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EUROPEAN UNION



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TRANSNATIONAL METHODOLOGY  
FOR SOCIAL IMPACT INVESTMENT  
POLICIES IN THE ALPINE SPACE



# TRANSNATIONAL METHODOLOGY FOR SOCIAL IMPACT INVESTMENT POLICIES IN THE ALPINE SPACE



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# ABSTRACT

## 1. Introduction

The AlpSIB project started in 2015, initiated by a group of individuals belonging to public and private organizations from Austria, France, Germany, Italy and Slovenia. They had been impressed by the potential revolution and smart mechanism of Social Impact Bonds (SIBs): funding outcomes rather than outputs, enhancing providers' performance through impact assessment, bringing investors' economic resources and know-how into the social field.

It was clear that SIBs were gaining momentum; partners at regional and local levels were encouraged to align with innovative national policies or European trends. What was still unclear at that time was how to transfer innovation to regional and local levels, under different conditions, and how to involve local and regional actors (public authorities, investors, and social enterprises/organizations) in this "groundbreaking process" and catalyzing it through their contribution. How to develop the territorial capacity of leading, managing and measuring social impact through this new policy instrument?

The AlpSIB project was conceived to address these problems and thereby promote SIBs in the alpine region.

## 2. Social Impact Bonds in the Alpine Region

The second chapter aims to give a broad overview of the actual conditions, as well as future obstacles and opportunities of social impact bonds in the alpine region.

### 2.1. Austria

Austria has a strong welfare state, offering several services for its population. However, even in a strong welfare state, not all people can be reached through standard initiatives. The total number of NEETs (youth not in education, employment or training) is about 9.3%, compared to 15.3% on average in the EU, looking at the 15-24 year-olds.

In its working program 2013-2018, the Austrian government showed a deep interest in Social Impact Bonds and Social Impact Investing. It announced the promotion of innovative approaches through SIBs in order to face the current challenges in welfare policy, close any gaps and strengthen social cohesion in Austria with new initiatives.

Although the government commented positively about SIBs, these are still rather unknown by stakeholders in Austria. Therefore, a crucial first point is the communication about Social Impact Bonds in general. So far, one SIB pilot project, named "Perspektive: Arbeit" which lasted from September 2015 until August 2018, was conducted in Upper Austria.

Stakeholders that were involved in the AlpSIB project highlighted a fear of erosion of the welfare state due to privatization. That is why SIBs must be clearly communicated as additional instruments to state intervention.

## 2.2 France

Welfare policy is a national responsibility in France, articulated around the public insurance system (Sécurité sociale). The French welfare policy includes all target groups. In past years, an increasing effort has been undertaken for seniors. The NEET rate in France is 13.5 % and thus a little lower than the EU average of 15.3%. In 2016, there was a first call for proposals to be funded via SIBs by the government of France. Out of this process, thirteen projects have been selected, ten have been structured or are under construction of which four have been signed by the beginning of 2019.

The centralized political system in France triggers challenges and opportunities for SIBs: On one hand, the centralized system enables larger scale SIBs with larger providers represented in the whole territory and Ministries refunding the projects. On the other hand it does not facilitate bottom-up approaches from the regions as it is difficult to convince ministries or investors to participate in solving a local issue.

## 2.3 Germany

Although Germany is a welfare state, there are people who are hardly, or not at all, reached (any more) by standard social security measures, education, and the apprenticeship system. There are more than 550.000 NEETs in Germany. This means just a NEET rate of 8.7 % compared with the EU average of 15.3 %. Also, in the group of senior citizens, there is a need for action: More than one million of the generation aged 50 and above cannot make a living on their own. SIBs are a powerful way to provide a safety net for these people while saving money.

Decisions about social policies are not made exclusively by the national government, but also at state level or even local level. The very complex legal framework in Germany leads to great insecurities among representatives from different local bodies – particularly with regard to personal liabilities.

German budgetary law underlies the principle of economy. This implies that potential savings of a new action have to be demonstrated beforehand. This is

why the measurement of the project's impact is a crucial point in the contract design (as will be examined in chapter 3).

Until today, three SIBs have been or are being conducted in Germany.

## 2.4 Italy

Literature considers the Italian welfare system as representative of the so-called FAMILISTS models, in which intra-family and inter-family relationships are intense and extensive, and the family acts as a social shock-absorber for meeting the needs of its members. In this system, the state intervenes only in a subsidiary manner when the family has not been able to fulfill its task. In this model the public services system is not properly developed.

In the early 2000s, a new Framework Law on social policies and a Constitutional reform completely modified the territorial distribution of competences in the field of welfare. According to the principle of subsidiarity, they aimed at regional re-organization (mainly decentralization) and increased social participation, reinforcing the role of private actors and civil society organizations in the creation of a mixed welfare system.

In 2017, the NEET rate was 25.5 % compared to the average of the EU 14.7 %. Italy obtains the supremacy among the 28 EU countries with a percentage of elderly citizens over 65 (21.4% ahead of 20.8% of Germany and 20.5% in Greece). The general dynamics of growth of the over-65 population over a decade confirms the importance of foreseeing and implementing effective and innovative interventions in favor of the elderly.

Until today, it is not possible to report a complete SIB initiative. Nevertheless, there are different stakeholders, particularly public organizations, as well as regional representatives, who express interest in implementing SIBs in Italy.

## 2.5 Slovenia

When it comes to the estimation of SIBs in Slovenia, the Slovenian AlpSIB-team describe a profound mistrust of former governments from the public towards Social Impact Bonds, as Slovenia has a strong and well-functioning welfare system and there is a fear that SIBs will lead to the monetization of welfare work.

The NEET rate in Slovenia is, with 12.3%, below the EU average of 14.8%, as of 2015. Furthermore, Kump et al. address the 30-35 age group, who were the most affected by the unfavorable labor market which has resulted from the economic crisis. Therefore, the authors plead for an inclusion of 30-35 years old in the NEET group of Slovenia.

The strong welfare system in Slovenia is one of the reasons why no SIBs have been realized so far. For most of the relevant stakeholders the system of Social Impact Bonds is still unknown, although SIBs were presented and an initiative for pilot SIB schemes in Slovenia was already given by Fund 05 – Foundation for Social and Impact Investment in 2010 at the 1st Social Economy Days in Ljubljana. Moreover, it is unclear whether current Slovenian legislation supports SIB implementation at all. Hence, more research on this topic is needed.

## 2.6 Common Elements and Intermediate Results

Chapter 2 identified vastly differing constraints for SIBs in Austria, France, Germany, Italy and Slovenia on a judiciary level. All states share massive insecurity with respect to the feasibility of SIBs under current legislation. For an effective implementation of SIBs in individual states, the establishment of a political and legal framework is required. Moreover, structures that reduce the individual costs of a SIB have to be established in order to make them attractive in the long term.

A crucial point for the success of a SIB is the evaluation and impact measurement. Therefore, the development of efficient impact measurement tools is of high importance when designing the contract. Actually, there is a lack of systematic evaluations.

Another main task is the communication of stakeholders at the beginning of a new SIB. To avoid misunderstandings during the realization, it takes time to get to know the different mindsets, and to start to understand each other and to find reasonable compromises.

## 3. Guidelines for Interested Stakeholders

In the international discussion, the question of how to reduce transaction costs of a SIB keeps coming up. One side says that with a fixed number of investors, a single contract model, and a customized approach, processes can be simplified and ultimately financial savings in transaction costs and ongoing costs are possible. The other side argues that the flexibility and the individual adaptability to the needs of the target group are elementary components and not least the success factor of a SIB. We see the greatest potential of SIBs in these possibilities of individual adaption.

Chapter 3 is based on the work of Social Finance (2013), "A Technical Guide to Developing Social Impact Bonds" and the eight steps it takes in building a SIB.

### 3.1.1 Defining the Social Issue and the Target Population

As the propensity to invest increases when a background, personal passion or involvement is created, investors and financiers need to be involved in choosing which social problem to tackle.

The identification of the social problem is closely connected with the definition of the target group. Of course, access to the target group is important as well as the ideal size of the target group – also with regard to the evaluation in the later stages.

### 3.1.2 Defining the Intervention

In general, prevention-based services should be offered by a SIB. Interventions of a preventive nature are suitable for embedding in a SIB because they avoid cost-intensive reorganization measures and, thus, offer governments a financial incentive to participate in a SIB with interest. Evidence-based interventions with a track record are also ideally suited for SIBs. Moreover, scalability plays an important role within the decision of the appropriate intervention.

### 3.1.3 Defining the Outcome Metric

It is much easier to measure the success of an intervention by input/output other than by outcome.

However, there are good reasons why measuring by outcome should be preferred. Input- or output-oriented contract types may increase the risk that service providers cut their costs and then only the most necessary aims will be reached. Those NEETs who are particularly difficult to reach and who, at the same time, are most dependent on help, fall into the trap. That is why commissioning by outcomes is the best way of doing this within SIBs.

To develop an Outcome Metric, five steps are necessary: 1. Identification of outcomes – selecting and defining the outcomes. 2. Establishing a baseline or counterfactual. 3. Evaluation of outcomes. 4. Measuring and attributing the impact. 5. Evaluation of impact.

### 3.1.4 Building the Business Case

The so-called five-case model is often heard in connection with the development of the business case. This includes five dimensions that are necessary for a functional business case: the strategic case, the economic case, the commercial case, the financial case and the management case.

The process of creating a business case departs from three steps. In the first stage, the scheme needs to be scoped and the Strategic Outline Case (SOC) must be prepared. Stage 2 is focused on planning the system and preparing the Outline Business Case (OBC). The third and final stage in the development of a business case is the procurement of the solution and preparation of the Full Business Case (FBC).

### 3.1.5 Calculation and Program Design

The variety of service providers and contracts risks losing track of the overall costs of program delivery, including transaction costs, infrastructure and overheads. A sound understanding of this is essential for a SIB. Developing an indicative budget for the services provided therefore determines the amount of funding that must be raised by the investors. At the beginning, a detailed estimate of the number of users of a service provided by a SIB is required. From this a detailed operational plan can be created.

The calculation and determination of the payment mechanism is also part of the calculation of a SIB. The payment mechanism should describe in detail how

the success of an intervention looks and is measured. Furthermore, a tariff is set for each partial success and specified when and how much it will be repaid to the investors.

### 3.1.6 Handling the Procurement

Handling the procurement process in outcome-based commissioning may generate some challenges. Many different parties with different interests have to work together, based on a contract and the aim of generating outcomes for getting returns on the investment. At the same time, commissioners and service providers have to work more together like in a collaborative partnership than in other contract forms.

Access to the same information during a procurement process is one of the most complicated stadiums in the whole process. The commissioner should make sure to offer information to all suppliers and not just to those that are involved since the first steps.

Getting real competition during a procurement process is a challenge. A SIB is a rather new tool where in most cases only a few providers can deliver the right service for achieving an innovative solution. That is why an open tender process will not receive many bids. A restricted procedure, competitive dialogue, negotiated procedure and innovative partnership are alternative main procurement routes. The Innovative Partnership is particularly suitable for embedding in a SIB.

### 3.1.7 Contracting of the SIB

As with the procurement, there are also different types of contracting a SIB. It's possible to make a direct contract or a so-called SIB with Special Purpose Vehicle (SPV), an intermediated SIB or a fund-managed SIB. Which type is the best ought to be discussed and decided on a case-by-case basis. There are, however, a few key terms such as a statement of shared aims, contract duration, payments and the investment amount, as well as default and termination of the contract that should be included in every SIB contract.

## 4. A broader View – SIBs in the European Union

Not just in the AlpSIB states, but in almost every member state of the European Union, SIBs are still in the early stages of development. The only exception is the UK which takes on a pioneering role regarding SIBs in the EU.

In the last years, the EU institutions have made some efforts in fostering SIBs and other forms of social impact investing in the EU. However, these efforts are far from sufficient.

So the AlpSIB states formulated a “wish list” to political authorities which contains concrete measures that may help to establish Social Impact Bonds as a mass-suitable financing instrument.

The following requirements are mentioned:

- a) Strengthen the commitment of different stakeholders by affirming the rationale and the legitimacy of SIBs, by developing a common language, by transnational co-operation and mutual learning and by political backing.
- b) Support piloting by the coverage of transaction costs, by discovering and supporting initiators and through technical assistance for governments. Furthermore, defining standardized models could be another way to support piloting.
- c) Foster mainstreaming by reviewing public procurement policies and procedures through the harmonization of practices and by increasing complexity and size over time.

# Interreg



## Alpine Space

### AlpSib

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ALPSIB FORUM Nice 22/09/2017



# 1. INTRODUCTION

The AlpSIB project was launched in 2015, initiated by a group of individuals belonging to public and private organizations, who had been impressed by the revolutionary potential and smart mechanism of Social Impact Bonds (SIB). At the time, the first SIB, Peterborough SIB, had just started; few SIBs had been introduced in continental Europe and the US. Today more than 120 SIBs (Social Finance Ltd, 2019) have been set up around the world, but in 2015 this new financial instrument in the social field was perceived as a game changing solution which all AlpSIB partners were interested to explore in order to build their own and other organizations' capability of implementing it.

From the very outset AlpSIB partners from Austria, France, Germany, Italy and Slovenia, saw the great strengths of SIBs as a policy instrument in the social field, as a community development tool that brings together the public, non-profit sector and finance sectors to work towards the same goal: improving social outcomes. The potential for innovation was clear: funding outcomes rather than outputs, enhancing providers' performance through impact assessment, bringing investors' economic resources and know-how into the social field. Moreover, some AlpSIB partners had already experienced a SIB as social service providers or local stakeholders, like Eckert Schools and Augsburg Municipality where the eleven SIB was piloted between 2013 and 2015. The first Austrian SIB followed in 2015, while AlpSIB submission was

underway; the first call for a proposal for a Social Impact Bond (contract á impact social) was issued by the French government.

It was clear that SIBs were gaining momentum; partners at regional and local levels were encouraged to align with innovative national policies or European trends. What was still unclear at that time was how to transfer innovation to regional and local levels, under different conditions, and how to involve local and regional actors (public authorities, investors, and social enterprises/organizations) in this groundbreaking process and catalyze it through their contribution; in a word, how to develop the regional capacity of leading, managing and measuring social impact through this new policy instrument.

The AlpSIB project was conceived to address this problem: in line with the SIB spirit, AlpSIB was initiated to promote mutual learning between the finance, public and non-profit sectors; between different government levels from local to national up to European institutions; between those who have expertise, those who bring vision, and others who work daily with target groups. In line with this purpose project activities were guided by three principles.

**Listening:** moving back to each partner's region and discussing the potential SIBs offer with policy makers and relevant public authorities, the leading actors of SIB that set social priorities and steer the whole process. SIB's limits and opportunities have been examined in depth with them and five discussion papers (from Austria, France, Germany, Italy and Slovenia) focusing on the public administration perspective are the first main results the present document draws on.

**Sharing** knowledge, skills and tools related to SIBs with the third and financial sectors and other relevant stakeholders. This meant involving them at local level in building consensus on SIBs without suspending critical interpretation, while engaging them in networking and training opportunities. This has resulted in more than 20 events reaching hundreds of people. It also meant building a web platform to make all instruments and data widely and easily available.

**Co-constructing** future practices of social impact contracting. An effort was made to pave the way for SIB replications in each partner Regions, starting from key social issues, such as marginalization of youth and the elderly, and moving toward solutions compatible with SIBs. A transnational advisory board of experienced professionals, public officers, providers and investors was set up and challenged to link findings from the bottom-up process to background knowledge and future trends in the field and finally draw up a "Common Methodology for implementing Social Impact Bonds in the Alpine Space".

The present document - Common Methodology - therefore represents the effort of all those involved in AlpSIB to support anyone willing to innovate social policies and practices in analyzing political and legal scenarios, framing problems, building the process and system of actors, while saving energy thanks to tips and tools. The document itself is a work in progress that will be hopefully refined by its users, as the only way to make innovation transfer possible.

The Document is structured as follows:

- Chapter 2 focuses on the actual status of development and implementation of Social Impact Bonds in the project partners' countries.
- Chapter 3 serves as a manual when planning to build up a SIB. It is divided into seven consecutive subsections, illustrating the required procedures step-by-step,
- Chapter 4 highlights the actual situation in the European Union. It lists existing initiatives and programs and ends with a wishlist to political authorities, developed during the project.
- Finally, Chapter 6 places some contract models of already implemented SIBs at your disposal.





## 2. SOCIAL IMPACT BONDS IN THE ALPINE REGION

### PRELIMINARY REMARKS

The following chapter aims to give a broad overview of the actual conditions, as well as future obstacles and opportunities of Social Impact Bonds in the Alpine Region. The content is mainly the result of five Discussion Papers that summarize the findings of individual preparatory meetings in the project partners' countries and interviews with stakeholders and experts. Different potential actors - national and local public partners, private investors, social service providers and scientists - discussed the background and prospects of SIBs in the individual states, from their perspectives.

Unless otherwise noted, the information about SIBs in the individual countries in chapter II is based on the following papers that can be found on the AlpSIB project website. For detailed information about the individual countries, the reader is referred to:

- 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).
- The emphasis in chapter II is on:
- a) The political framework and legal conditions that stakeholders must take into consideration. The form of government and legislation of each state defines the preconditions, the potentiality and implementation of actual and potential SIBs. Although all participating countries in the AlpSIB project are part of the European Union, and therefore subject to EU jurisdiction, each state has its own legislation in regard to social welfare, its area of responsibility and procurement law. National and local legal restrictions can affect the activities of all participating partners. Therefore, in chapter II, national singularities will be explained.
  - b) and seniors. In general, fixed policy areas for SIBs are not determined, as social welfare varies from state to state and depends on regions, time and financial background. The chapter examines the situation of young NEETs (Not in Education, Employment or Training) and seniors in the project partners' countries to detect potential policy fields for SIBs.
  - c) In addition, an overview of SIBs already accomplished or in implementation will be provided.
  - d) Chances and obstacles in the individual countries. SIBs create new networks and bring together social service organizations, public administration,

investors, foundations, and consulting firms. Therefore, not only can the stakeholders involved vary from SIB to SIB and country to country; their motivation also depends on the individual context. The next section aims to identify possibilities and constraints of national legislation as well as of potential partners.

- e) Common opportunities and challenges for implementing SIBs in the Alpine Space. Although the authors of the papers focused on individual states, some common elements - for example according to the measurement or the motivation of involved partners - can be identified.

## 2.1. Austria

### 2.1.1. Actual Conditions

#### Political System and Welfare Policy

As different public partners may be responsible for any particular field of policy, the federal character of Austria has to be considered when discussing SIBs. Besides national legislation, nine provinces have their own subordinate legislative and executive bodies. Through the Federal Council (Bundesrat), provinces can pass laws at national level. The provinces are sub-divided into regions that are further divided into municipalities.

Austria has a strong welfare state, offering a number of services for its population.

Due to its federal character, competencies regarding social politics are distributed at state level (e.g. youth welfare, hospitals), federal state level and local level (e.g. housing, childcare) (Republik Österreich Parlament).

Alongside the public sector, private or non-profit organizations offer help on behalf of the state. However, even in a strong welfare state, not everyone can be reached through standard initiatives. Therefore, SIBs are seen as an interesting additional instrument to state intervention in Austria, but not as an alternative to services provided by the state.

#### NEETs and Seniors

Looking at the 15-24 y.o age group, the total number of NEETs in Austria is about 9.3%, compared to 15.3% on average in the EU (Ledermaier and Mascherini, 2016: 11).

The group of young people in Austria who are neither in employment nor in education or training is dominated by the short-term unemployed (31.3%) and those whose situation is due to family responsibilities (25.1%). Compared to the EU average across 28 member states this rate is 5 percentage points better in those NEET categories. In third place the share of NEETs due to illness or disability at 13.2% is almost double the EU average of 7.1%.

The degree of urbanization can be correlated with NEET rates for young people living in cities (Eurostat, 2017b). Normally a high degree of urbanization has the consequence that the proportion of NEETs in cities is low. Although Austria has many urban zones with cities, towns and suburbs, it is one of the six Member States with the highest NEET rates for those living in cities (Eurostat, 2017b). An important requirement for effective policy targets is that more than half of the NEETs in Austria are registered with public employment services (PES).

Looking at seniors in Austria, the numbers almost correspond to the EU average. The number of people older than 65 is only 0.5 percentage points higher than the EU average, while the risk of poverty for those older people at 14% is also equal to the EU14 average (Bundesamt, 2016: 30). Although the income of Austrians aged 65 and over is much higher than in other EU countries, the risk of poverty for this group is also equal to the EU14 average (Bundesamt, 2016: 37).

#### Social Impact Bonds in Austria

The Austrian government showed deep interest in Social Impact Bonds and Social Impact Investing in its working program 2013-2018. It announced its intention to promote innovative approaches through SIBs in order to face the current challenges in welfare policy, close any gaps and strengthen social cohesion in Austria with new initiatives (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz), no date). Furthermore one pilot project, "Perspektive: Arbeit" from September 2015 until August 2018, was conducted in Upper Austria (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz), no date; see table No. 1).

PERSPEKTIVE:ARBEIT	STATE OF UPPER AUSTRIA	09/2015 – 08/2018
<b>SOCIAL ISSUE ADRESSED</b> Exclusion and unemployment of women affected by violence	<b>TARGETED POPULATION</b> Women who are legal residents in Austria, are of working age, and have valid working permits, who do not earn a living wage or are at risk of losing their job and who are affected by violence. They must have been in contact with a women's shelter or a Center for Protection Against Violence in Upper Austria within the last 24 months.	<b>INTERVENTION</b> Participants of the project are individually supported by the partners; during the program they are provided with protection, shelter and stable and ongoing childcare
<b>PROJECT PARTNERS</b> Center for Protection Against Violence Upper Austria (Gewaltschutzzentrum Österreich) and Women's Shelter Linz (Frauenhaus Linz)	<b>INTERMEDIARY</b> Juvat gemeinnützige GmbH (a non-profit subsidiary of the Benckiser Foundation Future in Munich) acts as the intermediary; their responsibility included negotiating the contract, acquiring investors and operative partners, and finding a suitable partner for evaluations	<b>INVESTORS</b> ERSTE Foundation Scheuch Family Private Foundation, through a 100% subsidiary company HIL-Foundation Schweighofer Privatstiftung Beteiligungsverwaltung GmbH Juvat gemeinnützige GmbH
<b>COOPERATION PARTNERS</b> State of Upper Austria (Landesregierung Oberösterreich) Austrian Federal Ministry of Education and Women's Affairs (Bundesministerium für Bildung und Frauen)	<b>EVALUATORS</b> Auditing Firm Ernst & Young (Success evaluator) NPO & SE Competence Center, WU Wien (Process Evaluator) Institute of Conflict Research (Accompanying Evaluator)	<b>PARTNER PUBLIC SECTOR</b> Austrian Federal Ministry of Labor, Social Affairs, and Consumer Protection (Bundesministerium für Arbeit, Soziales und Konsumentenschutz)
<b>MAX. POTENTIAL LOSS</b> Completely covered by the investors → 100%	<b>OUTCOME METRIC</b> Pre-defined number of women that are either able to keep their jobs or placed in a job for at least one year	<b>THRESHOLD FOR REPAYMENTS</b> 75 women in work for at least one year with working hours of at least 20 hours per week
<b>PREMIUM</b> 804.688,- € (including 1 % p.a. interest on the loans).	<b>REPAYMENTS ONLY IN CASE OF POSITIVE OUTCOME AT THE END OF THE PROJECT (REGARDING FINAL EVALUATIONS)</b>	

**Table 1** Perspektive Arbeit (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, no date)

## 2.1.2. Opportunities and Challenges

Although the government commented positively about SIBs, they are still not well-known among stakeholders in Austria. Therefore, a first crucial point is communication about Social Impact Bonds in general. It is important not only to acquaint parties with the existence of this instrument, but also to provide detailed information about possible policy fields, as the preparatory event highlighted a fear of erosion of the welfare state due to privatization. SIBs must be clearly communicated as additional instruments to state intervention.

As Nina Schneider states, both the workshop and the conducted interviews identified particular challenges and possibilities for SIBs. Despite the fact that Austria has a strong welfare system, not everyone can be reached by its standard programs. On one hand, SIBs seem to be a promising new approach for certain policy fields, as they have the potential to reach these people. On the other hand, the legal framework and administrative issues are hindering the implementation of SIBs. Moreover, challenges in regard to the process were mentioned, for example how to measure success.

The political system and the longstanding welfare state are also anchored in Austria's legislation. Therefore, some obstacles and open questions relating to the legal framework can be identified for SIBs.

- a) Subsidies vs. procurement (Förderungen vs. Beschaffung/Vergabe): Since target setting is not allowed in relation to subsidies, SIBs can only fall into the category of procurement.
- b) Procurement Process Regulations exclude social service providers from the decision-making process for contracts between the public sector and private investors. Furthermore, the regulations affect the contract between the public sector and the intermediary as well as that between the private sector and the intermediary. This regulation affects how a SIB is designed, as collaboration with service providers early in the decision-making process would be essential, especially when targeting a new policy field. The inclusion of social service providers from the beginning guarantees achievable goals, a realistic time frame, and clear and reasonable target definition. The choice of the intermediary is another crucial factor when designing reasonable targets.

- c) Another legal obstacle lies in Austrian Private Foundation Act that forbids foundations to make profits and obliges them to follow a risk-averse investment strategy. As SIBs offer profit for investors in case of success on one hand, and on the other hand are high-risk investments, investments by foundations are hindered on two different levels.
- d) Austria has strict regulations about the use of public money. Which services can be offered to combat a certain social issue are usually quite clearly stated, making it difficult for social service providers to adapt services according to individual needs.

On a public level, the establishment of a political and legal framework that encourages SIBs or at least trialing them is necessary. Otherwise, implementation costs were considered too high to attract further SIBs.

The contract development of Social Impact Bonds is still rather complex, due to legal restrictions but also because SIBs are relatively unknown and comprise a new method of financing. Apart from one pilot project, no SIBs have been implemented in Austria so far. Among other things, this lack of experience means that setting up a SIB entails considerable administrative effort. Furthermore, the acquisition of funding and adequate partners is a difficult task. Due to the lack standardization and inexperience of potential actors, SIBs are currently an expensive instrument.

Besides different legal restrictions such as the law on subsidies vs. procurement, procurement regulations, the law on foundations and the regulations about the use of public money, the preparation meeting in Austria highlighted another challenge for the state or the local government involved. It is necessary for a SIB that the public partner sets aside resources and the appointed premium. It is unclear what happens to the money in the event of failure.

Regarding the aims of stakeholders, the Discussion Paper mentions challenges as well as opportunities.

Among other things, SIBs are attractive for public partners because they can result in cost savings for the state. Additionally, the public sector can test new approaches and only pays in case of success. SIBs are a comparatively expensive instrument in Austria, due to the inexperience of the actors and lack of standardization. Therefore, SIBs require an intensive personal commitment of stakeholders and institutions.

Relating to the purpose of social service providers, SIBs provide the opportunity for new acquisition of funds. Therefore, SIBs are seen as an interesting additional approach to classical state regulation. Moreover, they can increase flexibility in the social welfare system and help to reach a new audience as they do not have fixed stipulations on what can be done with the funds, in contrast to public money where the service providers have strict specifications regarding what the money can be used for, meaning that social service provision cannot easily be adapted.

On an organizational level, finding investors and stakeholders is a challenge in Austria. As SIBs are a rather new instrument, partners have no experience and have to be willing to campaign for a SIB. SIBs have to be communicated to potential investors as an attractive alternative to more traditional programs, since in the event of success they provide the opportunity of retrieving and/or reinvesting the money in another project. Foresight, a specific fund where private investors, foundations or companies could invest in a fund which in turn would invest in SIBs, could facilitate the process of finding investors. On one hand, more potential sponsors, even those with smaller amounts of credit, could take part. On the other hand, individual investors would not have to spend time on dealing with SIBs in detail, but could still invest in them.

In summary, it can be stated that Social Impact Bonds are a promising new opportunity for social welfare programs in Austria, but further research is necessary to render a conclusive judgment.

