected cost is adjusted at the evaluation date with an adjustment factor for price development for placement care.

This is calculated on the basis of analysis of the average change in daily costs for the different types of placement of the individuals in the intervention. Comparison is made of the average daily cost of the original estimate of historical social service costs and the average daily cost at the time of evaluation. Average percentage change in price is calculated and multiplied by the historical social service cost. The average percentage change in price is calculated through separate calculations for the different types of placement, which are then weighted together to form a composite measure according to how much of the historical social services associated with the respective placement.

#### (2) *Changes in school performance*

Calculation of changed school performance is done in two steps. In the first step, calculation is made for each individual, where the individual's school performance is measured before the start of the individual's action.

The comparison at the individual level is based on a score system that measures school performance based on predefined criteria. The time period for comparison is from the start of the action (first evaluation) to one (1) year after the completion of the action (second evaluation) (referred to as the *school follow-up period*). An individual who improves school achievement during the individual's school follow-up period is counted as one, two or three plus points (+1, +2, +3) and an individual who is deteriorating in school achievement is counted as one, two or three minus points (-1, -2, -3).

In the second step, the score for all individuals sums up to a total amount. In order for school performance to be considered improved, the total sum should be a positive value (> 0).

#### *Classification of school achievements in the scoring system*

The rating system takes into account both the change of grade over time and whether the individual actively goes to high school. The score system is based on group classification (no merit points).

There are four different ways to classify school achievements. The method used is based on the type of school the individual is attending:

1. A student who goes to *primary school on both evaluations* and who at the start of the action has *not yet received his/her first grades*
2. A pupil who goes to *primary school on both evaluations* and who, at the start of the intervention, *has received his/her first grades*

3. A pupil who goes to *primary school at the first time* of evaluation and who *no longer attends primary school* at the second time of evaluation
4. A pupil who *does not attend primary school / enrolled in high school at both evaluations*

Note that a very small proportion of included individuals are expected to be classified according to point 1 above.

Detailed description of the score system by type of classification:

1. A pupils who goes to *primary school* on both evaluations and who at the start of the action *has not yet received his/her first grades*.

For these pupils, an evaluation of change is made based on the tools used by the action team to assess the individual's school-related skills. The evaluation is made by tests made at the start and end of the action for each individual.

Points are given as follows:

- Is considered the overall development of ability to be positively given +1 point
- Considered the overall development of ability to be negative is given -1 point
- Assuming the overall development of ability to remain unchanged, 0 points will be awarded.

Instruments and assessment methods shall be approved by the Financier prior to the evaluation.

2. A pupil who goes to *primary school on both evaluations* and who, at the start of the intervention, *has received his/her first grades*

Group affiliation is assigned according to the classification below, based on the latest available grades at the start of the action and at one (1) year after the completion of the action.

- Failure: the pupil is Fail (F) in more than one core subject and / or Fail (F) in six or more other subjects
- Failure: the pupil is Fail (F) in more than one core subject and / or Fail (F) in more than two to five other subjects
- Passed: the student is approved (E or higher) in all core subjects and is Fail (F) in no more than two other subjects
- Good: The pupil is approved (E or higher) in all core subjects, Fail (F) in one subject at most and has grades higher than approved (D or higher) for at least five subjects.

The core subjects are Swedish (alternatively Swedish as a second language), English and mathematics.

Points are awarded as follows:

- Unchanged group relationship between two evaluations gives 0 point
- Advance / downgrade one level gives + 1 / -1point
- Advance / downgrade two levels provide + 2 / -2point
- Advance / downgrade three levels gives + 3 / -3point

3. A pupil who goes to primary school at the first time of evaluation and who no longer attends primary school at the second time of evaluation

Points are awarded as follows:

- That the student is actively enrolled in a national program at the high school gives +2 points
- That the student is actively enrolled in the introductory program at the upper secondary school gives +1 points
- That the student refrains from starting high school gives 0 points
- That the student has started but has since dropped out of high school gives -1 points
- That the student has started high school but is not actively enrolled gives -1 points

4. A pupil who *does not attend primary school / enrolled in high school at both evaluations*

Group affiliation is assigned according to the classification below, based on the status at the start of the action and at one (1) year after the completion of the action:

- Not actively enrolled: the student does not attend primary school or is enrolled in high school, but is not actively attending
- Actively enrolled in introductory programs at high school or adult education (Komvux, folk high school, etc.)
- Actively enrolled in a reduced national program at the high school
- Actively enrolled in a national program at the high school

Points are awarded as follows:

- Unchanged group affiliation between the two evaluations gives 0 point
  - Not actively enrolled or actively enrolled in introductory programs at high school or adult education gives 0 points
  - Actively enrolled in a reduced national program at high school or Actively enrolled in a national program at high school gives +1 points
- Advance / downgrade one level gives + 1 / -1point
- Advance / downgrade two levels provide + 2 / -2point
- Advance / downgrade three levels gives + 3 / -3point

Being actively enrolled means that the student is enrolled in a school program and has a presence of at least 80% in the last three months. For individuals with a reduced schedule, the attendance requirement is 80% based on the scheduled time. Pupils who have only home-based school lack reliable presence statistics excluded from the calculation.

Individuals in Group 3 and 4 who, due to lack of space, are not prepared for appropriate secondary education programs and are therefore awarded minus points are excluded from calculations.

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## 7. VIRI

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#### ALPSIB PARTNERJI



Projekt AlpSib sofinancira Evropski sklad za regionalni razvoj. Vsebinska te publikacije ne odraža uradnega mnenja Evropske unije. Odgovornost za vsebino in mnenja, izražena v publikaciji, nosijo izključno njeni avtorji. Ponovna uporaba je dovoljena z navedbo vira. Ponovna uporaba gradiva v prilogah ni dovoljena, saj vsebuje gradivo, ki ni nastalo v okviru projekta AlpSib.