## 2.2. France

### 2.2.1. Actual Conditions

#### Political System and Welfare Policy

Welfare policy is a national responsibility in France, articulated around the public insurance system (Sécurité sociale). At the local level, several public authorities have a role which has been delegated by the central authority. France is divided into 101 "départements" and 18 regions, which have different responsibilities regarding social issues; the Region is in charge of employment and training issues and the Département is responsible for social welfare. In

addition, municipalities have minimum obligations towards the elderly but can decide to invest more funds in the territorial organization of health, such as building residential homes, etc.

Social protection in France is based on the principle of solidarity. It includes compulsory public social insurance schemes with social security, pension schemes, schemes of public employers as well as unemployment insurance. Social assistance from the state or non-profit institutions for old people, families, housing, unemployed and poor people is also part of social protection in France. A private complementary insurance scheme exists and since 2016 enterprises have the obligation to propose a corporate complementary insurance and to provide at least half the finance for it.

French welfare policy includes all target groups. In the past years, an increasing effort has been undertaken for seniors. French welfare policy is currently being reformed, in order to respond to the increasing needs of the population while reducing public investment.

#### NEETs and Seniors

About 900,000 young people leave school in France without any graduation or degree certificate (Noneets). However, the NEET rate in France is 13.5% and thus even a little lower than the EU average of 15.3%.

Although the rate of re-entrants into education or the labor market (12.2 %) is almost double the EU average (6.4%), the two biggest groups of NEETs in France are the short-term unemployed (29.8%) and the long-term unemployed (20.1%). The interventions for NEETs due to family responsibilities also seem to be better at only 13.4% compared to the EU28 with 20.3% (Ledermaier and Mascherini, 2016: 36).

Looking at gender, it is striking that one quarter of female NEETs in France belong to the short-term unemployed (25.7%) and another large share of female NEETs belong to those due to family responsibilities. But according to studies, the risk of becoming NEET is higher for males. Generally the risk of being identified as a NEETs is higher for young French people with only primary education and also for those with an illness or disability.

It is also very interesting that only a low share of young unemployed French people are endangered by social exclusion. The reason for this could be that nearly one

quarter of all NEETs in France get financial assistance.

The proportion of seniors, people 60 years old and more, was 24.4% in 2014. This is projected to increase to 33% by 2050 (INSEE - L'Institut national de la statistique et des études économiques, 2018).

France is a welfare state with a very stable pension system that is subdivided into two segments: The "régime de base" or basic system pays about 50% of the earnings back to the pensioners. It is complemented by an additional system called "rétraite complémentaire", complementary pension. This strong pension system allows employees who have been working for 40 years with earnings greater than the

minimum wage to receive a pension of about 85% of their income, since 2008 (Stöger, 2011: 16). That is the reason why seniors in France have high incomes and a high level of prosperity.

### Social Impact Bonds in France

In 2016, there was a first call for proposals to be funded via SIBs (denominated "Contrats à Impact Social") by the government of France. Out of this process, thirteen projects have been selected, ten have been structured or are under construction and four have been signed by the beginning of 2019.

ADIE: MICROCREDIT ADAPTED TO RURAL ENVIRONMENT - SIGNED & LAUNCHED	FRANCE : ALPES, PYRÉNÉES AND BOURGOGNE	01/2017 – 2022
<b>SOCIAL ISSUE ADDRESSED</b>	<b>TARGETED POPULATION</b>	<b>INTERVENTION</b>
Desertion of countryside due to unemployment	Precarious rural inhabitants, unemployed and with no access to financial facilities, wishing to launch a small business in order to create their own jobs.	Facilitate access to the microcredit agency's services (Adie) for residents living in isolated areas far from its offices. 2 types of action: distance assessment of funding requests and in-place support services
<b>PROJECT PARTNERS</b>	<b>INTERMEDIARY</b>	<b>INVESTORS</b>
Association pour le Droit à l'Initiative Economique (ADIE)	BNP Paribas	BNP Paribas, Caisse des Dépôts, Agesica, Mobiliz Invest, Fondation Avril
<b>COOPERATION PARTNERS</b>	<b>EVALUATOR</b>	<b>PARTNER PUBLIC SECTOR</b>
	KPMG	Ministry of economy and finance; beginning from January 2017, co-founding with the Ministry of Ecological Transition and Solidarity
<b>MAX. POTENTIAL LOSS</b>	<b>OUTCOME METRIC</b>	<b>THRESHOLD FOR REPAYMENTS</b>
€1,3 million	Number of financially excluded persons given access to finance (target: 500). Number of persons sustainably reintegrated 3 years after funding (objective: 320)	Repayment for each beneficiary from defined thresholds. For instance, if 30% of the goals is reached, then 30% will be reimbursed beginning from X%
<b>PREMIUM</b>	<b>PROGRESSIVE REPAYMENTS UNTIL GOALS ARE REACHED</b>	
More than 320 persons sustainably reintegrated		

Table 2 Microcredit adapted to rural environment (Aide, 2018). Additional information provided by Maha Keramane.

IMPACT CREATION - IN PROGRESS	FRANCE	2016 – 2020
<b>SOCIAL ISSUE ADDRESSED</b> Economic development of priority districts (quartiers Politique de la Ville) to reduce the difference of development in the disadvantaged districts in relation to other districts in cities.	<b>TARGETED POPULATION</b> 5.5 million citizens that are living in those 1,500 priority districts	<b>INTERVENTION</b> By creating 300 stores in the priority districts, 350 people can be trained and nearly 2,000 new jobs will be generated.
<b>PROJECT PARTNERS</b> <ul style="list-style-type: none"> <li>• CNAM (National center for distance education)</li> <li>• Epareca (national public establishment for the development and restructuring of commercial and craft spaces in the priority districts)</li> <li>• ESH (The federation of social enterprises for housing)</li> <li>• France Entrepreneurs Agency</li> <li>• French Federation of Franchising Franchise Observatory</li> </ul>	<b>INTERMEDIARY</b> No intermediary (Impact Partenaire is playing the role of investor, operator and intermediary)	<b>INVESTORS</b> <ul style="list-style-type: none"> <li>• Impact Partenaires (investment company with a social mandate)</li> <li>• European Investment Funds</li> <li>• Francaise des jeux</li> <li>• BPI France</li> <li>• Regional authority Ile de France (Region of Paris)</li> <li>• BNP Paribas</li> </ul> Revital Emploi
<b>COOPERATION PARTNERS</b> <b>National franchisors</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>	<b>EVALUATOR</b>	<b>PARTNER PUBLIC SECTOR</b> Ministry of economy and finance; Ministry of urban policy; Regional Authority of Ile de France Region
<b>MAX. POTENTIAL LOSS</b>	<b>OUTCOME METRIC</b> Number of shops created	<b>THRESHOLD FOR REPAYMENTS</b> 300 stores in priority areas 2000 jobs
<b>PREMIUM</b>	<b>REPAYMENTS ONLY IN CASE OF POSITIVE OUTCOME AT THE END OF THE PROJECT (REGARDING FINAL EVALUATIONS)</b>	

**Table 3** Impact création (Impact Partenaires, 2018). Additional information provided by Maha Keramane.

WIMOOV - SIGNED & LAUNCHED	FRANCE	2018 – 2019
<p><b>SOCIAL ISSUE ADRESSED</b></p> <p>The lack of mobility, defined as the inability to move in space, affects all ages and strata of society: adolescents residing in low-density areas, aging individuals without mobility autonomy, modest car-dependent incomes, persons with physical disabilities who have access to work are daily subjects.</p> <p>Mobility is therefore a key factor in the social integration of populations and the economic development of areas.</p>	<p><b>TARGETED POPULATION</b></p> <p>10,000 people with mobility issues relating to employment (no driving license, rural area, physical handicap, etc.)</p>	<p><b>INTERVENTION</b></p> <p>Improving access to employment and training through mobility:</p> <p>Strengthening the support process in an innovative way by proposing, on the one hand, a new gateway to support (mobility test, which will enable the identification of typical profiles in relation to mobility and orientation towards the most suitable accompaniment path) and, on the other hand, by adapting tailor-made pathways through three complementary interfaces: physical, telephone and digital.</p>
<p><b>PROJECT PARTNERS</b></p>	<p><b>INTERMEDIARY</b></p> <p>BNP Paribas</p>	<p><b>INVESTORS</b></p> <p><i>BNP Paribas, Caisse des Dépôts et Consignations, Aviva Impact Investing, Ecofi Investissements</i></p>
<p><b>COOPERATION PARTNERS</b></p>	<p><b>EVALUATOR</b></p> <p>KiMSO</p>	<p><b>PARTNER PUBLIC SECTOR</b></p> <p>Ministry of Employment, Ministry of Ecological Transition and Solidarity and Ministry of economy and finance</p>
<p><b>MAX. POTENTIAL LOSS</b></p> <p>€682k</p>	<p><b>OUTCOME METRIC</b></p> <ul style="list-style-type: none"> <li>• 10.000 mobility tests on beneficiaries with a minimum for young people</li> <li>• 70% of beneficiaries will have a tailored action plan</li> </ul> <p>At least 17% of the mobility tests to be realised by Wimoov prescribers (level of enrolment)</p>	<p><b>THRESHOLD FOR REPAYMENTS</b></p> <p>Proportional repayment on achievement of objectives from defined thresholds</p>
<p><b>PREMIUM</b></p> <p>If the first objective is reached and the second reaches 80%, a premium is paid.</p>	<p><b>PROGRESSIVE REPAYMENTS UNTIL GOALS ARE REACHED</b></p>	

Table 4 Wimoov (Wimoov, 2018). Additional information provided by Maha Keramane.

THE MOBILE SOLIDARITY TIE (CRAVATE SOLIDAIRE) - SIGNED & LAUNCHED	FRANCE, ILE-DE-FRANCE REGION	2018
<p><b>SOCIAL ISSUE ADRESSED</b></p> <p>Support young people in their employment research by offering professional attire as well as counseling for job seekers with the aim of improving their performance during job interviews</p>	<p><b>TARGETED POPULATION</b></p> <p>900 young unemployed people not in the Paris suburbs</p>	<p><b>INTERVENTION</b></p> <p>Helping unemployed people preparing for job interviews and providing them with suitable attire.</p> <p>Create a mobile bus service that will enable implementation of the following activities:</p> <ul style="list-style-type: none"> <li>• Serve less mobile members of the public</li> <li>• Bring an innovative and concrete solution to events targeting job seekers in order to increase the number of beneficiaries</li> <li>• Mobilize a new community of volunteers facing similar mobility challenges to act.</li> </ul> <p>The association's bus will be in two disadvantaged neighborhoods in the greater Paris area.</p>
<p><b>PROJECT PARTNERS</b></p> <p>KEA Partners</p>	<p><b>INTERMEDIARY</b></p> <p>BNP Paribas</p>	<p><b>INVESTORS</b></p> <p>Caisse des Dépôts et Consignations, MAIF Investissement social et solidaire, INCO Investissement, Aviva Impact Investing France</p>
<p><b>COOPERATION PARTNERS</b></p>	<p><b>EVALUATOR</b></p> <p>KIMSO</p>	<p><b>PARTNER PUBLIC SECTOR</b></p> <p>Ministry of Employment, Ministry of Ecological Transition and Solidarity and Ministry of economy and finance</p>
<p><b>MAX. POTENTIAL LOSS</b></p> <p>€405k</p>	<p><b>OUTCOME METRIC</b></p> <p>900 people accompanied 140 enrolled +3pts of positive outcome</p>	<p><b>THRESHOLD FOR REPAYMENTS</b></p> <p>Proportional repayment on achievement of objectives from defined thresholds</p>
<p><b>PREMIUM</b></p> <p>When the job entry rate is higher than the agreed-upon objective</p>	<p><b>PROGRESSIVE REPAYMENTS UNTIL GOALS ARE REACHED</b></p>	

**Table 5** La cravate solidaire (La Cravate Solidaire, 2018). Additional information provided by Maha Keramane.

NEW SOLIDARITY AGAINST UNEMPLOYMENT - IN PROGRESS	FRANCE	2019 - 2023
<b>SOCIAL ISSUE ADRESSED</b>	<b>TARGETED POPULATION</b>	<b>INTERVENTION</b>
Combatting unemployment and social exclusion	Long term unemployed people	2 types of intervention: <ul style="list-style-type: none"> <li>• Introducing the VAE (validation of a degree based on working experience) and assisting beneficiaries through the VAE process</li> <li>• Supporting long term unemployed people when returning to employment in order to ensure the best transition</li> </ul>
<b>PROJECT PARTNERS</b>	<b>INTERMEDIARY</b>	<b>INVESTORS</b>
VAE les 2 Rives (organization adapting a certified methodology for tailor made support in gaining recognition of experience when making job applications)	BNP Paribas and PMO by Co-Conseil	BNP Paribas, Caisse des dépôts et Consignations, Fondation Caritas, Le chant des étoiles (Family endowment fund against exclusion of fragile persons)
<b>COOPERATION PARTNERS</b>	<b>EVALUATOR</b>	<b>PARTNER PUBLIC SECTOR</b>
	KiMSO	Ministry of Employment, Ministry of Ecological Transition and Solidarity and Ministry of Economy and finance
<b>MAX. POTENTIAL LOSS</b>	<b>OUTCOME METRIC</b>	<b>THRESHOLD FOR REPAYMENTS</b>
€460k	3825 beneficiaries oriented either towards VAE process (Target: X enrolments in VAE and Y completion), or towards support when returning to employment (target; to reduce the drop out rate by X pts)	
<b>PREMIUM</b>	<b>PROGRESSIVE REPAYMENTS UNTIL GOALS ARE REACHED</b>	
When the number of beneficiaries aware of the VAE and the number of supported beneficiaries in their job exceed the agreed objectives		

Table 6 Solidarity for employment (Solidarités Nouvelles face au Chômage, 2018). Additional information provided by Maha Keramane.

ARTICLE 1 - FINALIZING	FRANCE	2018-2022
<b>SOCIAL ISSUE ADRESSED</b>	<b>TARGETED POPULATION</b>	<b>INTERVENTION</b>
School drop out of students in agricultural education	1130 pupils from high school (classe 1ère) to first higher education (BTS) in agricultural education	<p>Improve school retention, further education and professional integration for students.</p> <p>Fighting school drop-out in agricultural education establishments and enabling talents from the working class to pursue pathways through selective channels of higher education</p>
<b>PROJECT PARTNERS</b>	<b>INTERMEDIARY</b>	<b>INVESTORS</b>
	BNP Paribas & Citizen Capital	BNP Paribas, Caisse des Dépôts et Consignations, European Investment Fund
<b>COOPERATION PARTNERS</b>	<b>EVALUATOR</b>	<b>PARTNER PUBLIC SECTOR</b>
	KIMSO	Ministry of Economy and Finance, Ministry of Ecological Transition, Ministry of Agriculture and Emmanuel Faber Foundation
<b>MAX. POTENTIAL LOSS</b>	<b>OUTCOME METRIC</b>	<b>THRESHOLD FOR REPAYMENTS</b>
€870k	X workshops, +Y pts on the school retention rate, Z involved mentors, +N pts of school perseverance	Proportional repayment upon achievement of objectives from defined thresholds
<b>PREMIUM</b>	<b>PROGRESSIVE REPAYMENTS UNTIL GOALS ARE REACHED</b>	
When school retention and perseverance exceed the agreed objectives		

**Table 7** Article 1 (Ministère de l'agriculture et de l'alimentation, 2017). Additional information provided by Maha Keramane.

## 2.2.2. Opportunities and Challenges

The French discussion paper identifies the difficulties in the evaluation of social impact. Its basis is the study "Experience in the evaluation of social impact", conducted by Phare for Avis in 2017 (Phare, 2017). They identified five barriers for social impact evaluation, which is an important part of the SIB process:

- a) Strategic barriers: Lack of resources for realizing social impact measurement.
- b) Political barriers: Social impact is often seen as a performance management tool, which can cause difficulty with quantifying the impact of interventions.
- c) Knowledge barriers: The concept of social impact assessment is new, so appreciation of the results can be associated with a lack of knowledge.
- d) Technical barriers: Data collection, data analysis and interpretation of the results are difficult because the outcome metric and what should be measured are often not completely clear.
- e) Organizational barriers: Internal resistance from stakeholders against measurement can cause problems.

The centralized political system in France triggers challenges and opportunities for SIBs in France:

On one hand, the centralized system enables larger scale SIBs with larger providers represented in the whole area and ministries refunding the projects. In fact, it is the national level which has launched a national call for proposals to select and refund SIBs.

On the other hand it does not facilitate bottom-up approaches from local areas as it is difficult to convince ministries or investors to participate in solving a local issue.

A solution could be to develop a national SIB based on local issues, with national coordination in order to ensure an interesting financial volume and several pilot areas in order to give concrete and tailor-made responses to local difficulties, with local providers.

The importance of public administration in dealing with social and/or health issues is a natural brake on the process, even more so at central level. Developing SIBs at local level could accelerate the process, but the financial volume is probably not sufficient for such

a contract. Therefore, national coordination of several local projects under an "umbrella SIB" could enable a tailor-made and more rapid response to social and health issues.

## 2.3. Germany

### 2.3.1. Actual Conditions

#### Political System and Welfare Policy

Regarding legislation in Germany, an important consideration is the federal system with 16 federal states. Decisions about social policies are not made exclusively by the national government, but also on state level or even on local level. Federal states have far reaching latitude. For instance they decide on family policy, health policy and education. There are also opportunities to design policies at local level such as social services or housing.

Among other things, this differentiation combined with social legislation makes the legal framework in Germany very complex. When implementing a SIB, a lot of uncertainties regarding existing laws and personal liabilities must be clarified beforehand (see chapter 2.2.4.).

Although Germany is a welfare state, some people are hardly reached, or not at all (any more) by standard social security measures, education, and the apprenticeship system. These people may be from diverse backgrounds, including families and children, juveniles, the marginalized, or those in need of care as well as people with psychological disorders. For these beneficiaries, SIBs can be a meaningful addition to traditional state-run social policy.

#### NEETs and Seniors

Several policy areas relating to NEETs and seniors can be constituted (see chapter X for detailed information). For example, more than 550,000 young people in Germany have neither an employment nor an apprenticeship training position. This comprises a NEETs rate of just 8.7% compared with the EU average of 15.3%. Most of them are NEETs due to family responsibilities. Half of all German NEETs are registered in public employment services and financial assistance is given to three quarters of all NEETs in Germany.

Action is also needed within the range of social welfare policies for seniors. More than one million of the generation 50 and above cannot make a living on their own (Fliege et al., 2015: 1). Furthermore, the risk of poverty at 16% per person is higher than the EU14 average. Forecasts looking at demographic change state that in 2050 one in three Germans will be over 60 (Bundesamt, 2016: 41).

### Social Impact Bonds in Germany

The first ever completed SIB in Germany (“ELEVEN”, see table No. 8) shows that cost savings are not seen as the only successful outcome of a SIB in Germany. In this regard, the improvement of service quality for the participants was seen as more important than short-term savings for the state. Meanwhile a second SIB (“Prävention in den Hilfen zur Erziehung stärken” [Strengthening parenting assistance], see table No. 9) is being conducted in Germany and a third has just started in Mannheim (see table No. 10).

<b>ELEVEN</b>	<b>AUGSBURG, BAVARIA</b>	<b>09/2013 – 12/2015</b>
<b>SOCIAL ISSUE ADRESSED</b>	<b>TARGETED POPULATION</b>	<b>INTERVENTION</b>
Unemployment of adolescents and young adults	Unemployed adolescents and young adults (max. age 25) who live in the region of Augsburg. The participants are currently not attending any school, they did not complete compulsory education/ apprenticeship, have no occupation; no participation in programs of the employment agency for at least 2 years	Through receiving intensive support, participants are integrated into the labor market. They also receive ongoing support after being placed in a job/ apprenticeship.
<b>PROJECT PARTNERS</b>	<b>INTERMEDIARY</b>	<b>INVESTORS</b>
Apeiros e.V. Ausbildungsmanagement Augsburg/ Eckert Schulen Kinder-, Jugend- und Familienhilfe Hochzoll Joblinge gAG München	<i>Juvat gemeinnützige GmbH</i> (a non-profit subsidiary of the Benckiser Foundation Future in Munich); their responsibility included negotiating the contract, getting investors and partners responsible for operation, and finding a suitable partner for evaluations	BHF-BANK Foundation BonVenture GmbH BMW Foundation Herbert Quandt Eberhard von Kuenheim Foundation of BMW AG
<b>COOPERATION PARTNERS</b>	<b>EVALUATOR</b>	<b>PARTNER PUBLIC SECTOR</b>
	<i>Spiegel RA WP StB Partnerschaft mbB, München</i> (Success evaluator) <i>University of Hamburg</i> (Process Evaluator)	<i>Bavarian State Ministry of Labor and Social Affairs, Family and Integration</i> (Bayerisches Staatsministerium für Arbeit und Soziales, Familie und Integration)
<b>MAX. POTENTIAL LOSS</b>	<b>OUTCOME METRIC</b>	<b>THRESHOLD FOR REPAYMENTS</b>
Completely covered by the investors → 100%	Pre-defined number of adolescents/ young adults that are placed in a job/ apprenticeship for at least 9 months	20 individuals placed in a job/ apprenticeship
<b>PREMIUM</b>	<b>REPAYMENTS ONLY IN CASE OF POSITIVE OUTCOME AT THE END OF THE PROJECT (REGARDING FINAL EVALUATIONS)</b>	
3% overall return		

Table 8 eleven (Juvat gemeinnützige GmbH, 2016b)

<b>„PRÄVENTION IN DEN HILFEN ZUR ERZIEHUNG STÄRKEN“</b>	<b>OSNABRÜCK, GER</b>	<b>09/2017 – 09/2021</b>
<b>SOCIAL ISSUE ADRESSED</b>	<b>TARGETED POPULATION</b>	<b>INTERVENTION</b>
Parents who have an individual need for support due to family challenges.	Families with children between the ages of two and twelve years.  The families are identified within the framework of a legally prescribed procedure for the granting of help for parenting. The social service of the youth welfare office in the administrative district of Osnabrück is responsible.	48 selected families get access to levels four and five of the <i>Triple P-Programme</i> . Pre-accredited <i>Triple P-Trainers</i> of the Lega S Jugendhilfe support participants by carrying out several single- and group-training events
<b>PROJECT PARTNERS</b>	<b>INTERMEDIARY</b>	<b>INVESTORS</b>
Social services are provided by <i>Lega S Jugendhilfe</i>	Phineo gAG	<i>Kreissparkasse Bersenbrück</i>
<b>COOPERATION PARTNERS</b>	<b>EVALUATOR</b>	<b>PARTNER PUBLIC SECTOR</b>
<i>Bertelsmann Foundation</i> (project initiator)	Evaluators are selected by <i>Bertelsmann Foundation</i>	<i>Administrative district of Osnabrück</i>
<b>MAX. POTENTIAL LOSS</b>	<b>OUTCOME METRIC</b>	<b>THRESHOLD FOR REPAYMENTS</b>
Completely covered by the investors → 100%	Positive development of the families shown in questionnaires handed out at the end of the project. Also, no further need for aid regarding help for parenting.	
<b>PREMIUM</b>	<b>REPAYMENTS ONLY IN CASE OF POSITIVE OUTCOME AT THE END OF THE PROJECT (REGARDING FINAL EVALUATIONS)</b>	
If the measures are very successful, the <i>Kreissparkasse Bersenbrück</i> will receive a risk compensation		

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

<b>„BILDUNGSCHANCEN FÜR KINDER VERBESSERN“</b>	<b>MANNHEIM, GER</b>	<b>09/2017 – 08/2022</b>
<b>SOCIAL ISSUE ADRESSED</b>	<b>TARGETED POPULATION</b>	<b>INTERVENTION</b>
Poor educational level among students with migrant background at elementary schools	Students with migrant background, parents and teachers at Pestalozzi school. The participants have a low level of education in core subjects as mathematics and low language skills.	The students are guided from grades 1 to 4 <ul style="list-style-type: none"> <li>• Additional lessons in German and mathematics</li> <li>• Workgroups in the afternoon</li> <li>• Individual support by mentors</li> <li>• Supportive work with parents</li> <li>• Instructions for teachers</li> </ul>
<b>SERVICE PROVIDER</b>	<b>INTERMEDIARY</b>	<b>INVESTORS</b>
<i>Pestalozzi School, Mannheim</i>	Phineo gAG	<i>BASF SE (social investor)</i>
<b>COOPERATION PARTNERS</b>	<b>EVALUATOR</b>	<b>PARTNER PUBLIC SECTOR</b>
<ul style="list-style-type: none"> <li>• Bertelsmann Foundation</li> <li>• <i>Fairchance Foundation</i></li> <li>• <i>Therapy Centre for Dyscalculia</i></li> <li>• <i>Tech First Deutschland gGmbH</i></li> <li>• <i>KinderHelden gGmbH</i></li> </ul>	The evaluation is contracted by Bertelsmann Foundation after the end of the project	<i>City of Mannheim</i>
<b>MAX. POTENTIAL LOSS</b>	<b>OUTCOME METRIC</b>	<b>THRESHOLD FOR REPAYMENTS</b>
Completely covered by the investors → 100%		
<b>PREMIUM</b>	<b>REPAYMENTS DUE TO POSITIVE OUTCOMES AT THE END OF THE PROJECT (REGARDING FINAL EVALUATIONS)</b>	

**Table 10** Bildungschancen für Kinder verbessern (Bertelsmann Stiftung, 2018b, 2018a)

### 2.3.2. Opportunities and Challenges

A big challenge for future Social Impact Bonds in Germany originates in the complex legal framework that affects the scope for design of different stakeholders. As Thomas Scheuerle and Anja Nieveler describe in their Discussion Paper, representatives from different local bodies in Germany are uncertain of the legal position. Furthermore, public actors expressed insecurities about personal liabilities (Scheuerle and Nieveler, 2017; Schneider, 2017).

a) The German Social Code (Sozialgesetzbücher, SGB) regulates the legal rights of individuals in specific

fields and the financing instruments for social welfare actions. The public partner who has decision-making authority regarding the social issues and target groups to be addressed must determine which of the financing instruments provided in the law is to be used.

One option for financing a SIB is public funding in accordance with public law (öffentlich-rechtliche Zuwendung). In this way social service providers are usually paid by the public partner for certain services. As a constraint of the underlying principle of subsidiarity, it must be demonstrated beforehand that a SIB arrangement, involving more stakeholders than just the social service provider, is necessary to achieve a meaningful outcome. Another principle of

German public law is the principle of subordinate and complementary public financing which make it difficult to justify the full coverage of costs plus the arranged premium, as normally only the basic supply is paid for by the public.

The second option, which was also used by ELEVEN, is a service agreement under civil law (*zivilrechtlicher Leistungsvertrag*) between the public body and the intermediary who in turn arranges sub contracts with investors and social services organizations. Within the framework of this option, the contract defines relatively clearly the results that are to be achieved, duties such as mandatory information provision and permit requirements, and the payment mechanism. According to the principle of economy, the selection of an intermediary would require a tendering procedure. In the case of ELEVEN, the challenge could be avoided, as the intermediary did not charge any fee (Fliegauf et al., 2015: 12–13).

b) As already mentioned, the principle of economy underlies German budgetary law. This implies that potential savings of a new action must be demonstrated beforehand. In case of the ELEVEN-SIB, this evidence was achieved in collaboration with the Court of Auditors. Another obstacle in this context lies in the necessary funding commitment. SIBs require a period of several years. To accomplish a funding commitment for more than one year is difficult, especially when SIBs are supposed to be completed beyond an election period (Fliegauf et al., 2015: 13).

c) As the German Law on Foundations requires a risk-averse investment strategy with preservation of the capital endowment, mission investments (i.e. investments within asset management) in SIBs are complicated for foundations. They bear a significant risk of not getting the investment back in the event of failure. One option is investments from operational resources of foundations when the SIB contributes to the mission of the foundation. In ELEVEN the foundations involved made their investments from free resources, which can be written off as a donation if lost. But this may conflict with the restrictions on commercial business activities. Therefore, such a procedure cannot be a permanent solution (Fliegauf et al., 2015: 13, 15-16).

Summing up, most public representatives that were consulted in the German workshop declared the administrative effort to be disproportionately high, due to these challenging legal uncertainties. Along with

that, administrations responsible for financial planning do not derive any particular benefit from saving money.

However, SIBs also offer advantages for the public, as they provide a chance to reduce public spending in the German welfare system, at least in the long run. Moreover, they may help to promote reflection on how impact can be estimated and what tools and structures must be provided for this purpose. Furthermore, they can help to instruct about the inclusion of tools for evidence in future decisions about allocations in social contexts.

Another benefit of SIBs is the possibility of helping people who are rarely or never reached by the social framework like schools, regular youth welfare institutions or job centers. Within a SIB, social enterprises have the opportunity to concentrate on these target groups and the chance to work constantly and intensely with them on innovative approaches.

As the accompanying evaluation of ELEVEN states, the social enterprises stated that innovative approaches are more easily enabled through relatively flexible budgets without high bureaucratic obligations. Furthermore, they offer all stakeholders the chance to increase their understanding of the beneficiaries (Scheck, 2016: 34).

As will be examined in chapter 3, measurement of the project's impact is a crucial point in the contract design. The authors of the German discussion paper indicate that the workshop also addressed the consequences of the complex legal situation in Germany. As the results of the SIB have to be calculated beforehand and must demonstrate its better cost-benefit relation in contrast to other approaches, profound knowledge of the social security and youth welfare systems in Germany are necessary for impact measurement.

Another striking point is potential stakeholders' lack of operating experience. The effort connected with gaining insights and learning from SIB projects is still relatively high for all stakeholders.

Furthermore, there may be only a slight gain in knowledge about the instrument and a low "learning-culture" with respect to SIBs that have already been realized. Although information about the successful SIB in Augsburg was provided by the intermediary and the public partner the Bavarian State Ministry of Labor, Social and Family Affairs and Integration, more information regarding the positive and negative experiences involved,

a qualitative evaluation of the outcome and questions of costs would be desirable to establish a better learning process in connection with SIBs.

Regarding potential investors, interviews revealed that SIBs are an option for impact investors who accept returns on their investments below the regular market level in favor of the social impact that is created, as there is a high risk linked with small profit when investing in SIBs. Such impact investors may be foundations, high-net-worth individuals, or companies with a CSR budget.

## 2.4. Italy

### 2.4.1. Actual Conditions

#### Political System and Welfare Policy

The state of Italy is a constitutional republic; the constitution was set up in 1948. The political system is also divided into executive, legislative and juridical power.

In the early 2000s, a new Framework Law on social policies and a constitutional reform completely modified the territorial distribution of competences in the field of welfare. According to the principle of subsidiarity, they aimed at a territorial re-organization (mainly decentralization) and increased social participation, reinforcing the role of private actors and civil society organizations in the creation of a mixed welfare system.

The modification of the constitution attributed a primary legislative power to the regions in the social assistance field with the consequent possibility of realizing autonomous choices regarding both the social services system and the ways of satisfying social rights in the various territories. Administrative functions have been assigned to municipalities, organized in 'social zones', identified at territorial level with the main responsibility for translating regional principles and frameworks into local programs, implementing them and delivering social benefits and provisions.

However, the constitution still attributes to the central state exclusive competence on the general orientation of social policies and on "determination of the essential levels of benefits concerning civil and

social rights that must be guaranteed throughout the national territory", in order to equalize services in the different regional systems.

In this multilevel governance system, each territorial level has the duty to promote a wider and concrete involvement of stakeholders, in every phase of the policy making process.

Literature considers the Italian welfare system as representative of the so-called FAMILISTS [Esping-Andersen 1999] models, in which intra-family and inter-family relationships are intense and extensive, and the family acts as a social shock absorber for meeting the needs of its members. In this system, the state intervenes only in a subsidiary manner when the family has not been able to fulfill its task. The public services system is not fully developed in this model.

The social assistance sector in Italy has always been marked by important peculiarities and criticalities:

- absence of an organic and inclusive policy to combat poverty
- lack of an organic national regulation that sets uniform standards for the whole of Italy (leading to significant disparities among different regions)
- concentration of spending on the pensions sector, with consequent marginalization of the social assistance sector dedicated to the family, unemployment and housing emergencies
- different degrees of protection enjoyed by different occupational categories (employees, independent workers, agricultural workers, etc.)
- backwardness of services that are not able to satisfy new needs in a post-industrial society such as non-self-sufficiency and problems of balance between family and work
- lack of resources for the social assistance sector

The consequences of this Italian model of social assistance translate into problems of efficiency, effectiveness and fairness. The welfare state crisis which began in the 1970s has been particularly intense in Italy. The change in the configuration of modern families has led to a reduction in the latter's ability to function as a social amortization, thus leading to more serious consequences.

The third sector has a long history in the Italian welfare system, but in the last 15 years, horizontal governance relations have been reinforced and the interaction among public institutions and other actors are organized on the basis of the new perspective of subsidiarity. This entails a shift of responsibilities from public central actors to local non-profit actors, very often without providing and redistributing 'adequate' resources to fulfill them. This means that in many circumstances, the role of civil society is substitutive of public responsibility instead of complementary and this reinforces the fragility, fragmentation and territorial diversification of the Italian welfare system.

At present, the social economy sector is mainly regulated at national level through several regulations referring to a multitude of organizations that work in the social economy: social enterprises, social cooperatives, associations of social promotion, organizations of volunteers, NGOs, foundations, associations and committees, innovative start-ups with a social vocation, benefit companies.

Currently an overall change in regulation is taking place, through what is called Reform of the Non-profit sector Law that started in 2016 and will be presumably operational from 2019, and will introduce several changes.

Once the Reform of the Non-profit sector Law enters into force, there will still be a multitude of different organizations, but they will all fall in the category of "Organizations of the Non-profit sector" and their fiscal and financial aspects will be regulated by a single law. (Chapter-Sources: (Campanini; Ferrera, 2012)).

### NEETs and Seniors

Looking at the group of NEETs and young people in Italy in 2017, the NEETs rate (people aged 15-34 who are not in education, employment and training) was 25.5% compared to the EU average of 14.7% (Eurostat, 2017b). More than 10% of the NEETs group is composed of undereducated young people with only primary or lower secondary education (grade 8). Early school leavers are therefore overrepresented in the Italian NEET group. Undereducated youngsters have also a higher probability of becoming unemployed, and the group of young unemployed Italians aged 15-29 years (31.6%) is far higher than the EU average (17.5%). Despite the alarming size of the problem, the rate of young people registered with public employment services (PES) in Italy is about 34%. Only about 2% of the Italian NEETs receive

financial assistance (Ledermaier and Mascherini, 2016: 51). Most of them become discouraged workers: 11.1% compared to EU average of 6.4%.

Addressing young people's poor education and unemployment is a compelling issue in Italy. Preventative interventions in this field are crucial since the phenomenon begins quite early, at age 14-16 when students are more at risk of dropping out from school (Ballarino and Checchi, 2006). NEET interventions are suitable for a SIB mechanism since educational and employment outcomes are measurable and data are available to estimate savings generated from the achievement of those outcomes. For instance, the public cost of grade repetition in Italy is equal to 7000 Euros per person and grade repetition increases the risk of leaving school and becoming NEET (OECD, 2017). The public cost of NEETs must also take into account welfare schemes (such as unemployment benefits, housing benefits, education-related allowances and others). According to the European Foundation for the improvement of Living and Working conditions the public costs of NEET in Italy are equal to 14,337 euros per person. Therefore, significant savings can be generated for National and Regional Public Authorities willing to commission a SIB in the NEET field.

The process of demographic aging - understood as an increase in the elderly component in relation to the overall population - is a phenomenon that characterizes not only the Alpine region, but all European countries. It depends, in general, on two different factors: on the one hand, the long-term dynamics of births, with its alternating phases of growth and contraction; on the other hand, the widespread improvement of health conditions, as a positive consequence of progress in the medical and scientific fields. These factors increase life expectancy for people over 65 and affect the generational structure and human and social capital of individual communities.

Italy leads the 28 EU countries in the percentage of elderly population over 65 (21.4% ahead of 20.8% in Germany and 20.5% in Greece). The phenomenon of aging involves deep socio-economic effects and significant impacts on the system of local services in the field of health and care.

Access to these services and to supportive family and social networks remains decisive in terms of quality of life, so much so that the lack, or inadequacy, of public and private interventions aimed at facing situations of economic difficulty or reduced self-sufficiency

promotes, above all among the elderly themselves, the growth of the phenomena of poverty and exclusion.

The progressive increase in numbers of older people also creates new challenges, including the ability to implement actions and promote initiatives in order to support active aging processes in which over sixty-fives become protagonists of their projects and contexts of life and not simply recipients of care and assistance. The general dynamics of growth of the over 65 population over a decade confirms the importance of foreseeing and implementing, by the legislator and the regional socio-economic systems, effective and innovative interventions in favor of the elderly, whose importance is now a constantly growing reality.

As is known, one of the main problems related to aging is the risk of loneliness, social isolation and the difficulties that may arise in the absence of a reference family and relational network. In this context the individual attitudes of the elderly person, their state of health and the human, financial and cultural resources at their disposal come into play.

We are therefore faced with a profound demographic transformation. The ability to identify effective strategies is one of the challenges that the EU is already confronted with. One particular strategy is active aging, according to which subjects over 65 are no longer simply carriers of needs, but also of resources that, when properly supported, can contribute to society. Finally, limiting the hospitalization or institutionalization of the elderly in structures promoting their dignity, autonomy, free choice and self-determination would produce significant savings in the costs of regional welfare systems.

### Social Impact Bonds in Italy

In the years directly after the financial crisis, there was a relevant discussion about impact finance as a way of supporting the restarting of the economic cycle. The result was a growing move in Italy from subsidies and public funding towards different interventions and to public-private partnership based on the level of payment by results. In 2017, two remarkable feasibility studies on Social Impact Bonds were conducted.

1. Fondazione Sviluppo e Crescita CRT and Human Foundation edited a feasibility study on the viability of a pay-by-results contract in the sector of social and employment reintegration of ex-prisoners ("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 and the Regional Government of Piedmont conducted a feasibility study to set up a Social Impact Bond for tackling Early School Leaving among migrant students. The study was carried out during the "SIB for Growth" project, financed by the European EaSI program. Project output, the procurement procedure and the contract model comply with the Italian Public Procurement Regime.

It is also worth noticing that impact measurement and management, which are key aspects of a SIB implementation, are quickly becoming widespread in Italian social policies adopted by public authorities and notable private foundations, such as the public-private social enterprise "Impresa con I Bambini". Furthermore, a social innovation fund of 25 million euros was set up through the budget law in December 2017, with the aim of piloting impact contracts.

So today, it is not possible to report a complete SIB initiative. Nevertheless, there are different areas that are expressing interest in implementing SIBs in Italy.

### 2.4.2. Opportunities and Challenges

Despite the strong interest from the regions and different actors in Italy in implementing SIBs, there are also some limitations in the Italian context that extend beyond the legal framework.

During the workshop "The challenge of the Social Impact Bond", participants identified two different limitations as described below:

A. Objective (or systemic) limitations:

- Poor flexibility of the formal legal framework
- Short-term orientation: The short-term tension imposed by public finance constraints radically contradicts the SIB philosophy. Social impact, by its very nature, manifests its ability to create value and recalculate spending on medium-term horizons. Linking it to the ability to generate savings in a short-term horizon is a limitation that greatly reduces the potential of SIBs, while there is also a contradiction between this trend and the norm requiring PAs to plan multi-annual economic and financial cycles
- Lack of process management procedure

- Poor integration of the SIB process into the economic financial planning cycle

B. Subjective (or cultural) limitations:

- Weak managerial skills in the PA
- Poor financial literacy in the PA and in non-profit sector organizations: this leads to skepticism and fear in relations with financial players
- Difficulty in governance of multi-stakeholder processes
- Weakness of leadership, partly due to a lack of overall political strategy. The expressed interest in SIBs has been mentioned above

The workshop, however, highlighted opportunities that should not be underestimated. As a first positive element, it is worth mentioning the interest shown by the participants in the workshop, which, as has been said, are important public organizations. In particular, regional representatives, engaged in a dual role of coordination (upwards with European and national policies, downwards with the municipalities) expressed interest in SIBs and stated their willingness to better understand the possibilities of implementation in their contexts.

Furthermore, the following aspects of the Italian context emerged as an opportunity:

- Availability of the ethical finance system
- The Non-profit Sector Reform (2016) which pushes non-profit sector organizations (TSOs) to change their approach
- Birth of networks and centers of expertise that create greater awareness (see role of foundations)

## 2.5. Slovenia

### 2.5.1. Actual Conditions

#### Political System and Welfare Policy

Slovenia is defined as a decentralized unitary state. The national government is the legislature in all areas and different state authorities supervise the legality of the work conducted by the local communities.

Twelve statistical regions implement national legislation, but do not have their own governments or legislation. Furthermore, 58 governmental entities that do not have local government status grant state responsibilities and manage the accountabilities of their ministries at regional level. The lowest administrative level consists of 212 municipalities. According to the constitution, the competencies of a municipality comprise local affairs which may be regulated by the municipality autonomously and which affect only the residents of the municipality. Municipalities are responsible for social transfers concerning pre-school and primary education, housing and to a certain extent institutional care.

In contrast to many post-socialistic countries, Slovenia has no welfare gap, but rather a very strong welfare state. Article 2 of the Constitution of the Republic of Slovenia stipulates that Slovenia is a state governed by the rule of law and a social state. Since the social state is embedded at the beginning of the constitution, it has fundamental value (Filipovič Hrast and Kopač Mrak, 2016: 290).

The Slovenian welfare state is shaped by the former socialist system with its state monopoly structure. The public sector still has a dominant role. However, there are some areas of social services covered by social enterprises and non-profit sector organizations, consisting of non-governmental and non-profit organizations. These implement government-mandated projects and services.

#### NEETs and Seniors

The NEET rate in Slovenia of 12.3% is below the EU average of 14.8% as of 2015. In Slovenia, the proportion of NEETs in long-term unemployment, at 28.2%, is slightly above the EU average (22%). On the other hand, only 2.1% of all NEETs are discouraged workers (EU average 5.8%). Besides school dropout, the main problems of this group are youth unemployment - especially long-term unemployment - as well as violence, crime, alcohol and drug abuse (Ledermaier and Mascherini, 2016: 13-36).

Furthermore, Kump, Kavaš, and Črnigoj address the 30-35 age group, even though they are beyond the age definition of NEETs. They were the most affected by the unfavorable labor market which resulted from the economic crisis, but are overlooked by the Youth Guarantee of 2014 that led to the creation and development of activities intended to assist young people

in getting back into education, training or employment. Therefore, the authors plead for an inclusion of the 30-35 age group in the NEETs group in Slovenia.

Increasing life expectancy and a low birth rate are leading to increasing aging of the population in Slovenia. At present, about 18 percent of the population is 65 and older, while by 2080 their estimated share of the population could be about one third (Eurostat, 2017a). This also leads to an increasing need for services for seniors.

### Social Impact Bonds in Slovenia

The strong welfare state of Slovenia is one of the reasons why no SIBs have been realized so far. For most of the relevant stakeholders, the system of social impact bonds is still unknown, although the SIBs were presented and the initiative for a pilot SIB scheme in Slovenia was given by Fund 05 – Foundation for Social and Impact Investment as early as 2010 on the 1st Social Economy Days in Ljubljana. In 2012 the Slovenian Forum of Social Entrepreneurship included ethical banking and SIBs in its goals. However, the aging population and the consequential increase in social protection expenditure will lead to welfare state reforms that might influence the role of the state.

## 2.5.2. Opportunities and Challenges

When it comes to the legal framework, different challenges can be detected for Slovenia. First, it is unclear whether current Slovenian legislation supports SIB implementation at all. Therefore, more research on this topic is needed.

The most challenging aspects are:

- a) The return on investment that is to be paid to investing stakeholders in the event of a successfully completed SIB.
- b) The public procurement procedure. First, there is a lack of experience as no SIBs have been implemented in Slovenia so far. Secondly, Slovenia's public procurement system has been subject to numerous institutional and regulatory changes in a short span of time, resulting in uncertainty about applicable rules and procedures. A third challenge lies in the weak administrative capacity and the long time that procurement processes require in general.
- c) Competences of public partners in possible policy fields. The political system with a strong national

level limits local responsibilities, competences and financial resources of the municipalities. This also applies to areas in which the local levels are responsible (urban and spatial planning, rest homes, housing, education (preschool, elementary school)). Municipalities face a lack of funds for implementing national legislation.

SIBs might be an interesting new approach to reducing costs for social services. Moreover, they give the government the possibility of testing alternative services with the help of private support. If a project is successful, regular funding may be provided.

One crucial point is communicating and promoting the benefits. SIBs offer not only possibilities for the state to test new approaches, but include the chance to reach people that are not reached through existing initiatives.

Nevertheless, when it comes to the estimation of SIBs in Slovenia, the Discussion Paper describes a profound mistrust shown by past governments and the public towards Social Impact Bonds, as Slovenia has a strong and well-functioning welfare system and there is a fear that SIBs will lead to the monetization of welfare work and have an increasing influence on the scope and range of social services as the monetary dimension becomes dominant. Furthermore, the authors describe incomprehension in relation to the rate of return for investors, since this money is intended to be spent on social services as well.

Moreover, identifying a social problem area which could benefit from SIB implementation is a challenging task in Slovenia, as the social services already operate in almost all policy fields, although problems arise due to lack of funding. The smallness of the country makes it even more difficult to find projects that would be of an appropriate size to be economically financed through SIBs.

On the issue of potential stakeholders in Slovenia, possibilities and obstacles can also be detected. First, the concept of SIBs is almost unknown to most of the potential partners. While the social economy sector is partly familiar with it, SIBs are largely unknown to the remaining stakeholders such as public partners, local authorities, etc.

Successful implementation of SIBs requires motivated government authorities who are interested in solving management problems in an innovative way and reducing costs. In addition, it needs interested investors and efficient social service providers.

Although potential investors who donate a large amount to social projects may be identified, it is not quite clear whether they are interested in investing in SIBs as well. An aggravating factor is that unlike donations, no tax allowances are given for investing in a SIB.

Another challenging task is finding appropriate social service providers. In most cases, current social enterprises are too small to attract private investors. On a judiciary level, the Social Assistance Act prohibits gaining any value through social services. Social service providers, who are most likely executive partners of Social Impact Bonds in Slovenia, are exclusively nonprofit legal entities and their excess revenue is used for social entrepreneurship or other non-profit purposes only. Therefore, financial returns for investors in SIBs represent a controversial issue, also for other stakeholders.

## 2.6. Common Elements and Intermediate Result

When looking at Social Impact Bonds in the Alpine region, it appears that although the countries involved have differing political conditions, their own legislatures and diverse social welfare systems, there are similarities related to obstacles and opportunities for Social Impact Bonds that were described comprehensively by the authors of the discussion papers. Therefore, common open questions can be detected in the areas of legislation, contract design and its implementation and in the area of potential stakeholders.

### Legal uncertainties

Chapter 2 identified differing vast constraints for SIBs in Austria, France, Germany, Italy and Slovenia on a judiciary level. However, all shared a massive insecurity with respect to the feasibility of SIBs under current law. For an effective implementation of SIBs in the individual states, the establishment of a political and legal framework that enables Social Impact Bonds or at least allows some pilot projects is required. Moreover, structures that reduce the individual costs of a SIB are needed, to make them attractive in the long term.

One main task when implementing a SIB is planning and structuring it. The structural setting contributes essentially to the success or failure of the project. Several core areas have been described by the authors of the discussion papers.

### Preconditions

As the SIB contract defines not only the goals of an action, but also its preconditions, difficulties may not only arise concerning the completion of a project, but also the fact that the environment of the beneficiaries must be verified. Not only must the target group be defined, it also requires a lot of effort to examine if they have indeed dropped out of the traditional social service system.

### Measurement and Evaluation

Another crucial point for the success of a SIB is evaluation and impact measurement. Therefore, the development of efficient impact measurement tools is of great importance when designing the contract. Currently, there is a lack of systematic evaluations. In order to establish a meaningful instrument, the guarantor requires detailed knowledge of the legal environment, as well as expertise in impact measurement procedures and the ability to progress. Moreover, the discussion about measurement raises fundamental questions referring to the worth of social work. Is social value measurable at all? Does it mean that only projects that can be measured can be funded? Does success automatically imply that the benefits outweigh the costs?

### Procurement

When working with public institutions, a procurement process is necessary to obtain services or to commission institutions. Problematic constellations may result from this; for example, involvement of the social service provider at an early stage can be very difficult. Therefore, finding alternative contract allocations that are unused so far is decisive.

### Contract Design

A key aspect for the SIB mechanism to work is contract design. The difficulty of contract design for SIBs is a factor common to all the countries with their individual political and social backgrounds. Because SIBs are a rather new instrument, not much experience is available, which makes the SIB contracting process a conceptual problem.

## Refund

Monetary refund in case of success is one of the essential parts of a SIB. Therefore, the rating of the project is a main aspect. Customarily, a SIB is seen as successful if the impact is higher than the costs. Success means saving on costs. Monetary aspects are easy to measure and evaluate, but stakeholders must be aware that different projects need different methodologies. Besides monetary aspects, other aspects such as the beneficiaries or social issues should also be part of the measurement. A critical point is to avoid seeing cost savings as a standard assessment of social values. Because SIBs are a rather new instrument, not much experience is available. The question is what happens to the money in the case of failure. The investor will not receive the money back, but for the public partner new problems may arise. In many cases it is problematic when money that was foreseen to be spent is not required. One possible solution could be staggered SIBs, as opposed to the current all-or-nothing design. If the measurement shows success in parts of the project, there could be a partial reimbursement. This would also lower the risk for investors and thus make investing in a SIB more attractive for them. Another advantage of this model is the possibility of reducing the transaction costs of finding partners, as lower risk makes SIBs more attractive for investors.

## Stakeholders

In a multi-stakeholder arrangement, it is important to find a reasonable number of partners. When for example deciding on the social service institution(s), it must be considered whether they have enough capacity for the work in the SIB, but that a lot of different providers who are not used to working together may not be very efficient and the transaction costs might be very high. SIBs bring together different actors who might not be in contact otherwise. Social service providers, public administrators, foundations, consulting agencies and investors try to bring new solutions to social issues and help people in need. This can be a huge advantage for the project as new ideas and prospects are carved out. To profit from new perspectives, one of the main tasks is communicating with stakeholders at the beginning of a new SIB. To avoid misunderstandings during realization, time must be taken to get to know the different mindsets, to start to understand each other and to find reasonable compromises. As SIBs are outcome-orientated, some pressure to achieve a certain goal can help increase

efficiency and effectiveness in pursuing this goal, and as SIBs usually lead the way in new policy fields, the social service organizations involved are highly motivated to give this new method a try. What is more, participation in a SIB can also be good publicity for the social enterprises through the public attention.

However, stakeholders must be aware that this constellation also contains conflict potential. Diverging approaches and attitudes can clash in this new constellation. Conflicts may arise among the participating stakeholders. When two or more social service providers work together in a SIB, the solution approaches may diverge from each other and at worst be inconsistent. Furthermore, a tight budget can lead to an increased rivalry between the social enterprises. Attention must also be paid to the fact that a too tight budget, matched with incentives for fixed goals, increases the risk for self-exploitation.

In a nutshell: For stakeholders, a lot of open questions concerning SIBs in the Alpine Region can be identified. The following chapter III will give advice, expanded with best practice examples, for those actors interested in implementing a SIB-project.



## 3. GUIDELINES FOR INTERESTED STAKEHOLDERS

### 3.1. Development Process of a Social Impact Bond

This chapter is dedicated to the core of the Common Methodology. The SIB development process is presented in the following section and its individual steps are considered in more detail. In the international discussion, as in the previous chapter, the question of how to reduce SIB transaction costs keeps coming up. As part of this process, one frequently mentioned consideration is whether a consistent or harmonized model template could correct this problem. One side says that with a fixed number of investors, a single contract model, and a customized approach, processes can be simplified and ultimately financial savings in transaction costs and ongoing costs are possible. The other side rather focuses on the background of an SIB. It argues that SIBs serve to solve massive social problems in certain social groups which are usually difficult to reach, and thus allow the state to make savings on such complex interventions and activities. The flexible adaptation of a SIB to the needs group, to the investors, its purpose or the financial possibilities would be lost if the SIB model were standardized. We see the greatest potential of SIBs in these possibilities of individual adaptation. Therefore, the next pages do not specify an orthodox model to follow, but a suggestion of how to approach the SIB. The following chapter tries to give only possible answers to the question of what opportunities and steps exist when developing a SIB.

Chapter 3 is based on the work of Social Finance (2013), "A Technical Guide to Developing Social Impact Bonds" and the eight steps to building a SIB. In the build-up process, it makes sense to go through one step at a time and work on it individually for the SIB. Some steps, such as defining the social issue and the target population as well as defining the intervention, are mostly needed and completed at the development stage of a SIB. Others, however, are under construction, but also come up in conversation repeatedly in the implementation of a SIB, such as working on the business case, the outcome metric or contractual obligations. The following diagram depicts the individual steps in the development process of a SIB.

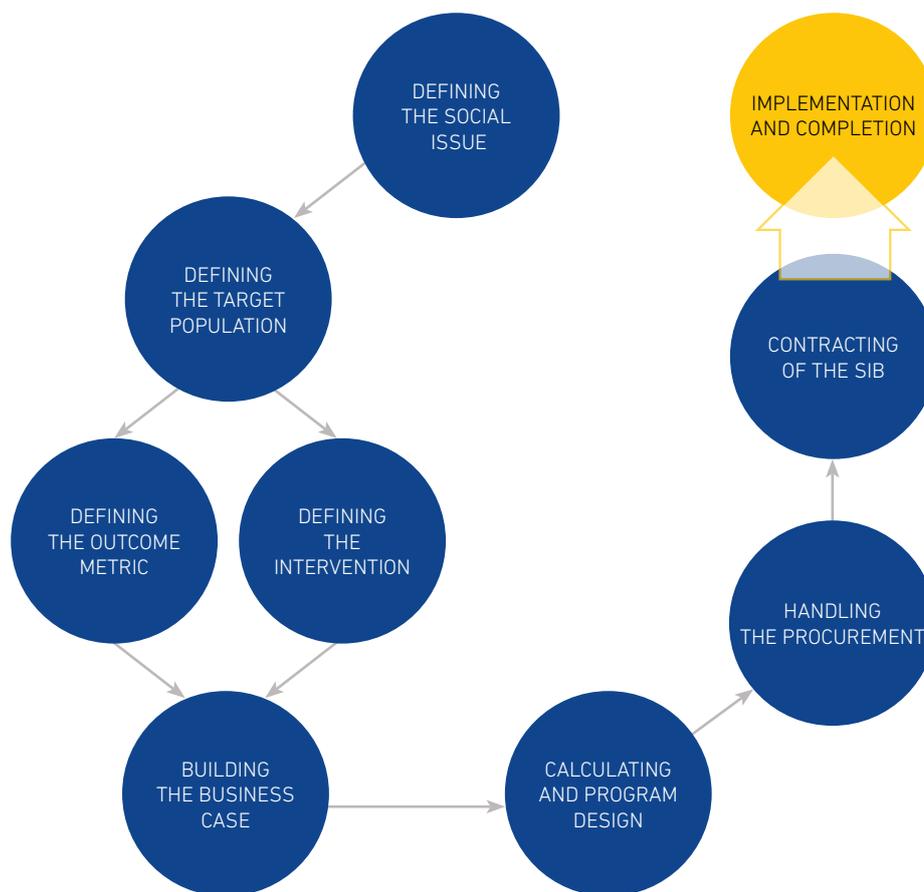


Figure 1 Development Process of a SIB (cf. Social Finance, 2013)

### 3.1.1. Defining the Social Issue and the Target Population

It could be argued that it is beneficial to base the choice of planned intervention, and thus the **social problem** to be remedied, on quantifiability, cost saving or cost avoidance on the part of the state (So and Jagelewski, 2013: 18). This is usually the case, as more costly interventions can be structured in a SIB and the capital invested by social investors, ideally enabling the government to save costs. The investors and financiers are certainly also to be involved in choosing which social problem to tackle. It is important to ensure that those making the commitment, which becomes visible in the form of investments, are already closely involved in decisions taken during feasibility work. The choice of sectors is also related to investors as their propensity to invest increases when a background, personal passion or involvement or sense of a big impact from the investment is created (Varga and Hayday, 2016: 40).

The definition of the **target group** is also closely connected both with the social problem to be addressed and ideally, with cost savings for the state.

The cost saving factor is reflected in the ideal target group that currently shows poor outcomes which can be remedied by a correspondingly complex intervention. The effort entailed in such an intervention is due to the fact that the target group is inadequately addressed in the current system. At the same time, this leads to the definition of the ideal target group, which can be derived from the NEET definition in Chapter 2. To delineate the target population more accurately, it should be easy to identify and, of course, accessible to the intended intervention. Access to the target group is particularly important in order to be able to record the services provided and the results for evaluation in the later stages. Defining the target group also includes determining its ideal size: It should not be so large that results cannot be properly verified and no statistical statements can be made, nor should it be so small that a specialized intervention is not actually necessary. In general, a SIB should offer prevention-based services, and the target group must be selected and defined accordingly. If the definition is too unclear or too diffuse, this directly affects the result of the SIB (Social Finance Ltd, 2011b: 8). In summary, the identification and definition of the target group is crucial to the

success of any intervention, including a SIB, and must therefore be chosen precisely and with due regard to the different possible effects.

### 3.1.2. Defining the Intervention

In the context of a SIB, an intervention is the service or the services that are made available to the target group. These services are adapted to the desired outcomes and objectives of a SIB and the needs of the respective target group. It is therefore of immense importance for the success of a SIB that the intervention achieves the outcome. The step of defining the intervention should therefore ensure that its effectiveness can be verified on the basis of sound data (Social Finance Ltd, 2014: 11).

On the other hand, gaps or omissions in the provision of the service should be avoided, since they could change the SIB's desired objectives. Certain criteria must be taken into account when identifying appropriate interventions. Interventions of a preventive nature are particularly suitable for embedding in a SIB, avoiding cost-intensive reorganization measures and thus offering governments a financial incentive to participate in a SIB with interest.

Also, interventions with more qualitative effects may not be suitable within a SIB (Social Finance Ltd, 2013: 6–7). A concrete assignment of the results of the intervention is necessary and can be counterfactually evaluated by a valuation method or a comparison. Similarly, the various stakeholders not only demand good results, but also want to create progress and therefore innovative interventions. Thus, interventions carried out by organizations which can both tell a story of success, and act flexibly and innovatively, are extremely suitable for SIBs, especially if they are not funded by the state budget at the time of implementation. Therefore, the transfer of risk to private investors and a promise to pay only if the results are achieved offer a great opportunity and should be taken into account when defining the intervention. Evidence-based interventions with a track record are also ideally suited for SIBs.

In contrast, the SIB model is not suitable if the outcomes can almost be considered guaranteed. In this case it makes more sense for the intervention to be completely financed from the government side.

Finally, scalability still plays a role when deciding on the appropriate intervention. Service providers should

be able to scale the intervention to the extent that both cost and effort are appropriate to and justified by the structure of a SIB.

When defining interventions, a few more factors and points of attention must be mentioned, for instance the investment focus. In addition to financial investors, non-financial support plays an important role in SIBs. Therefore, this should also be considered when it comes to determining the intervention, because non-financial support likes to focus geographically or on sectors where they have found a capacity gap or have specialized knowledge in one area and are motivated emotionally and personally to support the SIB intervention. It is often dependent on the overall context of a SIB. In view of a possible international framework as presented in chapter 4, non-financial support often depends on the local focus and the basis of the respective national language. When markets are small, non-financial investors can choose to set up a regional model that they see as more cost-effective and can provide learning benefits to social enterprises (Varga and Hayday, 2016: 36).

### 3.1.3. Defining the Outcome Metric

**“Why commission by outcomes?”** Before talking about why commissioning by outcomes is a suitable method for SIBs, some key terms should be defined. There are two concepts, input-oriented and output-oriented commissioning, that are the first steps or part of an alternative way to commission a SIB. These kinds of input- or output-oriented contracts are somewhat easier to measure. Because of that, public sector leaders accepted those rather straightforward measurable inputs and outputs for assessing the success of a SIB or other payment-by-results interventions. Looking at the definitions of input and output, the numbers for measuring success stand out very clearly:

*Input* comprises all financial and personal resources that have been invested into a project or intervention. This shall also include working time and other material equipment.

*Output* means all “immediate provided services” (Schober and Then, 2015: 46) for a project or organization that arise from the input. These might be consultations, direct sales or for example events.

The definition of outcomes shows that the concrete numbers needed for measuring success are more hidden than in input or output oriented contracts:

*Outcomes* are all expected and unexpected, as well as all positive and negative effects and changes for the stakeholders or target group involved. They are the result of the outputs, the concrete interventions in an SIB.

The concept of impact is used almost interchangeably with the terminology of outcomes. However, looking at the definition of the term impact, it quickly becomes clear that it entails a deeper exploration of the true value of the object or service to be valued:

*Impact* can be referred to by the term net effect. Different terms like deadweight etc. will be deducted in full or in part from the outcome.

When we talk about outcome measurement in the assessment of SIBs, this usually means net effects, e.g. impacts. There are further reasons in addition to those listed at the beginning of this chapter why commissioning by outcomes is nowadays preferred to contracting and commissioning by inputs or outputs. Input or output-oriented contract types may increase the risk that service providers cut their costs and the quality of the service or intervention provided for the target group will decrease. When providers always have to check that the service they offer balances the money invested, there is no room for innovation. When there are too many barriers defined by money or the outputs offered, innovation and creativity are caught up in these and only the most necessary aims will be reached. Furthermore, management makes a great effort to comply with the procedure. Input or output-oriented contracts give management has a wide scope to comply the contract even if the ultimate objectives of a SIB are not reached (Social Finance Ltd, 2015: 5).

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*“While inputs can be measured at the time of delivery, outcomes can typically only be measured post-delivery”*  
(Social Finance Ltd, 2015: 6)

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In order to commission by outcomes and measure them, the aims of an intervention must be defined very clearly from the start. This ensures that all stakeholders in a program are focused on achieving these aims rather than simply providing the contracted service within the agreed conditions. There is also no space for anonymity, because the freedom to personalize services is pointed out in outcome-based contracts. When measuring success by outcomes, innovation is possible because there is space to develop new solutions and to realize outcomes in

a better way. For these reasons, commissioning by outcomes is the best method of commissioning SIBs.

**Process of Developing an Outcome Metric:** An outcome metric is the value needed to determine whether an agreed performance has been achieved. In terms of SIBs, the outcome metric is needed to determine whether and to what extent the return will be paid to the investors and, if applicable, to the providers. The process of developing an outcome metric can be separated into five steps. First the outcomes must be identified: This should start very early in the project development process. The second step is establishing a baseline or counterfactual. Next, the valuation of outcome must be stated in accordance with the contracting authorities’ objectives. Then, the measurement and attribution of the impact can start. A range of measurement methods must be discussed and selected for these steps. Finally, the last step in the outcome metric is evaluation of the impact (Social Finance Ltd, 2015, p. 10). At the TAB meeting in Munich in June 2018, Stephanie Petrick, Head of Impact Investing at Phineo gAG, supported the meeting as an acknowledged expert for outcome measurement. Stephanie Petrick has more than 15 years of experience in advising private equity investors, international corporations and social enterprises in Europe and the US. Based on this TAB meeting, her knowledge is worked into the following paragraphs about developing an Outcome Metric.

We also followed the guidelines on outcome metric and measurement by Social Finance (please refer (Social Finance Ltd, 2015) and the Governments Outcomes Lab (please refer (Government Outcomes Lab, 2017b).

### **1. Identification of outcomes: Selecting and defining the outcomes**

In this phase, the results to be achieved must be defined in detail. It follows that the method of measuring the best results must also be agreed and established. Further, a payment structure must be developed which sets certain payment terms and indicates the sum to be paid. This is to be done for each individual outcome (Government Outcomes Lab, 2017b: 23).

Before going further, we give a brief overview about how the identification of outcomes should be carried out (Government Outcomes Lab, 2017b: 12). First, the outcome of the intervention, or the change that is expected to be generated in the social target group, will be used to select possible outcomes. Furthermore,

the question arises as to whether the outcome agrees with the contractual objectives and the financial case. If this is not the case, if there are no similarities with the contractually agreed goals, then this outcome must be declared unsuitable for the contract. If the selected outcome is aligned to contract objectives, then the financial component comes into play. This means checking whether the effort and costs of measuring the outcome are acceptable. If not, a suitable proxy outcome and measure should be determined. After clarification of the financial issue of outcome measurement, requirements for measurement of the outcome must be identified and metrics considered. Thereafter, the result will be examined for possible perverse incentives (explanation follows) and if any are identified, they will be mitigated. Only after passing through all these phases is the outcome considered suitable for the contract.

The identification and selection of outcomes to be measured is a crucial step in developing SIBs. It is not a linear process; there are many steps and opportunities to reaching a precise definition. In some instances, the interventions' objectives are easily quantifiable, so outcomes can be formed out of them. But in other instances, more iteration loops are needed to get "meaningful and measurable" (Social Finance Ltd, 2015: 11) outcomes. Social Finance offers some questions in the technical guide for designing outcome metrics, which may help to specify and identify such outcomes:

1. What does success look like for the project?
2. What objective measures of this success are available?
3. Of these measures, which are linked to existing data sources that can be used practically?
4. Would this be a meaningful assessment in terms of reflecting genuine positive improvements in people's lives?
5. If this data does not already exist, could it be captured objectively and without requiring significant additional resources? (Social Finance Ltd, 2015: 12)

Other organizations have also developed an outcome matrix including different areas of social interest. The Outcome Metric from Big Society Capital or New Philanthropy Capital (Social Finance Ltd, 2015: 13), for instance, can be used as a working aid.

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*Impact measurement usually comes very early in a project; to understand what improvement means for the target group and how we can measure it. What indicators do we need to follow? And how do we set up the intervention accordingly? Can an impact be attributed to this intervention? Stephanie Petrick*

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The selected *time scale* over which outcomes are measured should be big enough for creating sustainable outcomes. The time scale also determines and influences the outcome payments. The investors' and providers' financial planning depends very heavily on how expensive "it will be for investors or providers putting in the risk capital" (Social Finance Ltd, 2015: 16). Investors normally look for a payment time of about three years between starting the intervention and completing the outcome measurement. Taking a shorter time scale means that the investors will receive the return on their investments earlier and may finance new projects more quickly, thus generating more social impact.

Other issues that should be discussed and for which answers for each individual SIB should be found include the time scale, aligned incentives and perverse incentives (Social Finance Ltd, 2015: 16–20).

*Aligned incentives* can be understood as considerations about how to frame success. Outcomes can be measured according to a binary or a frequency method. Measuring by a binary method means that, for example, the number of NEETs who have taken part in application trainings and then been mediated into a job will be measured. It is a more absolute interpretation. The frequency method means that the number of written applications is measured. Every outcome needs to frame success and must decide how it can best be measured, using a frequency or binary method.

*Perverse incentives* appear "when outcome payments [...] incentivize action which has a detrimental impact on social outcomes" (Social Finance Ltd, 2015: 16). With good contract design and significant selected and defined outcomes, two of the main perverse incentives may be avoided. One main perverse incentive is *cherry picking*, where the service provider selects those members of the target group who are easier to reach with the intervention than others. It is the attempt to maximize outcome payments to the disadvantage of those NEETs who are harder to reach. On the other hand, parking is also a perverse incentive, where the service provider ignores the harder-to-help groups and excludes

them from the service as it is harder to earn outcome payments with them.

Risks and incentives will appear in any SIB. However, the risk could be reduced by “paying providers to deliver by activity and with investors taking the risk for the delivery of outcomes” (Social Finance Ltd, 2015: 16).

## 2. Establishing a baseline or counterfactual

Establishing a baseline is usually done through a specific survey. An impression of the target group’s situation should be made by such a survey before the contract is signed and the intervention is provided. It should be conducted as early as possible. The design of the baseline survey should be based on the evaluation design for obtaining values and results that can be compared later. If there is an extra evaluator in the SIB, it should do both the baseline survey and the evaluation if possible.

In some cases it is not possible to establish a baseline. If this is the case, other data sets may be available that allow comparison with the target group in the same way as a baseline survey would. Alternatively, if the treatment and comparison groups are nearly the same population, a single estimate may be valid.

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*Three methodologies are frequently used to establish a counterfactual: control trials (ideally randomized), historical baselines data or outcomes tariffs.*

Stephanie Petrick

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The counterfactuals set out all outputs and outcomes that would appear in the absence of the provided intervention. The counterfactual survey is necessary to compare actual outputs and outcomes to what they would have been without the intervention. The risk that is generated by not having those findings is therefore called “Counterfactual Risk”. Outcomes can be over- or undervalued if there are no findings about outcomes or outputs in case of the service not being provided.

Some factors that affect the counterfactual risk are explained in the following (Social Finance Ltd, 2016: 13): The availability of historical data within a low or in some cases no baseline will influence and increase the counterfactual risk. The dependence of outcomes on external events also affects this risk but this can be managed by close links to the service provision. The strength of the evidence base for the target group means that there may be no link between interventions

for a similar group, which also influences the counterfactual risk. Large-scale service provision and verifiable outcomes may lower this risk. In combination with a short SIB duration such as one or two years the context is stable.

In the case of a high counterfactual risk, for example with an untested SIB intervention for young ex-convicts, the investment in an estimated outcome measurement is a step that gives outcome funders the security that they are not paying for results that would have appeared anyway. Also, the investors do not have to fear low repayments for outcomes that have been “more difficult to achieve than expected” (Social Finance Ltd, 2016: 16). When the counterfactual risk seems to be very low, for example with well-tested application training, additional costs for an outcome measurement approach may not be the right choice.

## 3. Valuation of outcomes

In order to evaluate the outcomes of a SIB, the average cost savings of the public sector are often used. Those cost savings are combined with the social value the service contracting authority would pay for. This results from the improvement in outcomes. However, when assessing the results, it should be noted that this value, which is used to determine potential returns, is also closely linked to government cost savings (Social Finance Ltd, 2011b: 7–8). The outcome value in its simplest form is defined by the cost savings to governmental budgets.

## 4. Measuring and attributing impact

The aim of the outcome metric is to show how much impact was generated through the intervention. Specifically that means that the net impact must be determined. The so called “additionality”, less factors of what could have happened if the intervention had not been provided and effected, must be calculated at this step of measuring the outcome.

A few items must be deducted from the whole outcome to determine the net impact. **Deadweight** is one of the best-known. This means outcomes that would have been reached even without the intervention. It is like a “basic test” (Social Finance Ltd, 2015: 16) of whether the impact as a result of the intervention would have happened anyway. **Leakage** means that there are outcomes and changes that occurred for a group which were not intended to be reached through the intervention. **Displacement** is an

effect caused by other persons or organizations, e.g. if an unemployed person gets a job, thereby depriving other unemployed people of the chance (Schober and Then, 2015: 50). Displacement is included in the calculation only if it has a correspondingly high impact.

**Attribution** is understood as "the attribution of effects to the respective project" (Schober and Then, 2015: 50). More specifically, it excludes effects caused by other projects or organizations. The lessening of effects especially for longer-term projects is calculated in the **drop-off** and deducted accordingly from the "total outcome" or the impact.

There are different models and strategies for evaluating and measuring the outcomes. Different factors like cost, pragmatism and quality influence the decision on which measurement system will be used. Unfortunately, the most expensive method is the one that is most thought out and robust. Most SIBs in the US use **randomized control trials** as they have a high financial value (Social Finance Ltd, 2015: 16). The intervention and the control group are randomly shaped out of participants and the different outcomes and results that are to be compared. This can only happen if the intervention is designed to reach the target group randomly. Randomized control trials are very robust and offer strong control mechanisms for factors like deadweight etc. Just as robust are the **matched control trials**. Here participants are compared because of statistical characteristics with a control group that does not receive the intervention. But this method is as expensive and time-consuming as are other control trials.

**Analyzing historical baselines** entails comparing the outcomes of the actual intervention to those of a historic, "previous, identical or similar cohort" (Social Finance Ltd, 2015: 16). This model is only possible if there are target groups which can be observed over a similar time frame. When historical baselines are used for measuring the success of SIBs with a small contract size, the costs may be very high. On the other hand, it is a good measuring option when randomized or matched control trials are not feasible for ethical reasons.

Another option for measuring the effect of a SIB is to establish an **outcomes tariff model**. The expected costs if the intervention were not carried out are used to obtain standardized criteria. Within these criteria a tariff model is built and used to measure outcomes. There is no procedure for comparing the results with a non-intervention group. Working with an outcomes tariff model is an easy way to manage and structure

the outcome measurement and the whole SIB. However, the risk of deadweight or perverse incentives is higher when measuring with tariffs.

## 5. Impact evaluation

PHINEO uses three phrases to describe the impact management cycle of an NPO in its publication "Social Impact Navigator" (Kurz and Kubek, 2016): 1.) planning the results, 2.) analyzing the results and 3.) improving the results. With regards to improving results, Phineo gAG suggests implementing a continuous learning process within the organization as well as reporting outputs, outcomes and expected impact on regular basis.

Two types of models are especially developed for reporting and evaluating social outcomes: Social Return on Investment (SROI) and Social Reporting Standard (SRS). They will be explained in more detail in the following:

According to Then and Schober 2015, a **SROI** is used to build an impact model with causal relationships for a specific project or organization. "It is a mixed method approach to assessing the social, economic, and environmental impact of interventions." (Maier et al., 2015). The impact model of the SROI serves to measure the financial and social added value of an organization. A SROI analysis can be used as a management tool, comparable to balanced scorecards, or as a method of evaluating projects and entire companies.

The methodology was developed by the Robert Enterprise Development Fund (REDF) in San Francisco and was used for the first time in 1996 to calculate the social added value of interventions for the integration of unemployed persons into work (Sprinkart, 2015: 93).

To identify the value and the individual effects on the part of the stakeholders involved in the project, three different levels of analysis are taken into account in the SROI and in the impact model. Through these levels of analysis, impacts of a project using the SROI method are identified and, where possible, converted into monetary units:

The first level is that of *economic value*, which mainly takes up the operating result in the sense of the balance sheet, profit and loss account or general financial investments. An *economic value* arises when "there is a financial return for an investment". The second level provides a look at the *social value* of a

project or organization. This means "all non-monetary quantifiable additional income" (Sprinkart, 2015: 93). Cited here are e.g. an improved quality of life or an improved state of health. In other words, this includes activities and resources that bring about improvements for specific target groups or society.

The last level of consideration is that of *socio-economic value*. On this, monetarily calculable earnings are recorded outside of the business key figures. Thus, it is a kind of intermediate level that moves between social and economic values and effects.

The **SRS** is a reporting standard that allows transparency to both external and internal stakeholders equally. It helps to foster impact-orientation within the organization and to improve programs and processes. The SRS was developed by a consortium of organizations active in funding NPOs and social enterprises in Germany (including Phineo gAG). The SRS does not include monetization of the social value (i.e. outcomes and impacts).

### 3.1.3.1 OUTCOME MEASUREMENT - HOW TO DO IT RIGHT?

One hint should be made to this part of the Common Methodology, Particularly in the case of outcome measurement the uncertainty among initiators of a SIB is very great. The variance of the different options seems immense, a framework difficult to grasp and the formula with the ideal ratio of ingredients cannot be found.

Unfortunately we cannot conjure up here, and thus guarantee, the success and proper execution of a SIB. However, the following pages should serve as a decision aid in the implementation of a SIB. Thus, this part does not anticipate any decisions but merely shows different options that need to be voted on in individual cases.

#### 1. Where should the journey go?

Of course, when developing a SIB, it is already clear which problem should be solved when you arrive at the step "Outcome Measurement". It is therefore all the more important when setting up a SIB to always return exactly to this point, this goal, and ask yourself: "Where should the journey go? Where do you want to go? What is the goal?" In Outcome Measurement, too, it is therefore essential to deal with the following questions again in order to define goals and later outcomes:

#### What is the SIB the solution for?

Of course, it always depends on who has decisively initiated the SIB. In most cases, it is the municipalities that no longer master a problem. It is, especially for them, an enormous overcoming to admit that a certain population group is slipping away from them and that the interventions emanating from the municipality no longer work. In order to be able to navigate the SIB in the right direction, it is therefore also necessary to look back at possible previous interventions. That can be dealt with by the following questions:

- What concrete problem should be tackled with a SIB?
- Are there already activities aimed at the target group?
- Where exactly did previous interventions fail?
- Why cannot the target group be reached by existing interventions, or only inadequately?
- What are the strengths of the previous activities?

From the perspectives of the past and the problem to be solved, one or more goals of a SIB intervention can already be deduced. In an optimistic way of thinking, looking at mistakes or unsuccessful attempts to reach the target group helps to look ahead and determine where you want to go. The first numbers are already being considered in this step, but above all there is the question: what optimum state should be achieved with the SIB?

- What have previous interventions achieved? Can this be used to derive numbers and nominal sizes?
- Have there been goals in previous activities and were they realistic and achievable?
- Which goals and numbers are realistic and can be achieved with a SIB?
- When does the SIB succeed?

Ideally, first computational variables may be identified with the desired optimal state and a realistic view of it, such as e.g. 90% of the target group of adolescents with police registrations are to be placed in an apprenticeship.

### Who is involved in the SIB solution? Do the objectives of the stakeholders agree?

The strength of an SIB lies, above all, in the involved stakeholders. Perhaps the desired optimal state can become even better through the cooperation or collaboration of various stakeholders. Of course, each stakeholder pursues their own goal by participating and investing in a SIB. Nevertheless, the goals that will later be outlined as outcomes should be equally relevant to everyone. Therefore, they need to be compared and considered closely. Here are a few examples where goals should be fine-tuned further:

- Does the social service provider need to finance the measure to stay in business? - Then that may not be the right service provider for the SIB or is particularly committed to receiving follow-up orders from the municipality or the client.
- Is the investor willing to do more than just provide financial resources? - In SIBs, stakeholder collaboration is extremely important. For example, investment firms could offer internships for the target group or provide their own experts as appropriate for the SIB intervention.
- Is the municipality honest with itself regarding previous problem-solving attempts? - If their own interventions were rated too well, there is a risk that the target was set too high or too low.

### Quickly check aligned and perverse incentives

Aligned incentives, as mentioned at the beginning of this chapter, provide the framework needed to measure outcomes and achieve goals. This can be quickly determined with the following questions:

- Is the measure suitable for considering the agreed success factors purely quantitatively? → Binary measurement of the outcomes
- Does it require interpretation or are there softer factors that make the success of an intervention? → Frequency measurement of the outcomes

Above all, the perverse incentives relate to the selection process of the service providers, which means that the persons of the agreed target group benefit from the intervention, because most of them cannot be reached. In order to keep the selection process fair and unadulterated, it helps the service provider and the other stakeholders in the development of the SIB

and the measure to consider the following questions to exclude "cherry picking" and "parking".

- Have all possible participants been informed and acquired equally?
- Is it possible for all participants to access the intervention?
- Are there any preferences or disadvantages that make access to the intervention easier or more difficult?

### 2. Create "calculation quantities", define indicators and create comparative values

As soon as it is clear where the journey should go, computational variables can be created. But also to create concrete values that later in the form of outcomes indicate whether, and to what extent, an intervention was successful requires a little preliminary work. In the previous chapter much has already been described for the establishment of a baseline and a counterfactual. In this part, the concrete, practical procedure is briefly summarized again with its individual options, advantages and disadvantages. There are several ways to establish a baseline or counterfactual and so counter the counterfactual risk. As so often in SIBs, these have to be individually selected and tested. Furthermore, they are also strongly related to the measuring method already favored or chosen in the later considerations.

First of all, the question arises as to whether it is possible to create a baseline with which changes in the result can be compared.

- a) If interventions have already been carried out in the past, for example by municipalities that have not led to the desired success, it makes sense to use them for the baseline survey and to examine the target group of similar interventions in this regard more closely.
- b) If the SIB intervention deals with a completely new target group, other data sets should be used that can serve as baseline and thus allow a comparison between baseline survey and target group → for example by establishing a counterfactual like Control Trial, Matching or using a Tariff Model

BASELINE OR COUNTERFACTUAL	ESTABLISHING A BASELINE	HISTORICAL BASELINE	RANDOMISED CONTROL TRIAL	MATCHING	TARIFF MODEL
HOW DOES IT WORK?	Like a before and after study, this measures the outcomes of the target group before and after the SIB and compares the results against each other	Outcomes in the intervention group are compared against outcomes achieved by a historic cohort with similar observable characteristics	Participants are randomly allocated to an intervention group and control group. Outcomes compared between the two	Participants are statistically matched to individuals with similar observable characteristics not receiving the intervention. Outcomes compared between the two	Outcomes are measured through standardized criteria. Outcome payments fixed prior to delivery based on expected costs of non-intervention.
ADVANTAGES?	Simple, makes the objective and the definition of the optimal state easier	Can attribution sizes, such as Balancing deadweight well	Very robust method with controls for deadweight	Can be used when intervention is not randomly assigned, is a bit more just in terms of access  Robust and controls well for deadweight	Straightforward to structure and manage
DISADVANTAGE?	Can quickly be expensive for small contract sizes  Impacts are difficult to assess and know.	Does not take into account any major social or legal changes.  Time- consuming  Relatively expensive, especially for small contract sizes	Expensive as complex  Very time-consuming  Access to the intervention is random.  Exclusion of possible clients	Expensive and time-consuming  Risk of sampling bias	No comparison against a non-intervention group.  Hard to take account of deadweight  More risk of perverse incentives

(Social Finance Ltd, 2015: 25)

### 3. Pricing and valuing of outcomes

There are several ways and points of view to express the value of a measure and in particular its results. Often, cost savings for the public sector are combined with a social value intended to provide social added value to the population. Or, it is determined by various methods, which price e.g. municipalities would be willing to pay for the “delivered” service to monetize outcomes. Additionally, avoided costs can be used for evaluation. The Governments Outcomes Lab identifies three starting points in its “introductory guide to pricing outcomes” for the evaluation of outcomes: intrinsic value, efficiency and prevention. (<https://golab.bsg.ox.ac.uk/guidance/technical-guides/introductory-guide-pricing-outcomes/>)

**Intrinsic value:** This term is understood as the Social Cost Benefit Analysis (SCBA). It is the quantification instrument of the economy to quantify social value. This is done by comparing monetary benefits and expected costs. Thus, the price-performance ratio can be checked and the extent to which the financial benefits exceed the costs. If the SCBA is for a whole target group and not for individuals, the following steps should be taken to set a price for the outcome:

1. Determine effects: Comparison values from baseline or counterfactual can be used to determine the type and number of impacts
2. Valuation: Monetize the determined effects. Cashable and non-cashable fiscal benefits are often convertible into monetary values using local public sector organizations’ own data or alternative

unit costs. Thus, e.g. the PRRSU Health and Social Care Unit Cost database or the New Economy Unit Cost Database will be used to determine the value of the impact. Economic or social benefits are more difficult to monetize. For this purpose, larger evaluation techniques can be used that allow monetization over several levels for such values (several methods are presented in the Outcome Measurement section below).

**Efficiency:** Here the focus is on cost efficiency. This method is very useful for resuming already existing interventions, possibly changing the success rate. As a result, more success and value are generated for the same cost, or better value for money and performance improvements.

**Prevention:** This approach is similar to the intrinsic value, but focuses on preventing or shifting offers to the preventive area. The root causes of social problems

are targeted in preventative services to determine the value of the cost savings that would be required to reduce interventions in social issues. This can be done by a basic root cause analysis by answering the following questions:

1. Why has the target group been exposed to this social problem?
2. What interventions are there to prevent these problems?
3. What are the characteristics of the target group?
4. What costs are incurred by the public due to the social problems of the target group?
5. What are the savings when some of the problems no longer exist?

STARTING POINTS	INTRINSIC VALUE	EFFICIENCY	PREVENTION
ADVANTAGES?	<p>Useful for target groups that have not been reached by several existing interventions</p> <p>Good for completely new interventions</p> <p>Suitable for results-based contracts and SIBs</p>	<p>It can be shown whether savings, more achievements or both have been achieved compared to previous spending</p> <p>Good to use when a service is used again</p> <p>An already existing service, which is now being made more efficient, can reduce uncertainties among investors, and investor returns can thus also fall for SIBs</p>	<p>Understanding of the cause generates greater willingness of the other stakeholders to contribute in solving the problem (for example, investors or communities)</p>
DISADVANTAGE?	<p>Independence from actual or notional savings, therefore especially suitable for central government.</p> <p>Not possible without analytical resources.</p> <p>Using standard records instead of local records increases mistrust in the result.</p>	<p>Current costs may be difficult to assess</p> <p>This approach may be more prone than others to focus too narrowly on achieving the set outcomes, rather than meeting a wider range of requirements, as other approaches often need to measure the broader benefits to quantify them</p>	<p>The most effective measure is not always obvious, may need to be changed, repeated or extended during the project period</p>

(Government Outcomes Lab, 2019)

#### 4. Outcome and especially impact measurement

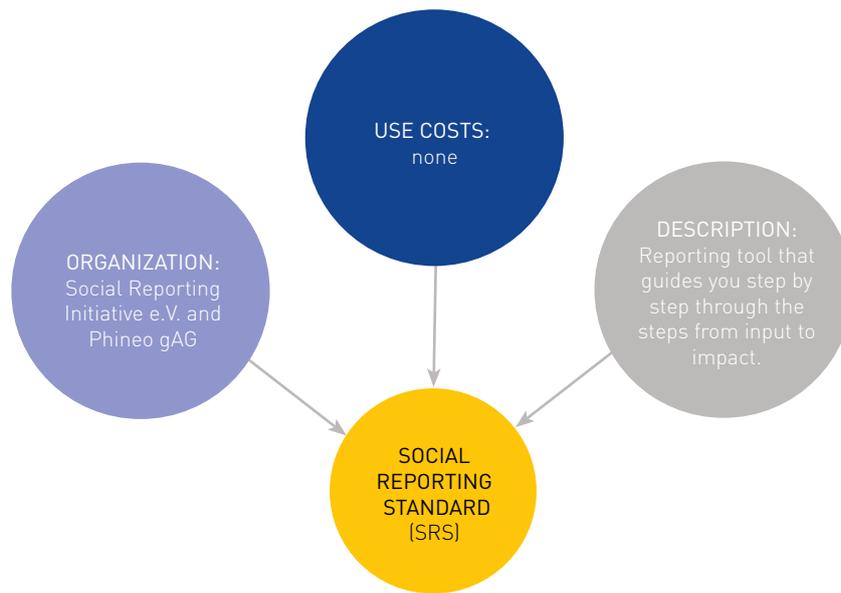
As under 3.1.3., already explained, there are several steps to indicate the social value and thus the actual impact of an action, intervention or thing. Combined with the financial indicators needed to calculate the return of investment in the case of an SIB, input, output, outcome and impact can be classified according to their financial quantification as follows (SIITF and IMWG, 2014: 16–17):

- **Inputs** are all resources that feed into a service. These can be divided quantitatively into non-financial inputs and financially quantified into the financial value of the resources.
- **Outputs** are all products and services emanating from the activities enabled by the resources / inputs. The financial quantification is done by the costs per output.
- **Outcomes** are all changes or effects for individuals or the environment that result from the provision of the products or services, summarized from the outputs. Financially and for the calculation of the return, the costs per outcome or per societal financial value per outcome are interesting.
- **Impact** describes all changes and effects for society and the environment that result from the outcomes. The financial quantification with the result of a social financial value of the impact is carried out qualitatively by an impact evaluation and by the impact measurement with the aid of a measurement tool, which is suitable for a SIB.

These four steps are intrinsically important and apply to all forms and variations of Impact Measurements. So they also apply to all the different tools available to measure the social impact of a SIB. The sequence, and the building up of, Input, Output, Outcome and Impact forms the basis for any applicable Measurement Tools.

A few of this tools, dedicated to identifying the social value that can be gained from a project will now be explained. There are more than 150 different Impact Measurement tools in total, so we limit ourselves to a few in this Common Methodology: Social Reporting Standard (SRS), IRIS and Social Return on Investment (SROI). A deeper insight into Impact Measurement and other important decision-making tools are also presented in the e-learning tool of the AlpSib project on [alpsib-project.eu](http://alpsib-project.eu). The framework for all the measurement tools is the same and this subchapter, which should show how to do it right, is based on it:

1. Setting the objectives and analyzing stakeholders
2. Measuring the results
3. Verify and evaluating impact
4. Monitoring and Reporting



*Method:*

1. Vision and approach to problem solving
2. Intervention / Service with regard to the social problem, resources, benefits and effects, outlook and organizational structure
3. Organization with profile and financial situation

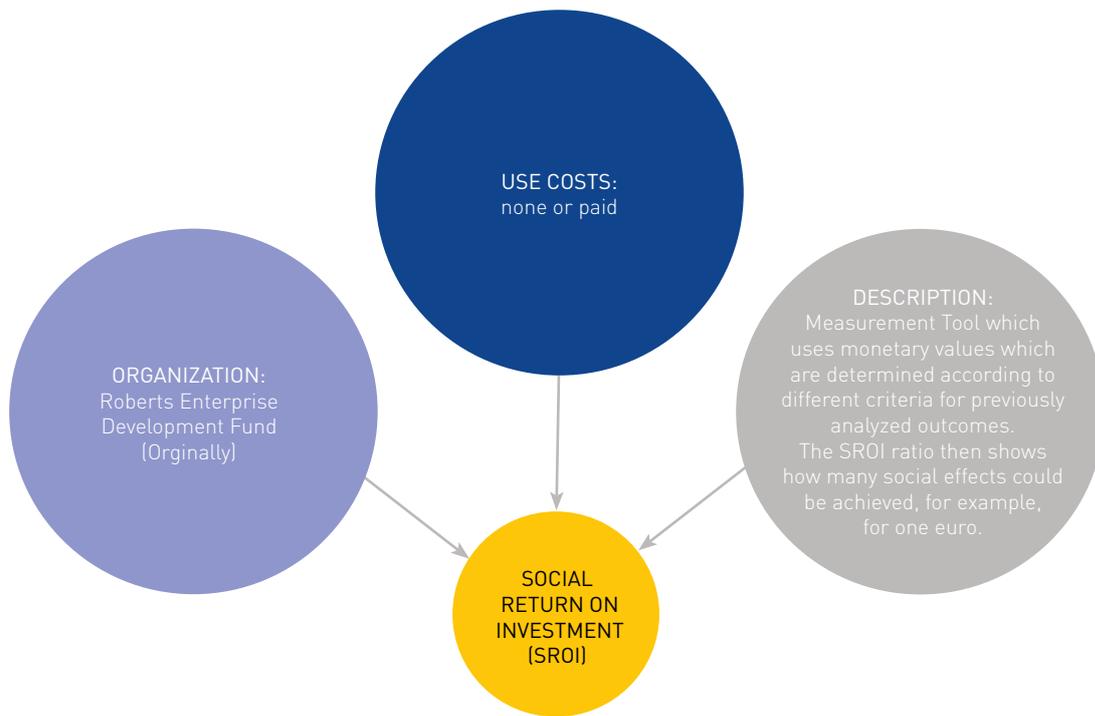
*Advantages:*

- makes social value visible
- Makes success and effects comprehensible
- Represents comparability of different projects
- Shows errors and makes organizational learning possible

*Disadvantages:*

- Financial quantification must be extra

Further information: <https://www.social-reporting-standard.de/>



*Method:*

1. Establishing scope and identify key stakeholders
2. Mapping Outcomes
3. Giving the outcomes a value
4. Establishing impact
5. Calculating the SROI
6. Reporting, using and embedding

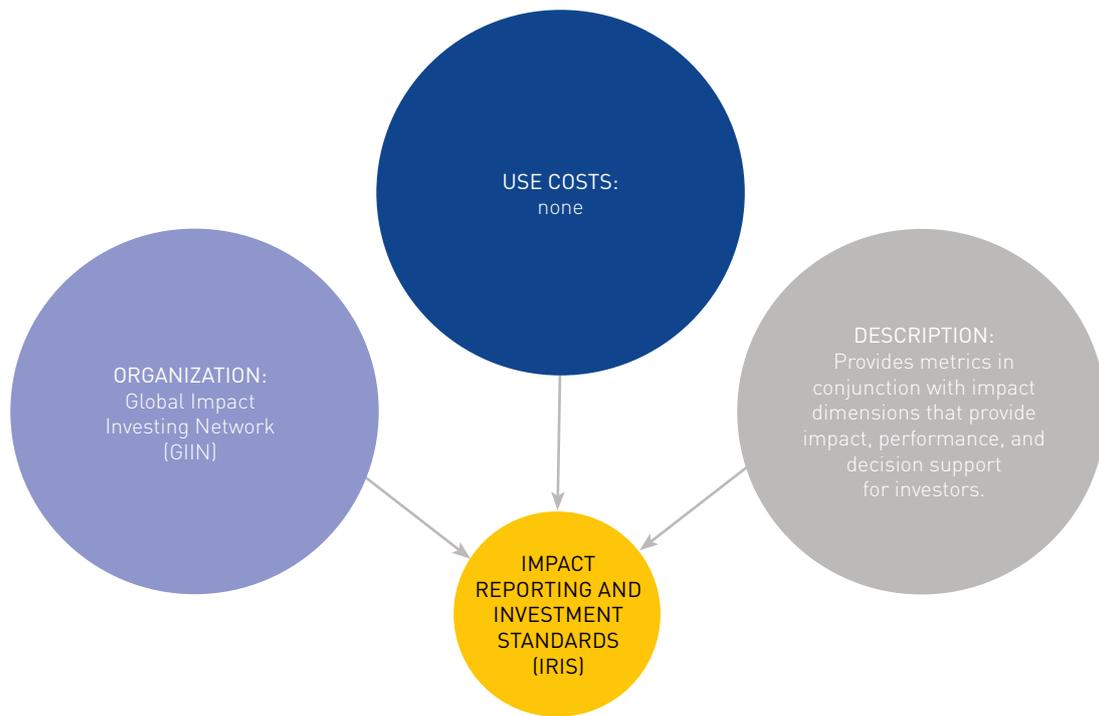
*Advantages:*

- Returns all the values that are interesting for a SIB
- Wide acceptance of this method
- Comparability of different projects possible through SROI ratio
- All stakeholders must work together on this tool

*Disadvantages:*

- Must be involved in the SIB from the beginning
- High workload to find appropriate conversion sizes

Further information: <http://alsib-project.eu/en/e-learning/modules/module-1/chapter-1-lesson-3/>



*Method:*

IRIS is a set of metrics that measure the social, environmental and monetary performance of organizations. This makes IRIS an ideal starting point for measuring the performance of SIB-financed interventions and services.

*Advantages:*

- Always up to date: new metrics are tested and added
- Provides conversion rates for a variety of effects
- Can be related to SDGs

*Disadvantages:*

- Less qualitative approach
- Could lower minor effects

Further information: <https://iris.thegiin.org/>

### 3.1.4. Building the Business Case

In connection with the development of the business case, the so-called five-case model is often mentioned. This includes the five dimensions that are necessary for a functional business case: The strategic case, the economic case, the commercial case, the financial case and the management case are therefore explained in more detail below (based on (HM Treasury, 2018: 7–10)). This model can be applied to projects, policies, strategies, programs, etc., as well as to SIBs.

The **strategic case** as a dimension of the business case aims to explain how changes are strategically appropriate. To stimulate and shape change, an up-to-date organizational business strategy is required that takes account of all policies and aims, providing a basis for the objectives and drivers of proposed spending. At best, these justifications are formulated according to the SMART principle (specific, measurable, achievable, relevant and time-limited). A challenge here is explaining why further expenditure is necessary in order to achieve important inputs, outputs and finally also impacts for e.g. investors, service providers and the target group. In strategic terms, therefore, SIBs are concerned with discussing the causes, motivations and reasons for using tangible and intangible capital for the different stakeholders.

The **economic case** as a dimension of the business case includes three values that do not necessarily seem to be economic at first glance. In addition to the economic effects of the intervention, the economic dimension should also consider social and ecological issues that affect and influence society. Therefore, measuring and defining the success of a program or project plays a key role here. The minimum requirements are determined and a cost-benefit analysis or similar tool is used to determine the best possible value of the intervention for the company or, in the case of the SIB, for the NEETs and the target group. When dealing with specific needs of the target group - in the case of a SIB, mostly NEETs - it is important to define the nature of the social problem, how it affects people in everyday life, the obstacles to creating better solutions and finally to select the most appropriate target group (Social Finance Ltd, 2011a: 7). First, the right options for scope, solution, implementation and financing must be selected. Otherwise, the options will not give optimal value for money in the first place,

justifying higher cost options in terms of benefits and risks, and monetizing them.

The **commercial case** refers to the proof of a well-structured deal between the public sector and service providers. This requires a good understanding of both the market and the services to be provided by the service provider and potential risks arising from public and private sector fee mechanisms. It is particularly challenging in the commercial dimension to be smart and forward-looking in terms of possible changes to business, organizational or operational requirements during the contract phase.

The **financial case** refers to the affordable financing of the options and interventions involving stakeholders. Funding gaps should be avoided as far as possible during the program period and should be determined preventively. Since SIBs often finance several service providers, the intervention costs should not be disregarded in the financial dimension. The total costs for program delivery, infrastructure and overheads are included here and must be raised by the investors through the SIB. Therefore, it is important at a very early stage to set up a financial model that reflects the economic aspects of the SIB. Three factors should therefore be taken into account: the aforementioned total intervention costs, the result values and the timing of the investment repayments (Social Finance Ltd, 2011a: 9).

With the **management case**, the business case ensures that both implementation and evaluation of the strategic part of the organization, program or project are carried out. Risk management and the setting up of contingency plans are necessary in order to achieve the expected results.

Having presented the dimensions that should comprise a business case, we now also examine the process of creating a business case. There are some key activities that are defined in three steps (HM Treasury, 2018: 11–18). Even before dividing key activities into the three stages, the strategic dimension of the business case is required to provide the context and assessment in the strategic planning phase. This phase corresponds to point 0 and determines the strategic context, i.e. the confirmation that the project, the SIB, is strategically aligned.

This is followed by the first stage: Scoping the scheme and preparing the Strategic Outline Case (SOC). It provides for a reaffirmation of the strategic

context. This is done in two steps: creating a case for the change and exploring the preferred method. After completing the SOC phase, management and stakeholders will understand the robustness of the intervention and its future direction.

Stage 2 is focused on planning the system and preparing the Outline Business Case (OBC). This is the concrete planning phase in which the findings from the SOC are discussed again for a detailed assessment, i.e. the value for money is determined in the fourth step. Afterwards, a potential deal (fifth step) is prepared and, in the sixth step, the affordability or financing requirements are determined. Planning for a successful delivery completes this second stage, allowing stakeholders to agree on the management dimension of the project's procurement phase. The third and final stage in the development of a business case is the procurement of the solution and preparation of the Full Business Case (FBC). The procurement phase, as discussed in the previous section, follows the negotiations with potential service providers (obtaining the value for money solution as step 8), before it becomes a full business case through the contract signing: that is step 9. Agreements on management, delivery, monitoring and evaluation of the project or SIBs are made in the last and 10th step, the planning for a successful delivery.

At this point the development of the business case is complete, having been developed based on the five-case model. Even after being developed, the business case remains important for SIBs. It should serve as a guide for changes requested by the Procurement Authority or the service provider. Further, it should also support the follow-up and evaluation of the interventions and projects and offer a possibility of accessing them in these cases.

### 3.1.5. Calculation and Program Design

As mentioned in the introduction to this chapter, the variety of service providers and contracts leads to the risk of losing track of the overall costs of program delivery, including transaction costs, infrastructure and overheads. A sound understanding of this is essential for a SIB. Developing an indicative budget for the services provided therefore determines the amount of funding that must be raised by the investors. A SIB operating plan helps to implement recommendations for the business plan in detail according to the value for

money principle. The operating plan should also include caseload assumptions. This is understood to mean a detailed estimate of the number of users of a service offered and provided by a SIB. From this a detailed operational plan can be created. In order to estimate the number of users, the actual results (baselines) are collected before the start of service provision. These include setup costs prior to service provision, as well as a final measurement period between the end of service provision and the measurement of the final results. When drawing up the operation plan, the following points should be noted: If a baseline measurement on potential users of an intervention starts before implementation and continues during the intervention period, additional measurement costs will be incurred. It is also crucial that a SIB-funded service fits well into the existing local service landscape. In addition, the operational plan shall ensure that the transfer path for SIB-financed services has been agreed and regulated with the contracting authority or intermediary (Social Finance Ltd, 2011a: 21–24).

The program design also includes the social service providers. When selecting the service provider, as described in chapter 3.1.2., investors are involved in the selection process in order to take their risk potential and management into their own hands. This review will require both a track record as evidence of measurable performance and the intended intervention for the target group, as well as delivery capacity, including the scope of the services to be delivered and local relationships in the SIB service area. Finally, there is a review of affordability, which also looks at the balance sheet of the implementing organization. In this way, as far as possible, it should be ensured that the contractually agreed services are also delivered and that the service provider is the right one for that SIB. Therefore, before deploying the budget the service provider should be benchmarked to ensure value for money.

Performance management is all about working with service providers and designating them. As a result, the organizations providing the intervention may be informed by the management level e.g. supported by large social investor companies, encouraging in-company learning and thus controlling and supporting the general delivery of the agreed intervention. Furthermore, the social outcomes can be better understood, tracked and reported on in order to derive changes and improvements from them. In summary, investor confidence is enhanced by good performance

management, which must be defined in program design. Although the Performance Manager is not normally involved in a SIB's day-to-day business and development, it is still a resource that advises the service delivery partner on stakeholder management and ensures visibility and service delivery on the ground. The Performance Manager acts as a problem solver and point of contact for the investors and service providers. Even where there is only one service provider, as in some direct SIBs, the performance manager's work may be less resource-intensive, but is still indispensable for achieving good social outcomes and keeping the SIB on course.

The point of calculation is based on a detailed financial model that deals with the economic aspects of a SIB. It includes both intervention costs and overheads as an investment requirement for the SIB, as well as cost savings, and outcome values that includes the success and the resulting return from the SIB for the investors. Finally, there is the time horizon for the realization and payment of those returns to the financial model. From a mathematical point of view, the financial model of a SIB is successful if intervention costs plus overhead costs and fixed costs are generally lower than the savings in the public sector, the outcome value. The time horizon of the repayment is very critical (see chapter 3.1.4.).

The calculation and determination of the payment mechanism is also part of the calculation of a SIB. Here an element of the Outcome Measurement from chapter 3.1.3 comes into play. The payment mechanism should describe in detail how the success of an intervention looks and is measured. Furthermore, a tariff is set for each partial success and the timing and amount of repayments to the investors is specified. So, results are required to measure the desired and expected success. More specifically, we work with the outcome metrics defined in the Outcome Measurement section, as well as the method as measured in detail in the field. The amount of the payments then depends on the measured, expected success. The contracting authorities are obliged to make such profit payments. Tariffs are therefore used to determine the level of payment, e.g. in the case of a cost saving for the state, the value of the savings is divided equally between investors and contracting authority. That share would have to be determined by both parties when setting a profit-sharing tariff and thus the payment mechanism. The time of payment depends heavily on the method of measurement. If results are only dependent on a person's performance, results can

be retrieved at regular intervals by the program and a quick payment is possible. However, if the payment depends on the performance of a cohort as in the first SIB, the Peterborough Social Impact Bond, the result measurement can only take place after the intervention has been suspended. Of course, investors want to see their money again as quickly as possible. The best time horizon is to be examined on a case-by-case basis, but a time horizon of about five years is recommended. Therefore, a well-timed schedule is needed between intervention, outcome measurement and return payout (Social Finance Ltd, 2011b: 9). In this case, the investor must wait longer for his return.

The investment raising process can begin as soon as the financial model including operational plan is available. This is usually followed by discussions with investors about securing commitments, which means guaranteeing investment regardless of the final outcome. The investors should really develop an "appetite" to support the goals of the SIB (Social Finance Ltd, 2011a: 23). This process will be completed before the contract is signed and includes a term sheet summarizing the main contractual elements. The process aims to provide a new service in line with the goal of a SIB that is paid for by the social investors' money and thus significantly improves the service users' outcomes. That is why a SIB, with its many stakeholders and overlapping structures, poses a high risk for the investor. This is because the investor could lose all his invested money if the results are inadequate or non-existent. Social investors only put up with this risk because they explicitly want it and want to support more effective interventions. As such, they quickly become more involved in the whole process and are involved in whether the intervention can have a positive impact on users. The involvement should ideally be undertaken by the party controlling the investment-raising process. Thus, e.g. in a signed Outline Business Case, the contracting authorities record this involvement of investors. Content could therefore be the interest in a particular social area and the methodology of measuring success. As a rule, the coordinating party must be regulated by the Financial Service Authority of a country.

### 3.1.6. Handling the Procurement

Handling the procurement process in outcome-based commissioning may generate some challenges. As Julian Blake said at the TAB meeting in Munich in June 2018, the perspective on the procurement

aspect is linked with the contract and with impact investing. Many different parties with different interests have to work together, based on a contract and with the aim of generating outcomes in order to get returns on the investment. Blake also reminds us that public procurement has too often become a procedure where too many are overly focused on the process. For example, public authority officials may look at the process itself while losing sight of what it was intended to realize. In other words, the focus on the process makes them forget that the whole purpose of procurement is to realize the best value in public services.

Some challenges may arise during the procurement process. Therefore, contracting authorities and service providers must work more closely together in a collaborative partnership than in other contract forms. They should discuss and develop ideas together to design a model for the service. This working mode is often unusual for contracting authorities and service providers, especially during the procurement process. For example, the contracting authority is no longer the only one who is looking at the outcome, because bigger social enterprises that are involved in the SIB also want to generate profit. There is also a kind of market shift when talking about procurement. Social services and organizations do not need explicitly strict contracts; they can “provide a level of trust and relational contracting” (Government Outcomes Lab, 2018a: 5). The access to the same information during a procurement process is one of the most complicated stages in the whole process. The contracting authority should make sure that it offers information to all suppliers, not just to those that have been involved from the first. A Prior Information Notice and other solutions will be explained in the following section.

SIBs are often developed with more than two different parties like investors, providers or both together. It can be hard for service providers when they are developing a SIB where in the end they might lose a selection process. To avoid collapse of the whole SIB due to the disappointed provider, solutions can be prepared when designing the procurement process. In some cases, the provider has the leadership of the SIB development. It makes sense that the provider thinks he is the one who is taking part in all decisions. But as soon as the contracting authority is consulted, it is the body that makes final decisions on how the procurement works.

There is a challenge in getting real competition during a procurement process. A SIB is a rather new tool,

where in most cases only a few providers can deliver the right service to achieve an innovative solution. That is why an open tender process will not receive many bids. Other main procurement routes that can solve this problem will be explained on the next pages.

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*“Don’t think about a standard, think about a model”*

Julian Blake

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In the following part we will also point out some changes in procurement that have to be considered in consequence of the EU Contract Regulations 2015. We also illustrate some opportunities of different procurement procedures and routes. These are proposals and there must be an individual decision in each case about which is the best approach for the SIB procurement. At the TAB meeting, Blake stated that we have now moved on from a period when the rules were treated as barriers and obstacles through misunderstanding and misinterpretation, so that increasingly the purposive and permissive nature of the rules is recognized. It is important to remember the new flexibility in procurement and “not to think about a standard, think about a model”.

### **Public Contracts Regulations 2015**

The EU Public Sector Procurement Directives were implemented within the EU Public Contracts Regulations 2015. European law has pursued the target of gaining high quality through competition and giving suppliers equal access to opportunity. The focus has not always been on serving the public interests. The new regulations contain more flexibility in terms of the procurement rules, so contracting authorities now can perform procurements faster and can orient more towards finding the suppliers that are best suited to the aim of the procured project.

There are some key changes that will be explained in the following paragraphs:

SMEs can be better participated in because the authorities are supported in having fewer procurements and limitations on turnover requirements. The supplier selection is simpler, using more supplier self-declarations and offering more access opportunities. The new flexibility throughout the new EU Regulations can be also observed in the change of the whole procedure and consultation routes. Provisional market consultations between contracting authorities or authorities and suppliers are possible

and should create better specifications to achieve the project's aim. The time limits have also changed. The minimum time limit for responding to advertised procurements has been reduced by about 30%.

One of the most important new features is the **Light Touch Regime**. This means that contracting authorities and authorities can design the procurement process as they need. It only has to be in accordance with the EU Treaty Principles (Villeneuve-Smith and Blake, 2016: 9). Five of them are fundamental for handling the procurement process:

There should be no *discrimination* on the ground of nationality. The principle of equal treatment means equal access opportunity for all suppliers. All of them must be given the same information for submitting tenders. Under the *transparency* principle, the procurement process should be predictable and open. Documents about contracting and procurement must be clear and contain all agreements according to the proposed procurement. All documents from other nations should be accepted and *mutually recognized*. The qualification requirement regarding the aim of the project or the contract's target group must be justified and appropriate to the service or work being procured. This is the principle of *proportionality*.

### Procurement Routes

The whole procurement process can be divided into four possible main procurement procedures: The **open procedure** means that the contracting authority offers providers the opportunity to bid directly for the contract in response to the contract notice. The winning service provider is selected directly. The disadvantage of open procurement procedures is that there is no opportunity for a pre-qualification process or any negotiation. Also it is important to know that the "requirement can be fully specified in advance" (Social Finance Ltd, 2011a: 33). This is why the open procedure is not often used for procuring Social Impact Bonds.

The **restricted procedure** means that the contracting authority makes a pre-selection among providers that respond to the contract notice. Only those pre-selected service providers (a minimum of five if five are available) participate in the selection process. The restricted procedure is a two-stage process which includes short-listing and submission of a formal tender. The winning provider is also selected directly. This kind of procurement procedure is suitable for Social Impact Bonds.

If the SIB is more complex, a **competitive dialogue procedure** could be the right choice for procurement. After the contract notice is published and a selection process has been effectuated, where a minimum of three providers have to be selected for dialogue, the contracting authority will discuss one or more solutions that are adjusted to the requirements of the project. The selected providers are invited to tender after that competitive dialogue between themselves and the authority.

The last main procurement route is the **negotiated procedure**. After the contract notice is published, a selection process has been effectuated, where three providers must be selected for entering the negotiations. The contracting authority now negotiates the contract and the terms with one or more providers. This negotiated procedure should only be used when other procedures do not work, competition is not adequate or where prior overall pricing is not possible. Within the EU Public Contracts Regulations 2015 authorities can use an accelerated negotiated procedure. Using it can justify shorter timescales. Also there is a "greater scope for post-tender negotiations" (Government Outcomes Lab, 2017a: 7), so authorities can better optimize final tenders.

One of the procurement routes, that is also the newest, is the **innovation partnership**. "It is a good opportunity for spreading SIBs and results-based contracts. It is a process for procuring a partner rather than a service provider. The premise is that what is required is a partner to assist with innovatory design, rather than a service provider, and the partner may continue with the delivery of the newly designed service under the same innovation partnership contract, for a reasonable contract period commensurate with the nature of the service and the need for its establishment and development" (taken from the minutes of the speech of J. Blake at the 3rd co-creative Lab in Ljubljana by M.C. Pizzorno, 4 December 2017)<sup>1</sup>. It is a contract for common experimentation. The result of an innovation partnership is a delivery model and the duration of the delivery will determine the contract duration or, in Julian Blake's words:

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*"This is the procedure to allow a public authority to engage with an innovation partner".*  
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An innovation partnership starts with a selection process of the suppliers that have responded to the

advertisement. After that, the contracting authority uses a negotiated approach to invite suppliers to discuss and develop ideas for innovative works in a partnership framework. In an innovation partnership, the contracting authority is allowed to make partnerships with more than one supplier. Through this procurement procedure, an innovation partnership solves the problem of “competitive advantage” and “intellectual property”, as it recognizes the nature of collaboration. Innovation partnership provides a process for research development, it makes sense of pre-procurement engagement, it allows market engagement for innovative solutions, it is a means of sharing the risk of innovation, a means for the public sector to drive up standards and establishes a “one-stop shop” for design and delivery. This process therefore implies some changes since investing for impact becomes the same thing as investing.

If the SIB is fairly but not fully certain, the contracting authority should use a **Prior Information Notice (PIN)**. It allows a small space for potential suppliers to express interest and to respond with a proposal within a period of 10 days. Thus there is a limited opportunity for a provider without prior involvement. A PIN is used where a provider is in a bulletproof position, for example through leading the development of the SIB. A PIN gives these kinds of suppliers a chance to bid. The Prior Information Notice is frequently used within a restricted procurement procedure.

The inverse conclusion of a PIN is the **Voluntary Ex-Ante Notice (VEAT)**. This does not provide for competition; instead it is used when the contracting authority has clear reasons to believe that only one supplier exists to deliver the advertised service. If this is the case, the contracting authority can publish a VEAT. It provides a retrospective notice of the decision to contract with a provider without competition.

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*“The VEAT is the process within the procurement to market-test whether there is a unique supplier or not.”*  
Julian Blake

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The VEAT announces that the contracting authority is intending to award the contract without submitting the EU Contract Regulations, the Official Journal of the European Union. In other words, the notice represents the justification of the contracting authorities’ decision (Government Outcomes Lab, 2018c: 6).

The concrete steps of making a VEAT are setting a standstill period about 10 to 15 days after awarding the contract. During this period organizations can “object and demand access to a competition” (Government Outcomes Lab, 2018c: 6) . If no other service provider responds to the VEAT during this time, the procurement process can be moved on to a negotiated procedure. The decision cannot be challenged outside the standstill period.

If the contracting authorities want to collaborate with other contracting authorities such as other public sector bodies, they can use a **co-operation agreement**. In this case, competition is not necessary, but a form of agreement with the contractual obligations of both contracting authorities is needed. This kind of procurement procedure was developed for Family Drug and Alcohol Services in Kent. The co-operation agreement was set up between Kent County Council, Medway Council and Tavistock and Portman NHS Foundation Trust.

### 3.1.7. Contracting SIBs

The contracting of a SIB needs precise planning. It started with constructing and choosing a contract type that fits the prospective SIB perfectly. At the TAB meeting in June 2018 in Munich, the project team from AlpSIB invited Jussi Nykänen from Finland to present his knowledge about contracting SIBs and to introduce the different contract types. Dr. Jussi Nykänen is a founding partner of Epikus Ltd, the first impact investment fund management company in the Nordic countries.

In the following sections, the different types and opportunities of contracting a SIB and the key terms of SIB contracts will be clarified.

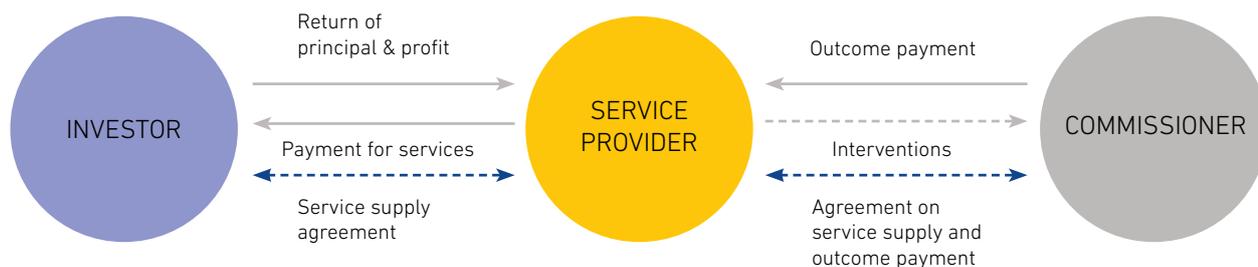
#### Direct contracts

A direct contract is defined as a delivery contract between the service provider and the outcome funder. The service provider receives the working capital directly from the government contracting authority or the body paying for the outcomes. The working capital is often paid as a loan (this is often done in French SIBs). The outcome payments are made if the fixed aims and outcomes are achieved as they are recorded in the contract. These payments go to the service provider and are then passed to the investors (So and

Jagelewski, 2013: 13). If the agreed outcomes were not reached, there will be no outcome payments as is typical for SIBs.

There could be a contractual problem if the service provider underperforms. The investor cannot change or terminate the contract easily, so it bears a high risk. To minimize this risk, it should undertake a detailed due diligence process before contracting with the

service provider. That kind of direct contract gives the service provider a very central role. It is responsible for implementation of the deal and also for the whole in-house performance management (Gustafsson-Wright et al., 2015: 9; OECD, 2016: 6). But it is difficult to share the risk with the service provider. While companies are more likely to take a part of the risk, NGOs cannot profit because they may only cover the costs, so it will depend on the type of service provider.



**Figure 2** Financing Services Directly (taken from the presentation of structural options of SIBs/SOCs by Jussi Nykänen at the TAB meeting in Munich, 19 June 2018)<sup>2</sup>

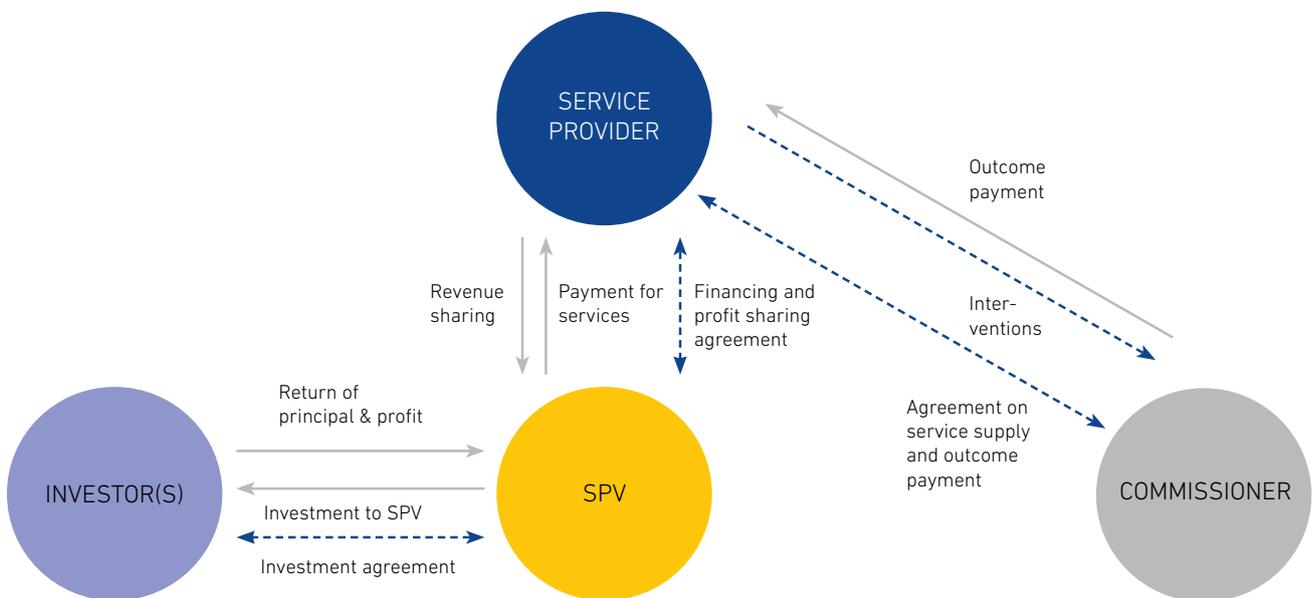
### SIBs with Special Purpose Vehicle (SPV)

Another type of direct contracting is a contract using a Special Purpose Vehicle (SPV), a legal entity specifically created for the SIB. Simply put, a SPV is holding a bank account where investors deposit their money (So and Jagelewski, 2013: 12). After that, the SPV transfers the money to the service provider to finance the intervention. The money is only called for when it is needed for the intervention itself. The contracting authority enters into an agreement concerning the outcome payment and service supply with the service provider. If the SIB has been successful and the outcomes have been reached, the money goes the other way round: The contracting authority pays a rate of return to the service provider, who sends the money to the SPV. Through an investment agreement between the SPV and the investors, they receive their profit return directly from the SPV.

Jussi Nykänen reminded us at the TAB meeting in Munich in June 2018 that the SPV is a good contracting model for large-volume SIBs, for example 10 million euros and more. It is also a good choice when there are many investors or contracting authorities involved. That is why the investors have more safety, because they

transfer money to the SPV and do not have to deposit it directly with the service provider. On the other hand, the investors are not so closely involved in the whole project due to the distance between them and the service provider.

Government contracting authorities often prefer this contract type as it brings greater flexibility. For example, if one service provider is underperforming during the SIB, the SPV can cancel the financing and profit sharing agreement between the SPV and the service provider for one that is better suited (So and Jagelewski, 2013: 12). Some other applications are only possible with SPVs. For example, asset transfer is an enormous challenge within SIB contracts, because many assets cannot be transferred or the transferring process is very difficult. Through the SPV as an entity with its own assets, the asset must no longer be split between various parties. Also the risk is no longer taken by the parent company. The SPV as a separate company shares the risk and a potential financial risk in the case of bankruptcy or other problem. Further on, non-investment grade companies can save funding costs by isolating assets in an SPV (PwC, 2011: 5). To sum up, an SPV-managed SIB is helpful in the points of legal work and cash flow management.



**Figure 3** Financing Services via SPV (taken from the presentation of structural options of SIBs/SOCs by Jussi Nykänen at the TAB meeting in Munich, 19 June 2018)<sup>3</sup>

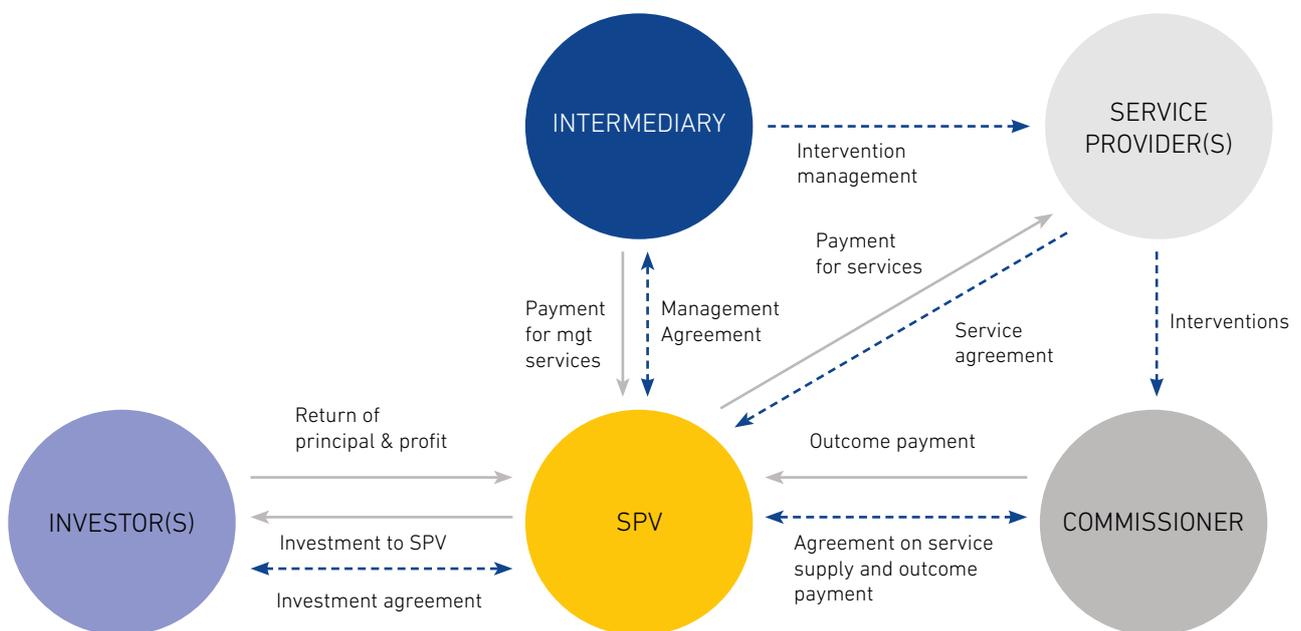
<sup>3</sup> Source not publicly available.

### Intermediated SIB

When there is an intermediary between the SPV and one or more service providers, the contract and SIB type is called an intermediated SIB. The intermediary has a relatively large level of responsibility in developing the SIB and performance management through a management agreement with the SPV (Gustafsson-Wright et al., 2015: 9). It is paid by the SPV for its management service. There is no agreement between the intermediary and the providers. The intermediary may act on behalf of the investors if the intervention does not work or a service provider is

underperforming. In this case, the intermediary can reduce the payment to the relevant service providers.

This contract model elevates project quality and, as Jussi Nykänen said at the TAB meeting, it allows SIB creators to form an ecosystem around the service providers. An ecosystem always starts from the problem that should be solved, not from the providers involved and their individual aims. The result, whether it is successful or not, is the result of their joint work and not of individual efforts. That is why the risk is shared in this case by the SPV and the intermediary separately.



**Figure 4** Financing Services via intermediated SPV (taken from the presentation of structural options of SIBs/SOCs by Jussi Nykänen at the TAB meeting in Munich, 19 June 2018)<sup>4</sup>

## Fund-managed SIBs

A fund-managed SIB is an idea that has been proven in Finland. Simply explained, it is the case when the SPV becomes an intermediary or similarly named fund. The contracting authority looks for a fund manager who is paid a fee from the fund and makes a tendered program management agreement with him. The big advantage to a fund-managed SIB over other types of contracts lies in the fact that several contracts can be created which deal with the same social problem and solve it using the measures from the SIB.

How such fund-managed SIBs work is explained in the following using exemplary numbers. When building these kinds of contracts, the initial cost could be 100,000 Euros; this is the fee to set up the contract. The fund manager is then paid 2% to manage the SIB. If the fund manager is also an intervention manager, the fee could be up to 4%. The return on investment is 5% to 8%. Investors are very different; they do not invest the same amount of money. Some invest 10 million, and some are smaller, like foundations, but they all invest under the same conditions. However, supervision rules prevent the involvement of small investors because it is too complicated for private, non-professional investors to understand the risks involved in SIBs. Fund management companies are also not allowed to invest since they must have risk management and understand how to manage the risk, and the Finnish FSA has ruled that they must also understand the intervention which is difficult for traditional financial companies.

Nykänen explained that the responsibilities are split because the contracting authorities cannot escape their responsibility for taking care, for example, of children in municipalities. The only thing the contracting authorities could do is to externalize such interventions. In most cases a coordination group will be built in addition to the municipality staff and the service providers. They all work together to analyze what the target group needs, supplemented by information directly from the target group. With a fund-managed SIB, the relevant persons can participate in the management of the intervention and the service suppliers have no real risk of failure.

In order to create a fund-managed SIB, a license must be obtained from the finance supervision authority in Finland (FSA). In the other European countries that are examined within this common methodology, there are different regulations as to whether licenses or other legal principles have to be followed:

- In Slovenia such a fund would be regulated according to the Investment Funds and Management Companies Act (Official Gazette RS, num. 31/15,81/15 and 77/16). The law strictly regulates all areas of such investment funds, including the conditions for establishment and services, permits, monitoring etc. If the SIB fund were organized as a "quasi-fund" (for example within the legal structure of private foundation) no special permits are needed from the financial authorities (for example Commission from Investment Funds and Management Companies Act, Bank of Slovenia etc.)
- In Italy, the status of "financial intermediary" must be authorized by the Bank of Italy. The process is nearly identical to the Finnish basic version.
- In contrast, in France there is no kind of license or anything else needed to implement and contract a fund-managed SIB.
- To implement a fund in Germany, many steps must be taken. Many different financial service providers are needed. For example, a capital management company is needed to administer the fund. Later, a custodian bank is needed. The fund manager or the external financial service provider handling the fund must also own a license as is stipulated in the German Banking Act, § 32 Kreditwesengesetz (KWG).
- Austrian investment funds are governed by the Investment Funds Act of 2011. Investment funds are managed by specially licensed management companies.

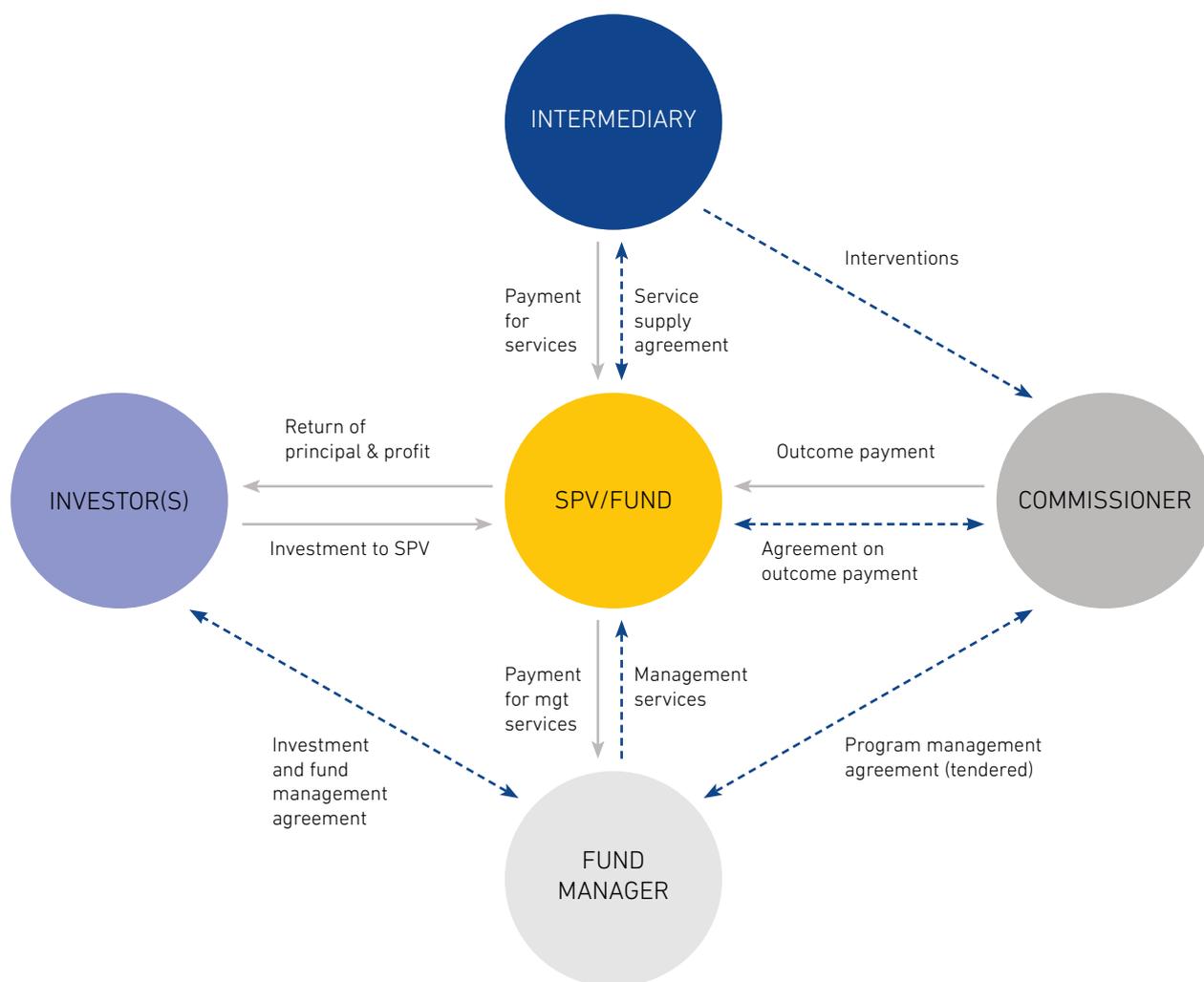


Figure 5 Financing Services via Fund (taken from the presentation of structural options of SIBs/SOCs by Jussi Nykänen at the TAB meeting in Munich, 19 June 2018)

**Key terms and conditions of SIB contracts**

Certain key terms should be written down and included in every SIB contract. In order to exemplify a contract model and to establish some comparison, the main key terms will be explained in the following.

The clarification of the key terms is inspired by the structure of the contract template from the Cabinet Office 2013 (Appendix 6.1.1.) and the associated explanations (Government Outcomes Lab, 2017c). The KOTO SIB in Appendix 6.1.2 also plays a role. Even though it is a managed SIB, a rare contract type that is difficult to recreate in other European countries apart from Finland, it gives a good overview of the structure and content of a SIB contract.

At the beginning, a *statement of shared aims* may provide that the different contract parties work together in a collaborative way. This contract clause creates an environment for understanding and

interpreting the liabilities of the different contract parties. Therefore the objectives should be set out with a description of the interventions aspired to and the main mechanics of the SIB should be explained within the contract. The governance structure as the base of the SIB mechanism must be clearly communicated. The *governance structure* is individual, just as every SIB is. Thus it should be modified to fit to the individual type and needs of the intervention and the stakeholders involved. Terms like the reporting mechanism and other challenges should be established within the setting up and development of the governance structure during SIB implementation. The different stakeholders that are integrated into the SIB governance structure each have different roles and responsibilities. These are explained in (So and Jagelewski, 2013: 15):

- Starting with the financial aspect, the *investors'* money is at risk. So in their interest, i.e. reaching the best positive social and later, the best financial outcomes,

the contracted services must work well to achieve those aims.

- The *service providers'* task is to deliver a service that best fits the needs of the target group and complies with the quality standards, contractual obligations and outcomes.
- In general, the *contracting authorities* must fulfill statutory responsibilities. Looking at contract types with an SPV, the government contracting authority is accountable for monitoring the outcomes contract through regular meetings with the performance manager and, or rather, the service provider to check the agreed contractual terms.
- A *performance manager*, such as is often established in SPVs, monitors and supports the outcomes delivery and ensures data analysis for reporting to investors. Performance management can be adopted from service providers, intermediaries or an SPV performance manager, depending on the SIB contract type. The performance manager also ensures service provider compliance with the agreed contractual conditions. To verify this, he acts in the locality of the target group, where the services are delivered, in order to support the service partner in managing interactions between them and other stakeholders or the local community. Above all these supporting activities is the focus on achieving the target outcome.

The *duration* of contracts between the different SIB actors is not very long. For example, service providers are often contracted year-by-year. *Contract duration* is often not the same as the duration of the service provided. In the 38 SIBs examined by Gustafsson-Wright et al., 2015, the shortest contract duration is about 20 months and the longest 120 months. The duration of the contract is one of the biggest advantages of the SIB model. For interventions financed from public budgets, the financial resources are released year-by-year. SIBs open up a longer and more sustainable time horizon. Projects and interventions can be planned, financed and contractually structured partially over several years.

A clause containing agreements that could be subsumed under the term *mobilization* means regulations for maybe-needed preparatory work that might be necessary. Both parties will have obligations during this preparatory period, which are set out in a mobilization plan. This plan should be a guarantee that everything that is needed to start the services and

interventions will be reached and done by all contract parties. The optimal timing for starting the services may be part of the mobilization plan. Sometimes it is necessary to start the interventions during or before a certain date, for example the start of the school year.

The point named *review, monitoring and obligations* tries to counteract problems and the possibility that developing an innovative solution like an SIB is may not be perfect from the outset. For example, within this clause, a Contract Review Date solves this problem with a meeting of all participating contract parties to consider these issues and decide how to respond. These reviews take place within six months, followed by one per year.

Further, the *payments* and the *investment amount* committed by the investors is another point which must be included. The template Contract from the Cabinet Office divides the payments into two kinds: On the one hand there is the Service Fee for ongoing interventions and services. On the other hand there is the period within which the capital and investments may be returned to the investors, the Outcomes Payment. This time period where money will be paid back according to the results achieved will be longer than the contract duration. The contract point of capital return must be preceded by determining the success metrics and how they are going to be measured. *Jussi Nykänen emphasizes that the payment schedule to investors can be individually adapted to the structures of the SIB and the type of investors. Even if the contract between investors and, for example, service providers, takes into account the entire duration of the SIB, the payments can be realized in a variety of ways. The payment schedule therefore does not refer to the length of the service contracts, but is dependent on the interim results.*

The contracts should include also terms *default* and *termination* (So and Jagelewski, 2013: 14). It should not be forgotten that either party has the right to terminate the contract at any time. The relevant terms and conditions are written down in this clause. For example in SIBs contracted with the SPV model, investors must be able to cancel agreements and contracts with underperforming service providers. Performance targets may avoid a conflict with the focus on the SIB outcomes. The SIB model and the contract always try to transfer the risk, for example the financial risk, from government to investors. The service providers can be deemed responsible in cases of underperformance but never for reaching the defined outcomes. When there is a negative outcome assessment, a performance improvement plan

is necessary to save the contract aims within an agreed time scale to avoid a contractor default. The necessary steps to be taken in the event of contractor default are also part of this clause. The same is also mapped out for the possibility of authority default.

### Challenges and opportunities within contracting SIBs in different countries and political systems

Designing a SIB contract in **Germany** is a rather legal and conceptual problem (Scheuerle and Nieveler, 2017: 11). The evaluation of the process has already shown that a precise and thoughtful definition of goals is difficult (Scheck, 2016: 3). This may be immanent in new fields or intervention approaches up to a certain point. German SIB contracts are predominantly civil service agreements between the public sector and the intermediaries, focusing on the exchange of services (Fliegauf et al., 2015: 12). Those services that will be exchanged monetarily are clearly defined as are measurable outcomes with a remuneration mechanism. The advantage of these civil agreements is that demands can be enforced by legal steps. One detriment could be that all points and clauses of the contracts in Germany can be regulated in great detail so that the governmental contractor can participate to a high degree in the points of the social interventions and how they will be implemented. It follows that the contracting process is long and complex. Another challenge with contracting SIBs in Germany is that in payment-by-results contracts the concrete savings only can be shown ex ante. This presents a challenge with regard to the principal of efficiency and economy, because the verification of real savings, rather than simply compensation costs or similar is very difficult. A further aspect is that, in accordance with §38 of the federal budget code (Bundeshaushaltsordnung), interventions that offer expenses in the following financial years are only permitted when they are in accordance with the budget plan (Fliegauf et al., 2015: 12–14). In particular, longer contracts may present problems here if they are longer than the legislative period. Long contracts that last more than four years are only possible when there is a budget law allowance. It is not certain whether this permission will be granted, because SIBs are not very popular in Germany. A solution for longer contract durations could only be a denominational structure.

From the perspective of **France**, the challenge of contracting SIBs in the French political system is that the majority of policies is under the responsibility of the national government, thus making local or regional

contracting difficult. With regard to the governance structure, there is no culture of intermediaries. That is a problem, precisely because the role of investors as an intermediary or facilitator seems to be very important in the French context. Opportunities offered by SIBs are in the government's interest. In 2016, the launch of a SIB dedicated call for proposals by the government in order to finance SIBs, and to give a designation for regional or local SIBs, enabled 13 SIBs to be selected. A new call for proposals is probably planned for 2019.

There are several practical challenges in contracting SIBs and contract design in **Slovenia**: Due to the lack of practical experience it is unclear whether the law on public-private partnerships could also be used as a legal basis for SIB contracting. Furthermore, the lack of experience concerning Art. 43 of the law on public procurement and its use for SIBs is challenging. Based on the EC directive, the goal of the Innovation Partnership approach is to develop innovative products or services and their later use while selection criteria are based on the best price and quality performance. Limiting participation in innovation partnerships to enterprises only remains a challenge (limiting it to social enterprises organized as NGOs for example). There is some uncertainty about applying Art. 31 of the law on public procurement (Reserved public procurement) to SIBs and a general lack of knowledge on the use of "Social Clauses" based on EC legislation. If the procedure is based on "classic" public procurement, there might be a legal challenge to pre-phase cooperation of stakeholders. The inclusion of possible providers in planning and developing SIB schemes is not regulated and might be seen as illegal (at least by other possible implementers) within later procurement procedures. There are additional limitations for SIBs in the field of social services: Providers in Slovenia must be non-profit legal entities and any profit in connection with social services is not allowed. How to enable financial benefits for them within contracting remains a challenge. Regarding contracting, financial returns for investors in SIBs face two obstacles: First, it must be determined how to legally define and implement payments from the state budget for investors in case of successful SIB implementation. Second, the financial return on social services would probably be seen as a controversial issue and would need to be defined and included into contracts very carefully, including extensive communication with and explanations to the public.

In **Italy**, only two contract or management types are currently possible: One opportunity is a management model that includes an SPV. This implies high costs

which can only be justified for big investments. The other possible solution is a management model with no SPV, which implies a direct relation and contract between the investor and the social provider. This is particularly complex due to the legal and administrative framework in Italy and such complexity might be a disincentive for the investor. There may be some challenges with the use of Structural Funds: The timing of the registration of the expenditure is one challenge, because the risk is that some money may be saved or not spent, which is not positive in the Structural Funds management logic (structural funds are given to regions in order to be spent not saved). Furthermore, Structural funds cannot be used to pay interest.

The difficulty with contract design in **Austria** is on one hand, the contract between the public sector and the private investors and on the other hand, between the public sector and the intermediary. In the Austrian pilot SIB, the intermediary offers its services for free, therefore the above-mentioned obstacle did not play a role. For a good initiative, a good project and a good SIB, early collaboration with the service providers would be essential and helpful as they know best what is needed. However, this stands in direct contradiction to the procurement process regulations, where their inclusion at an early stage is not permitted (Schneider, 2017: 9).

## 3.2. Mechanisms after SIBs

The expectations that SIBs e.g. could replace EU funding have not become common practice, as most European countries have so far implemented one or two SIBs at most. The innovation process has not produced any systemic change. It is not possible to scale up or standardize the process as in the industrial sector. So what is left after the development process, after implementing and performing a SIB? Which mechanisms can be derived from this or can be consolidated? At this point, we want to look at individual stakeholders and dare to reflect on how they could continue after a SIB. We shall clarify questions as to what it means to service providers when the seed funding of a project is suddenly withdrawn or what the situation is with follow-up investments by the investors in order to preserve and duplicate the added value that was created.

SIBs change the understanding of the welfare state. Instead of being a supplier, the state becomes a type of investor. Social policy is changing to become part of general political action that supports people within their available resources (Burmester and Wohlfahrt, 2018: 87). SIBs can be seen as an instrument for transforming the social service sector (Burmester and Wohlfahrt, 2018: 83). Theoretically, they influence the social policy of the locality in which a SIB is implemented in order to align its actions more closely with the interests of social investors. However, this remains only a theoretical construct in SIB practice. Monetizing the impact of a SIB does, however, force socio-political decision-makers to select projects with measurable success. The further development of detectable outputs rather than of outcomes or impacts is unfortunately mostly neglected in this process. Ultimately, the advantage of SIBs to the state is the outsourcing of government risk in the financing of social services, since it creates both alternative and new methods in social policy and, ideally, a cost reduction for the public purse. However, the support logic from process orientation to orientation towards goals and effectiveness is and remains the strength that emerges from SIBs for the public sector.

For the administration, there is a huge shift away from the bureaucratic-administrative division of tasks and fixed budgets towards a budget-wide, impact-oriented approach. So SIBs are triggering a change in the administration towards entrepreneurial thinking and acting. However, the focus on effectiveness generates effects on the regional policy side and in the administration through the combination of different intervention logics (Burmester and Wohlfahrt, 2018: 84) and overall more costly measures than through traditional financing.

The overall role of SIBs in transforming the bureaucratic-administrative system of social services in different countries depends on the role of local authorities in the implementation and development of SIBs.

An acceleration in market opening in the social service sector can certainly be ascertained, even if service providers only demand pure target achievement and no technical quality. Quantity over quality is also increasingly affecting the social services sector with the introduction of SIBs when it comes to the effectiveness of measures. In addition, the dimensions of the service offered by the service provider are usually dictated by intermediaries and government, as they are instrumental in the design of the service. As a

result, service providers struggle with this during and after a SIB. This is because they have less scope for flexibility than before the SIB and are still permanently monitored and have a greatly increased administrative burden (Roy et al., 2018). This administrative burden of reports, figures and data to be delivered also extends beyond the period of SIB implementation and extends into the evaluation phase. In addition, these data are needed to develop new SIBs. If, for example, a previous SIB that the service provider has participated in did not yield the expected results, it is unlikely that the service

provider will be taken as a SIB service provider again. In summary, the service provider lacks financial means to repeat or continue interventions and thus also to provide the target group with a corresponding offer. The dependence on the investor and thus the further tolerance of the voicelessness of the target group are problematic in the context of SIBs. Financialization and privatization of social and public policy is a potential threat posed by SIBs on the service provider side (Roy et al., 2018).





## 4. A BROADER VIEW - SIBS IN THE EUROPEAN UNION

### 4.1. The Role of European Institutions

The AlpSIB project has highlighted how dynamic the European region is in piloting SIBs and, more broadly, outcome-based financing instruments for impact-oriented initiatives.

Nevertheless, stakeholders in European States encounter individual preconditions when planning to implement a SIB. Many common challenges can be found according to the legislation and implementation. The principal points range from concrete questions about measurement up to the lack of knowledge of this instrument and fears - that the social sector may be reduced to numbers, for example (see chapter 2.6.)

The second Transnational Advisory Board (TAB) of the AlpSIB Project centered on the European context for solving these problems.

The European picture is still very non-homogeneous, with at least three groups of countries:

1. The UK, the pioneering European country in SIBs, is now in a third phase of development: after the first pilot initiatives and the spread with more than 40 schemes, it is now experimenting with second tier infrastructures (such as the Bridges Venture Fund supporting SIB schemes).

2. A group of countries, including Switzerland, where a few initiatives are testing the concept, and infiltrating the environment at the level of social organizations, governments and financial institutions. Among these, we can include France, Finland, Austria, Portugal and a few others.
3. Other countries where the interest in SIBs is sharply increasing, but the experiments are suffering from a number of difficulties (for example political, administrative, lack of initiators), especially related to local ecosystems that appear still fragile or not yet ready to take the challenge. We can include among these, for example, Italy, Germany, and Spain.

In order to accelerate and disseminate the process in the European context, there are at least three relevant questions:

- What are the needs of private and public institutions (especially in the countries in group 1 and partly in group 2)?
- How can the UK and group 2 countries' experiences influence group 3 countries in terms of rationale, structuring and involvement of different stakeholders?
- What is, and what could be, the role of European institutions in supporting the development of SIBs?

At European level, some approaches to solving the challenges of implementing SIBs can be found, as was highlighted in the paper provided by Georgia Efremova:

Over the last 5-8 years, two large-scale initiatives at European level (namely, the Social Innovation Agenda and the Social Business Initiative) have promoted a number of work streams, aiming at:

- facilitating access to funding, through a set of financial tools under the Employment and Social Innovation Program and the European Fund for Strategic Investment
- facilitating access to market for social enterprises, through capacity building and technical assistance programs
- improving framework conditions, through support for the implementation of national and regional strategies
- promoting cooperation between traditional and social businesses, thus increasing innovation, technological advancement and design of new business models
- supporting the international dimension through active participation in the global policy process

For the next Multiannual Financing Framework (2021-27), the European Commission has proposed a single integrated investment program representing the EU level investment strategy, called InvestEU. Its first pillar, the InvestEU Fund, will bring together in a single vehicle all the current financial instruments, including those dedicated to social investment. InvestEU will be supported by a € 38bn guarantee from the EU Budget. Out of its € 38 billion endowment, € 4 billion will be dedicated to an innovative and integrated Social Investment and Skills window, supporting investments in social infrastructure, social services, human capital and skills, innovation and social impact schemes, microfinance and social economy. The window will be supported by comprehensive advisory services (capacity building, technical and project development assistance) and will entail a strategic partnership with foundations and with the philanthropic sector.

In preparation for the launch of the new program (2021-27), the EIB and EC are launching a horizontal EU advisory platform for Social Outcome Contracting (SOC) under the European Investment Advisory Hub (EIAH), the second pillar of the Investment Plan for Europe.

The platform aims to build awareness and capacity amongst public authorities, build the evidence base and facilitate cross-border exchange of learning/practice in the area of SOC.

Another project launched in 2018, Buying for Social Impact, will raise awareness and support public authorities in using public procurement to pursue social objectives. This also includes encouraging public authorities to do business with social economy enterprises as a way of helping them access new markets and sources of revenue.

At local level, the European Social Economy Region Pilot aims at raising awareness and providing visibility of EU support programs for social economy and at collecting information on local needs and challenges to social economy development (taken from the handout “EC Policy Context for Social Impact Economy & Pilot Initiatives linking the EU and local/regional level” by G. Efremova provided at the TAB meeting in Milan, 27 February 2019)<sup>6</sup>.

#### 4.1.1. Policy Framework- Existing Initiatives and Programs

The financial crisis in 2008 led to an investment gap in the EU. In the social sector in particular the investment gap was large. At the same time, the unemployment rate increased significantly. Today, ten years after the crises, it still remains at a high level (16.6 million unemployed persons in September 2018 (European Commission, 2018: 2)). Particularly in rural regions, the high unemployment rate persists. In September 2016, the European Parliament forwarded a “Written Declaration” to the Council and the Commission with the aim of meeting these deficits (European Parliament, 2016). But in fact, EU-policy makers had already realized years ago that there is a link between economic growth and investments in the social sector. By launching the EU Social Innovation Agenda in 2010 and the Social Business Initiative in 2011, the European Commission has therefore made support to social entrepreneurship a key priority area for policy action. In summer 2013, the European Parliament (EP) emphasized in a resolution the important role of the private sector in social impact investment. The EP called on Member States to make more use of financial engineering through instruments such as Social Impact Bonds, and asked the Commission to make more detailed proposals on new financial instruments that

<sup>6</sup> Source not publicly available.

could leverage public social investments (European Parliament, 2013). The resolution was the response of the EP to the “Social Investment” communication, published by the European Commission in February 2013. The communication recognized the need for social enterprises to access private finance and urged EU Member States to focus on the private sector and to test and evaluate instruments such as Social Impact Bonds (European Commission, 2013). In 2013 the European Investment Fund (EIF), in collaboration with private sector investors, also launched the Social Impact Accelerator (SIA), the first pan-European public-private partnership for social impact investing. The SIA operates as a fund-of-funds managed by the EIF and invests in social impact funds targeting social enterprises across Europe.

After his election as president of the European Commission in 2014, Jean-Claude Juncker started an investment initiative, the “Juncker-Plan”, which pursues three main aims: 1. The elimination of investment obstacles, 2. Technical support for investment plans and the promotion of these, 3. A more efficient and effective use of financial resources. (European Commission, no date).

The European Fund for Strategic Investments (EFSI) is the financial pillar of the “Juncker-Plan”, managed by the European Investment Bank (EIB). Part of EFSI is EFSI Equity, a facility that provides equity investments to or alongside financial intermediaries focusing on the areas of the early stage, growth stage and expansion financing. It seeks to provide at least €150 million to social enterprises and social sector organizations that are located or active in the EU. The three pilot social impact instruments supported under EFSI Equity are investments in or alongside financial intermediaries linked to incubators, and/or accelerators, investments alongside business angels or in business angel funds, and intermediaries establishing and managing payment-by-results / Social Impact Bonds investment schemes (European Investment Fund, 2017).

The European Investment Fund (EIF), the Finnish Ministry of Economic Affairs and Employment, and Epikus<sup>7</sup>, a Finnish fund manager specializing in social impact investments, have announced a Social Impact Bond scheme in summer 2017. This agreement, enabled by the support of the European Fund for

Strategic Investments (EFSI), comprises a €14.2 million investment by investors such as the EIF, Epikus, SOK, Tradeka, and Sitra, to support the integration of between 2,500 and 3,700 migrants and refugees into the Finnish labor market. The SIB model was designed by the Finnish Innovation Fund *Sitra*, an independent public foundation supervised by the Finnish Parliament, which introduced Social Impact Bonds in Finland (Government Outcomes Lab, 2018b).

The European Investment Advisory Hub (EIAH) and the European Investment Project Portal (#InvestEU Portal) together form the second pillar of the Juncker Plan. They help proposed investment projects to be realized by providing technical assistance and greater visibility of investment opportunities (European Commission). The Investment Project Portal is intended to bring together project promoters seeking investment with investors seeking projects. In 2018, a horizontal Pan-European advisory platform for Social Outcomes Contracting (SOC) was launched under the EIAH. The platform aims to support the strengthening of the capacities of public authorities and sectoral stakeholders the development and use of SOC and to facilitate cross-border exchange of learning/practice. The SOC platform will seek solutions to common challenges such as public procurement, the effective use of European Structural and Investment Funds for outcomes-based initiatives, the establishment of **Social Outcomes Funds** at regional/national/and possibly European level, and will offer a common local approach to “impact co-creation” for stakeholders at the national and local level (taken from the handout “EC Policy Context for Social Impact Economy & Pilot Initiatives linking the EU and local/regional level” by G. Efremova provided at the TAB meeting in Milan, 27 February 2019)<sup>8</sup>. The platform was launched jointly with the Finnish Ministry of Social Affairs and Health and is also supported by the Finnish Innovation Fund *Sitra*.

Another platform relevant in this field is the *fi-compass* for advisory services on financial instruments under the European Structural and Investment Funds (ESIF). *fi-compass* is provided by the European Commission in cooperation with the European Investment Bank. It is designed to support ESIF managing authorities and other interested parties by providing practical expertise and learning tools on financial instruments. These include ‘how-to’ manuals, factsheets and case study

<sup>7</sup> Epikus is the second registered EuSEF- (European Social Entrepreneurship Fund) manager in Europe. It is supervised by the Financial Supervisory Authority of Finland and it operates as a social enterprise, dedicating 50% of its profits to social and environmental mission goals. Epikus operates as a fund manager, mediating between the financial community on one hand and public service contracting authorities or mission-driven organizations such as charities on the other hand.

<sup>8</sup> Source not publicly available.

publications as well as face-to-face training seminars, networking events, and video information.

In 2018, *fi-compass* published the study “The Portuguese Social Innovation Initiative – The Social Impacts Bonds Program – Using ESF to finance Social Innovation and Social Entrepreneurship”. Its two main objectives are to provide practical guidance to other Member States willing to implement this type of financing mechanism and to provide evidence-based inputs for the European Commission in the design of a regulatory framework concerning innovative ESF financing mechanisms (European Investment Bank, 2018: 8).

Also in 2018, the High-Level Task Force (HLTF) on Investing in Social Infrastructure released its report “Boosting Investment in Social Infrastructure in Europe”, providing recommendations and suggestions on a clear social infrastructure strategy. The HLTF was initiated by the European Long-Term Investors Association (ELTI)<sup>9</sup>, and established in February 2017, in consultation with the European Commission. Its aim is “to raise the political attention given to the critical role of social infrastructure” and to “boost public and private investments in this sector” (HLTF, 2018: 14).

### Initiatives in the field of social impact investing

The “big bang” for impact investment was the Social Impact Investment Taskforce founded by the G8 countries. Led by Sir Ronald Cohen, between 2013 and 2015 it prepared reports and recommendations to the governments of various countries on the ways they could promote impact investment. Now Cohen chairs the Global Impact Investing Network (GIIN) and the Global Steering Group for Impact Investment (GSG).

The Global Steering Group for Impact Investment (GSG) is an independent global steering group catalyzing impact investment and entrepreneurship. The GSG was established in August 2015 as the successor to the Social Impact Investment Taskforce established under the UK’s presidency of the G8. The GSG currently has 19 countries plus the EU as members, increasing from eight in 2013 (October 2018). The GSG is represented by countries via their National Advisory Boards (or NABs). The European Union Advisory Board, established in 2017, is a joint initiative of the European Commission (EC), the European Investment Fund (EIF)

and the European Investment Bank (EIB). It “seeks to encourage a policy debate for defining a regulatory framework to grow the social entrepreneurship sector in the EU” (GSG, 2018: 52).

The GSG held its annual summit in New Delhi from 8 - 9 October 2018, with 150 speakers from 30 countries. The next summit will take place in Santiago de Chile from 18 - 19 November 2019.

The OECD played a key role in the Global Social Impact Investment Initiative launched in 2013 during the UK’s Presidency of the G8. Its report “Social Impact Investment: Building the Evidence Base” (2015) called for developing global standards on definitions, data collection, impact measurement and evaluation of policies.

The OECD works in close partnership with the GSG, the GIIN and other platforms at national and regional level.

The GIIN focuses on reducing barriers to impact investment by building critical infrastructure and developing activities, education, and research that help accelerate the development of a coherent impact investing industry. GIIN members are enterprises, NGOs, and foundations such as, for example, the Bill & Melinda Gates Foundation, J.P. Morgan, the Bertelsmann Stiftung and Sitra, the Finnish Innovation Fund.

Social Finance Global Network is a collaboration between independent non-profit organizations who rethink the ways in which society tackles chronic social problems. It does so by collaborating with the government, the social sector and the financial community. Social Finance UK pioneered Social Impact Bonds in 2010. Today, it develops and launches Social Impact Bonds all over the world and functions as an intermediary organization within a Social Impact Bond. Today, the global network comprises Social Finance UK, US, Israel, India and Netherlands.

<sup>9</sup> ELTI was set up in 2013 to advocate a new investment framework in Europe.

<sup>10</sup> National Advisory Boards (NABs) promote and direct the national development of the impact investing ecosystem and market in their home country.

## Social Impact Investment on a national level

“The first, the last, and the most important factor in determining whether there is a role for Impact Bonds in any market is the readiness of government agencies to adopt the tool or to explore different ways of commissioning or contracting for social services”  
(Social Finance Ltd, 2016: 44).

Not just in the European Union, but worldwide, the UK, alongside Australia and the US, is one of the pioneers in the field of social impact investment and Social Impact Bonds.

In the US, the Government Performance Lab at the Harvard Kennedy School 9 has been instrumental in keeping governments on track with their Social Impact Bonds by providing in-house support to manage the projects. The UK follows this example and has appointed the Blavatnik School of Government in Oxford to build similar links. Furthermore, in the last years, several funds were launched by the UK government to promote and support the local development of SIBs. The biggest is the Life Chances Fund, residing at the Department for Digital, Culture, Media and Sport. The £80m fund tops up outcomes for locally developed projects that tackle complex social issues (GOV.UK, 2012).

Moreover, with the Finance Act 2014, the UK government enacted the Social Investment Tax Relief (SITR), allowing individuals who want to make a social investment to deduct 30% of the cost of their investment from their income tax liability. In addition, investments in companies set up to carry out a social impact bond are eligible for SITR (GOV.UK, 2016).

Apart from the UK, Portugal has already taken the first step by the creation in 2015 of Portugal Inovação Social, including a five-year €30 million outcomes fund.

At its mid-term debate in April 2017, the Finnish Government decided that it would include the Investment Impact SIB model in its toolkit and use it to both promote employment and prevent youth exclusion. At the start of June, the Koto-SIB project was announced by the Ministry of Economic Affairs and Employment Integration. It is the largest of its type in Europe and the world's second largest. It aims to help 2,500 immigrants into employment over a period of three years.

Also, the Finnish National Advisory Board proposed that – as in the UK and in Portugal – an outcomes fund will be established in Finland after the parliamentary election of spring 2019 (NAB, 2018).

## 4.2. Wish list to Political Authorities - Prospects of Social Impact Bonds

This chapter aims to answer the question of what can be done by political authorities to make SIBs more attractive or even possible for potential stakeholders in different regions.

The discussion during the TAB Forum in Turin identified a number of issues and policy implications for different actors, mainly related to three main strategic objectives:

- Strengthen the commitment of different stakeholders
- Support piloting
- Foster mainstreaming

### a) Strengthen the commitment of different stakeholders

In various areas, SIBs and outcome-based instruments are still catalyzing discussions over the role and responsibility of governments in welfare systems and over the hyper-sophistication of finance. In addition, considering that apart from the UK there are still only a few initiatives that cover few social issues, different stakeholders argue about the effectiveness and efficiency of SIBs and their integration into more traditional policy frameworks. In this respect, the action of EU institutions and of key stakeholders should be targeted to:

**a.1 Affirm the rationale and the legitimacy of SIBs** in the context of continental Europe welfare systems. This could be done by spreading examples that now exist in various domains and in different policy frameworks, from countries with a more centralized system of welfare to those where many policies are deployed at the local level

**a.2 Develop a common language** among various countries and regions, possibly by encompassing the terminology of SIBs and finding new and broader terminology (e.g. “social impact contracting” was proposed as a more inclusive terminology for the family of SIBs and performance-based instruments)

a.3 **Support transnational co-operation and mutual learning** at the level of awareness raising by involving policy makers and key stakeholders in workshops and discussion groups, by creating an exchange platform (wide network of institutions) and twinning programs

a.4 **Give political backing** to those institutions that are aware of the potential and interested in piloting initiatives but need to build coalitions at the local and national level. Political backing taking the form of initiatives indicated in a.3, and/or in the form of stakeholder engagement activities at the local level, with the support of EC/EIB/EIF, and by directing regional programs/funding mechanisms (AlpSIB is a good example and ERDF funding programs may in the future play an important role) contribute to this objective.

## b) Support piloting

Apart from the UK, virtually all the regions in continental Europe are still in an (early stage) prototyping phase. Current pilots are very different in terms of schemes adopted, type of social issues tackled, stakeholders and processes dynamics. According to many observers there is still a significant need for experimental schemes and test SIBs (and similar contractual arrangements) in order to complete a catalogue of possibilities and collect enough relevant data on costs, outcomes and key input variables. In addition, the diffusion of pilots should involve regions and countries where currently, experiments are more difficult and, at the same time, extend the set of possibilities in countries where some experiments already exist. There are several potential actions in this field, such as:

b.1 **Coverage of transaction costs** by third party institutions, such as the EC, in order to facilitate small scale pilot applications. Similar schemes, such as EaSI, are already in place for impact funds, but a wider amount of small and easy to access tickets may dramatically accelerate the process

b.2 **Discovering and supporting initiators.** The different experiments already in place are very diverse in terms of processes and actors involved, not only in terms of final scheme configurations. Processes are sometimes initiated by governments, in others by financial institutions of financial intermediaries and in still other cases by social agents. This diversity is a richness but, at the same

time, it poses some questions in regard to the identification and support for actors that may play a pivotal role. Small-scale mechanisms, such as pre-feasibility studies, could play an important role in identifying and empowering process leaders of future schemes

b.3 **Pilots involving philanthropic institutions such as foundations,** as partners for the coverage of potential loss and repayments in case of positive outcomes. Many attempts to launch SIBs encountered significant difficulties in the involvement of local or national governments, due to cultural and/or administrative issues. Nevertheless, performance-based mechanisms could also be tested in a private context, with the objective of solving publicly relevant issues. In such a framework, foundations could play a very important role as venture philanthropist and innovation leaders in local contexts. Even experiments of this kind may pave the path for building the business case for SIBs and attracting the interest of other relevant stakeholders

b.4 **Technical assistance for governments.** In line with the previous paragraphs - especially a3 and a4, but targeted at already aware institutions – the European Commission and/or EIF, directly or via consultants, may provide technical assistance to local governments in order to facilitate the setup of SIB schemes, the launch of stakeholder engagement processes and leverage from previous experiences

b.5 **Defining standardized models.** One of the problems that initiators face when designing and promoting result-based financing mechanisms is that they have to start from scratch. But, in fact, the social needs SIBs typically address, as well as the architecture of the partnerships, are often very similar. Listing or providing examples of possible uses of proceeds and defining a standard process could significantly simplify the process of stakeholder engagement and product design

## c) Foster mainstreaming

Even if mainstreaming does not appear to be the most crucial strategy for the time being, defining mainstreaming strategies and testing them in more mature countries may provide important indications to governments and stakeholders in countries where practices are still not in place or where only a few exist. The example of the UK, with more than 40

practices and second tier infrastructures shows that, after piloting, the future of social impact contracting may involve a variety of social issues and contexts

c.1 **Public procurement** policies and procedures need to be reviewed in order to create the conditions for a wider application of SIBs. In many European countries, the supplier selection processes in the public sector are not flexible enough to allow the construction of complex alliances between different stakeholders. Moreover, the provision of pay-by-results mechanisms introduces elements of uncertainty that are not compatible with current administrative standards

c.2 **Harmonization of practices** towards a number of quasi-standard schemes and availability of tested impact measurement frameworks may reduce transaction costs and, at the same time, mobilize significant financial means. The case of

green bonds illustrates well that simplification and typing expands the scope of application and attracts financing organizations with low expertise in the field

c.3 **Increasing complexity over time** in order to better manage risks and reduce transaction costs. Sophistication may involve financing schemes (country social innovation funds), impact measurement schemes (with local agencies), scaling up of practices and social organizations (by involving impact funds)

c.4 **Increase the size.** The vast majority of SIBs are small-scale from an investment perspective. This circumstance prevents large players' participation and augments the relative weight of fixed costs, reducing returns. By packaging together qualified social projects, we can reduce transaction costs and attract big institutional investors.



## 5. CONCLUSION AND ACKNOWLEDGMENTS

Many initiatives and programs conducted or in development on a European level focus on innovative approaches to support and integrate marginalized and difficult to reach groups of the European population, such as NEETs and seniors. Existing support for the establishment, implementation and, finally, the financial framework of SIBs in the European Union, its institutions and the political framework can already be found.

However, there is still a long way to go to make SIBs a priority financial instrument for social needs and fringe groups. This instrument is not only quite unknown by potential stakeholders, there are also still many fears and prejudices that must first be taken seriously and dismantled. Moreover, breaking down the political framework to a local level is still rather difficult.

More pilot projects are necessary to make real progress towards answering open questions concerning challenges of the legal framework as well as the implementation and outcome of Social Impact Bonds.

We trust that this Common Methodology is helpful, not only in explaining how Social Impact Bonds may be implemented or to take a closer look at the political context, but also to give an idea of Social Impact Bonds not only as an instrument for project funding, but also as instruments to make a sustainable chance for the affected target groups.

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# 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> / <i>[the Commencement Date]</i> 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.

### 12.1 *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.

### 13.12 *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**

- 22.1 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**



## 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**

**Schedule 5      Mobilisation and Demobilisation Plans**

**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.

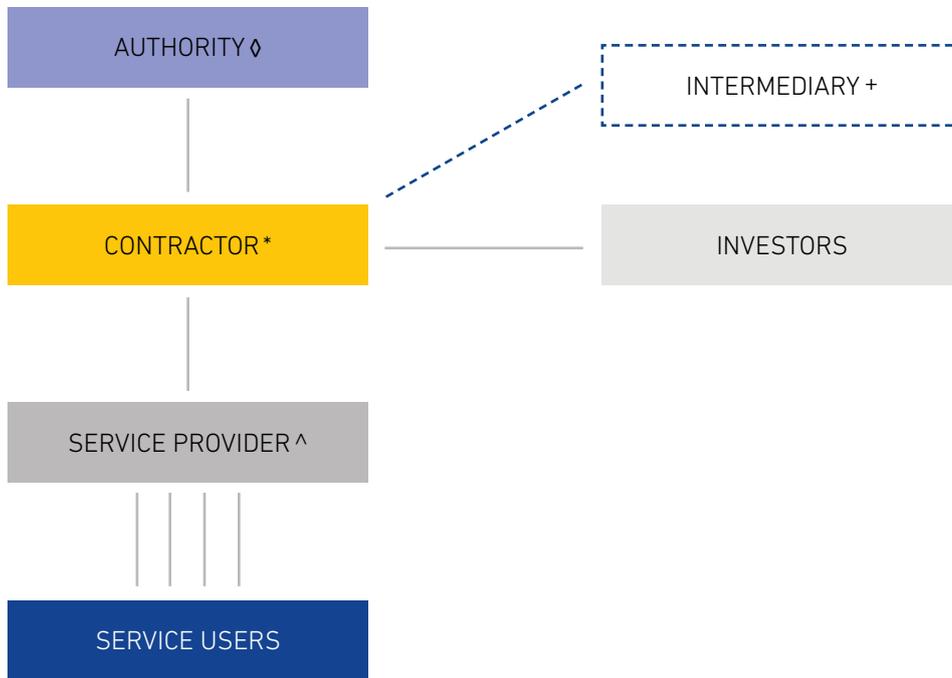
In the context of a SIB, in many cases we anticipate that the lead contractor may be a special purpose vehicle ("SPV") set up to manage this contract specifically. This will have the advantage, for the investors and the service provider(s), of reducing the prospect of the other activities of the service 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:*

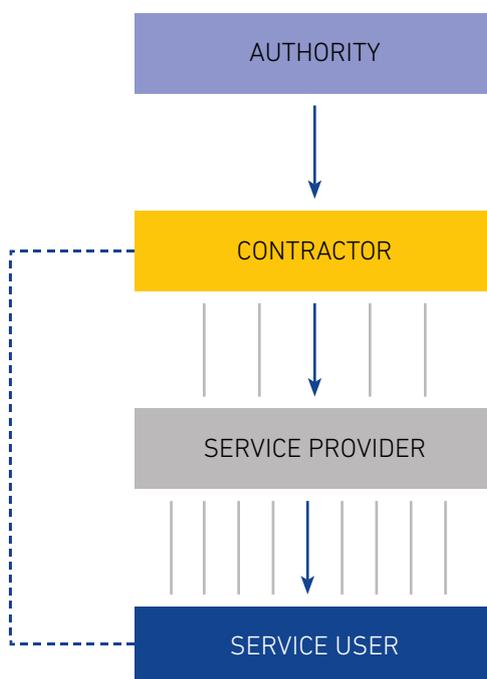
- ◊ It is possible that more than one authority may commission a service and outcomes, or that the authority will be the lead commissioner, but receive payments from other public sector bodies interested in seeing the services delivered and the outcomes achieved.
- \* The contractor may be:
  - An intermediary – 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.

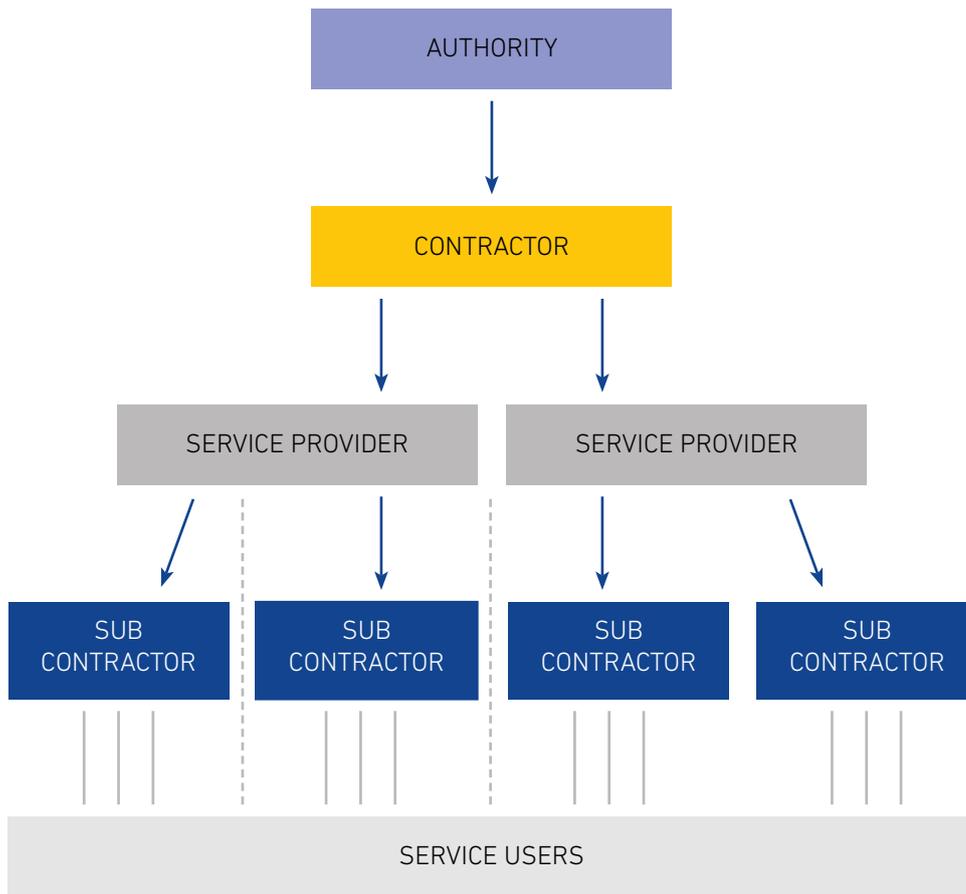
+ An intermediary may be involved, particularly where a contract is being created in a new sector, or there is a need for specialist support to raise investment capital for the project. It may provide advisory services to the contractor. Potentially, an intermediary may also provide advice to an authority, 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:*



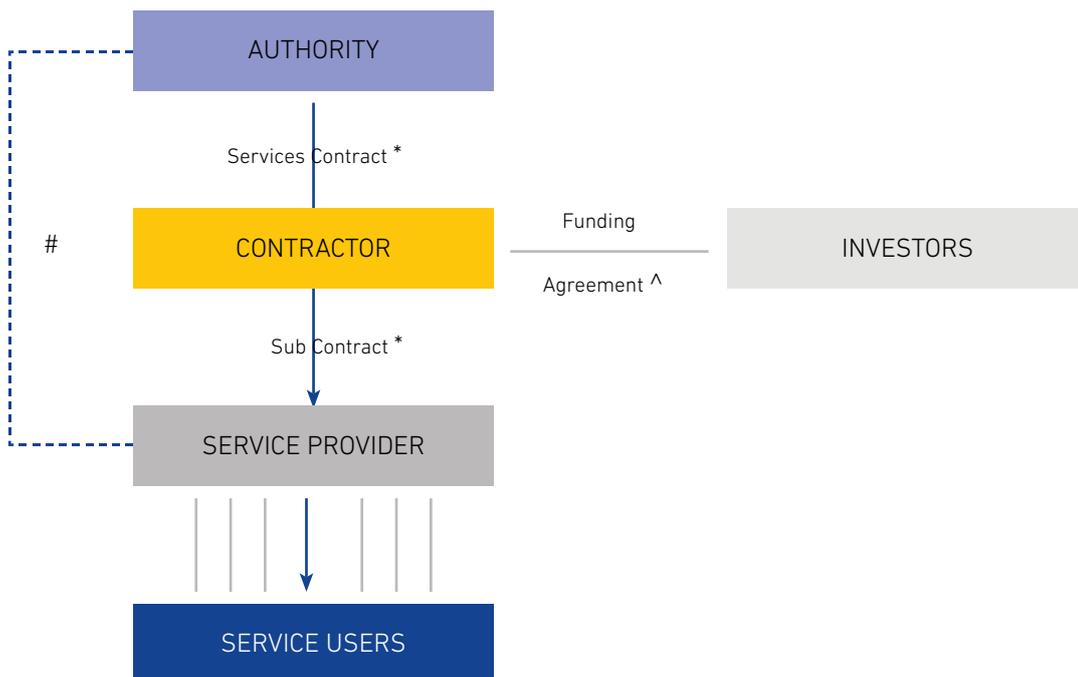
These structures are more likely to arise where there are service fees payable and the financing requirements are therefore less significant.

- 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]

[name]

[title]

[title]

\_\_\_\_\_

\_\_\_\_\_

[name]

[name]

[title]

[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 //*

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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 Manger 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 Manger 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

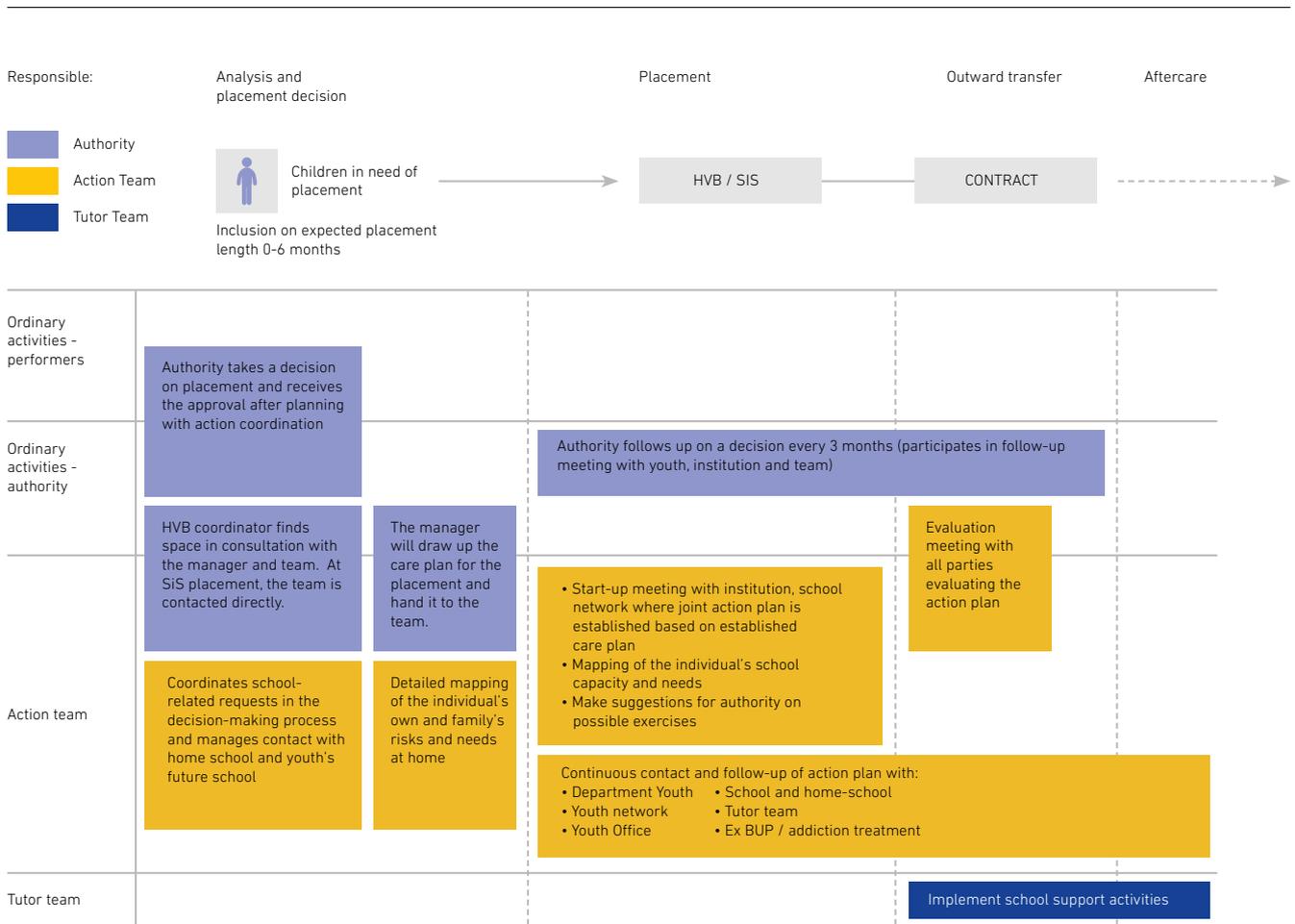
Summary description of the target group action

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.

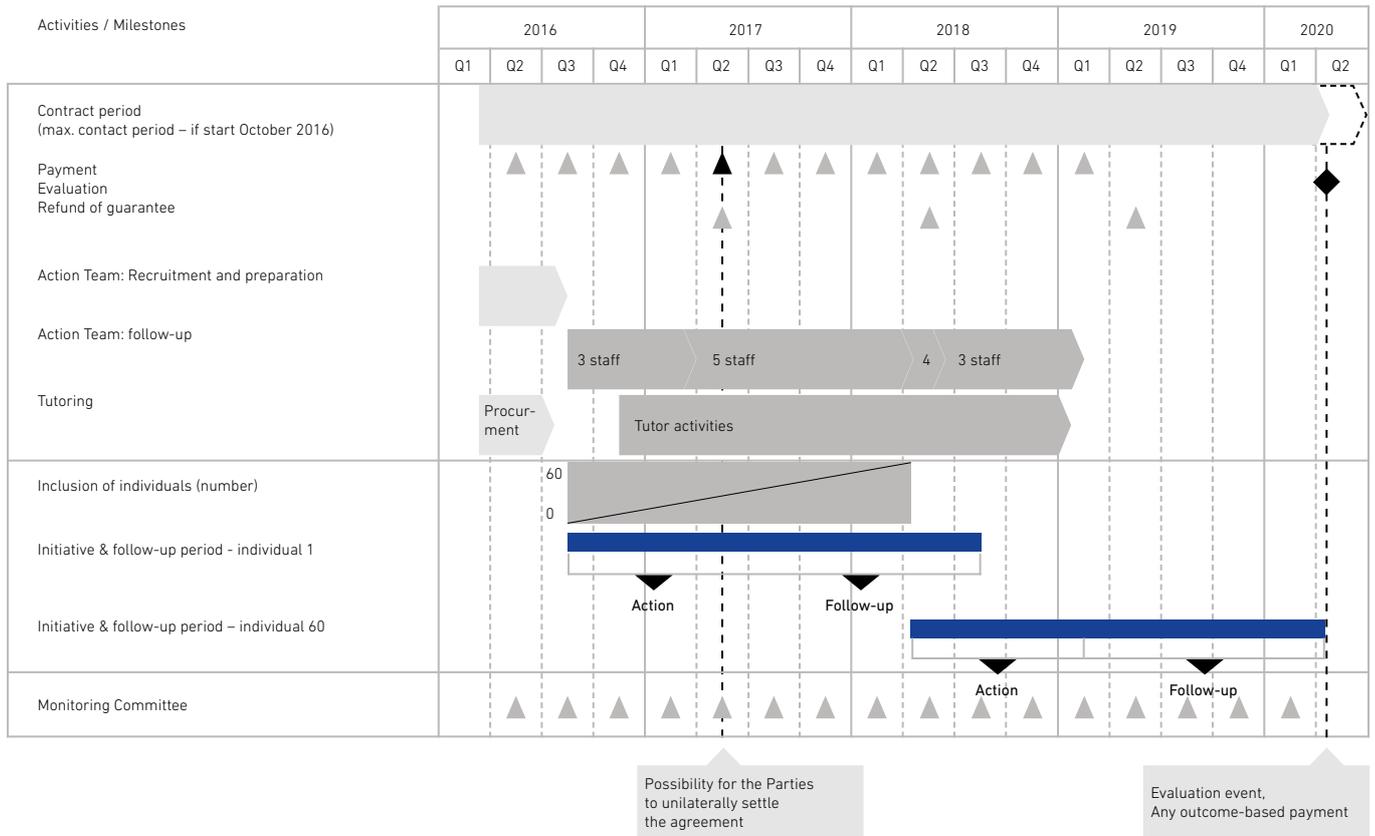
- March 2016 Contractual writing and entry into force
- April/May 2016 Recruitment team; First Monitoring Committee; Preparation of documentation
- June July 2016 Procurement for Tutoring action completed
- August 2016 Preparatory team work; First individual included; Second Monitoring Committee
- November 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.

<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>
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.

This contract was provided by Tomas Bokström (RISE Research Institutes of Sweden)





## 7. APPENDIX 2: SOCIAL IMPACT MEASUREMENT IN THE SIB MODEL: TOOLKIT

### What do we mean by measuring when using “the term to measure social impact?”

When people talk about measuring social impact, they also have very different activities in mind:

- **Monitoring** activities or outputs – refers to a continuous and systematic process of data collection about an intervention, meaning if activities or outputs delivered and implementation is progressing as planned.
- **Measuring results** in terms of outputs or outcomes – refers to assessing and calculating the outputs or outcomes of an intervention.
- **Evaluating** outcomes or impact – refers to disentangle the effects of the intervention from the contribution of other factors and to provide evidence of the cause and effect rationale.

Measuring social impact can be limited to calculating outputs or outcomes. However, it can go beyond that and adjust the observed outcomes for the results that would happen even without the intervention, results of other factors, possible negative effects elsewhere, etc. Measuring social impact is essential to manage performance, to evaluate whether something works and to provide a means for payment.

### Our understanding of social impact measurement and impact measurement in the SIB model

When people talk about measuring social impact, they have a different kind of results in mind:

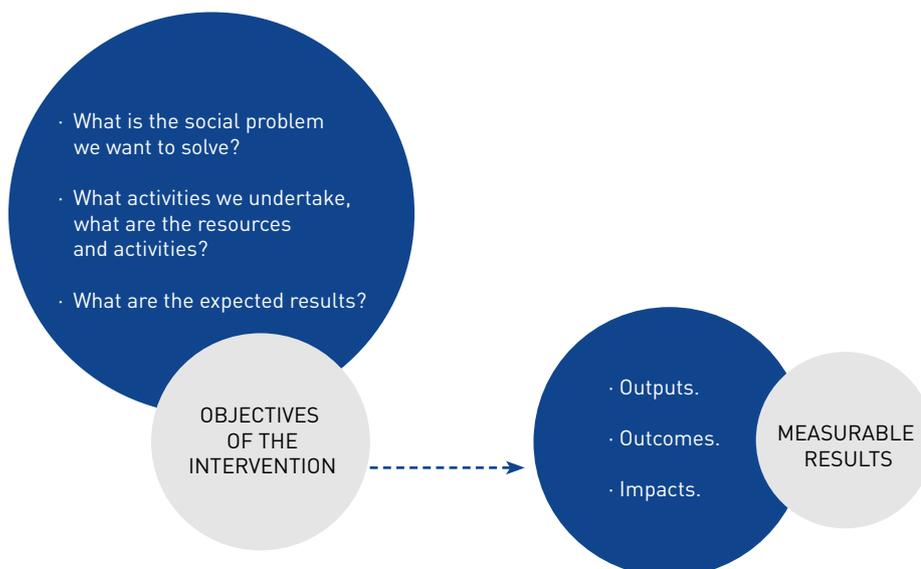
- **Outputs** – refer to tangible results from the activities conducted within the intervention.
- **Outcomes** – show the effects on the target population from the delivery of the outputs.
- **Impacts** – include changes or effects on society.

We adjust the observed outcomes for the results that would happen even without the intervention (deadweight), results of other factors, possible negative effects elsewhere, etc. When we talk about outcome measurement in the assessment of SIBs, this usually means net effects, e.g., impacts. Different terms like deadweight etc. are deducted in full or in part from the outcome. Outputs are relatively easy to measure while measuring outcomes and impact is a challenging task.

## Key steps in social impact measurement in the SIB model

<p><b>TRANSFORM OBJECTIVES INTO MEASURABLE RESULTS</b></p>	<ul style="list-style-type: none"> <li>• Outputs.</li> <li>• Outcomes.</li> <li>• Impacts.</li> </ul>
<p><b>DEFINE INDICATORS AND TARGET VALUES</b></p>	<ul style="list-style-type: none"> <li>• Output indicators.</li> <li>• Outcome indicators.</li> </ul>
<p><b>CALCULATE OUTPUTS AND OUTCOMES</b></p>	<ul style="list-style-type: none"> <li>• Collect the data about the indicators.</li> <li>• Compare the indicators to target values.</li> </ul>
<p><b>ADJUST THE OUTCOMES AND GET ESTIMATES OF THE IMPACTS</b></p>	<ul style="list-style-type: none"> <li>• Adjust the observed outcomes for the results that would happen even without the intervention, results of other factors, possible negative effects elsewhere, etc.</li> <li>• If this is not possible, at least acknowledging the factors that may cause that the outcomes are not equal to the impacts.</li> </ul>

Measuring the results of an intervention starts with the transformation of the objectives into measurable results



## What is an outcomes framework?

In order to measure outcomes and outcomes metrics should be set up because it provides a means for payment. A robust outcomes framework sets the groundwork for SIB project. It needs to define the following:

- The **outcomes** to be used. Even with clear definitions and robust measurement, there may be differences in views on how many, and which, outcomes to attach payments to.
- The **indicators** (measures) to be applied to each outcome, which show whether an outcome has been achieved or not.
- The **specific targets** to be applied to each measure, that determine the level of achievement at which outcome payments will be made.
- When **measurement** takes place.

## Outcomes framework: small and large number of outcomes

NUMBER OF OUTCOMES	ADVANTAGES	DISADVANTAGES
SMALL NUMBER	<ul style="list-style-type: none"> <li>• Simplifies model and works well when the intervention is more structured.</li> </ul>	<ul style="list-style-type: none"> <li>• Creates more risks as the SIB then becomes reliant on the performance of a small number of outcomes.</li> <li>• Can shift the balance towards process-related indicators.</li> </ul>
LARGE NUMBER	<ul style="list-style-type: none"> <li>• Beneficial when the intervention is flexible and may achieve different outcomes with different beneficiaries.</li> <li>• Spreads the risks as outcome payments can be made even if the intervention fails to achieve all its states outcomes.</li> </ul>	<ul style="list-style-type: none"> <li>• Adds to the complexity of the model.</li> <li>• Added burden on the providers who have to collect the data.</li> </ul>

## We define the desired results in terms of outputs and outcomes indicators and use target values

„**Result indicators** are variables that provide information on some specific aspects of results that lend themselves to be measured“ (EC, 2014). In the UK indicators are often termed as „**outcome measures**“:

- **Output indicator** is a “Specific and measurable actions or conditions that assess progress or regression against specific operational activities” (EVPA, 2015).
- **Outcome indicator** is a “Specific and measurable actions or conditions that demonstrate progress towards or away from specified outcomes” (EVPA, 2015).

Indicators should align with the policy objectives of the project. They should be achievable through social intervention and acceptable to all stakeholders.

## Factors that make a “good” indicator

Indicators should be **SMART**, that means specific, measurable, achievable, relevant, time-bound.

Indicators we use **should be compared with those used by others** so that the results of the intervention can be benchmarked. For each outcome **we should use more than one indicator**. Ideally we go for two to three.

**Indicators** could be hard and/or soft, indicators that show progression and/or binary (yes/no). If outcomes are difficult to measure directly, we can use proxy indicators. The proxy indicator is an indirect measure of the desired outcome strongly correlated to that outcome.

## Checklist for measuring outcomes

- What data will you use to measure outcomes: primary data or administrative data? Is there data available from other sources to measure outcomes (e.g., business register, public databases such as IRIS, Global Value Exchange or other databases)?
- Who will be responsible for collecting the data? Do they have the capacity (knowledge, experiences, access) to collect the data? Does the data need to be independently checked and validated?
- If data is not available, how much it will cost to set up new collection processes and systems?
- How outcomes will be measured: the individual measurement or across the cohort measurement?

## Example of indicators (outcome metrics) that were used in measuring social impact in the SIB model

OUTCOME FRAMEWORK: PETERBOROUGH SOCIAL IMPACT BOND (UK)	
OUTCOME	Reduced recidivism among offenders.
INDICATOR / MEASURE	A reduction in the number of hospital admissions by people receiving support in relation to the specified condition(s).
METRIC / TARGET / TRIGGER	Recidivism of 2,000 short-sentence offenders reduced by 7,5 % compared to a national control group.

## Example of indicators (outcome metrics) that were used in measuring social impact in the SIB model

OUTCOME FRAMEWORK: PERSPEKTIVE:ARBEIT (AT)	
OUTCOME	Social and economic empowerment of women affected by violence.
INDICATOR / MEASURE	Pre-defined number of women that are either able to keep their jobs or placed in a job for at least one year.
METRIC / TARGET / TRIGGER	75 women in work for at least one year with working hours of at least 20 hours per week.

## Example of indicators (outcome metrics) that were used in measuring social impact in the SIB model

OUTCOME FRAMEWORK: ADIE - MICROCREDIT ADAPTED TO THE RURAL ENVIRONMENT (FR)	
OUTCOME	Facilitate access to the microcredit agency's services (Adie) for residents living in isolated areas far from its offices.
INDICATOR / MEASURE	<ul style="list-style-type: none"> <li>• Number of financially excluded persons given access to finance.</li> <li>• Number of persons sustainably reintegrated 3 years after funding.</li> </ul>
METRIC / TARGET / TRIGGER	500 financially excluded persons given access to finance. 320 persons sustainably reintegrated 3 years after funding.

## Example of indicators (outcome metrics) that were used in measuring social impact in the SIB model

OUTCOME FRAMEWORK: ELEVEN AUGSBURG (GER)	
OUTCOME	Decreasing unemployment of adolescents and young adults.
INDICATOR / MEASURE	Pre-defined number of adolescents/young adults that are placed in a job/ apprenticeship for at least 9 months.
METRIC / TARGET / TRIGGER	20 individuals placed in a job/apprenticeship.

## Example of indicators (outcome metrics) that were used in measuring social impact in the SIB model

OUTCOME FRAMEWORK: SIB IN CANTON OF BERN (SWITZERLAND)	
OUTCOME	Sustainable, long term integration into the labor market, triggering social inclusion of immigrants in the Canton of Bern.
INDICATOR / MEASURE	Employment on a permanent basis (with and without training surcharge).
METRIC / TARGET / TRIGGER	Employment on a permanent basis (with and without training surcharge) at a level of 50%.

## Example of indicators (outcome metrics) that were used in measuring social impact in the SIB model

OUTCOME FRAMEWORK: WAYS TO WELLNESS SOCIAL IMPACT BOND (UK)	
OUTCOME	Well-being improvement and reduction in secondary care costs.
INDICATOR / MEASURE	<ul style="list-style-type: none"> <li>Improved sense of wellbeing, as measured through "Wellbeing Star".</li> <li>Difference in expenditure between WtW and comparison cohort.</li> </ul>
METRIC / TARGET / TRIGGER	<ul style="list-style-type: none"> <li>For improved sense of wellbeing, 100% of outcome payments are made if the latest Wellbeing Star comparison displays an improvement of 1.5 points.</li> <li>Outcome payments reduce on a sliding scale down to 0% if the point increase is less than 0.5 points.</li> </ul>

## Example of indicators (outcome metrics) that were used in measuring social impact in the SIB model

OUTCOME FRAMEWORK: KOTO-SIB (FINLAND)	
OUTCOME	Inclusion of immigrants & refugees.
INDICATOR / MEASURE	<ul style="list-style-type: none"> <li>The Koto-SIB program aims to find employment to 2,500 immigrants within the next three years.</li> </ul>
METRIC / TARGET / TRIGGER	<ul style="list-style-type: none"> <li>€ 1 500 fixed fee for each completed integration training + 50% of tax collections and employment benefit savings versus the control group.</li> </ul>

## Example of indicators (outcome metrics) that were used in measuring social impact in the SIB model

OUTCOME FRAMEWORK: IMPROVED SCHOOL PERFORMANCE AND REDUCED RISK OF REPLACEMENT FOR CHILDREN AND YOUNG PEOPLE IN NORRKÖPING MUNICIPALITY PLACED IN HVB / SIS (SWEDEN)	
OUTCOME	Improved school performance and reduced risk of replacement for children and young people.
INDICATOR / MEASURE	<ul style="list-style-type: none"> <li>• Changed social service costs.</li> <li>• Changed school performance.</li> </ul>
METRIC / TARGET / TRIGGER	<p>Reduced social services costs (<math>\leq 40\%</math> of total funded amount).</p> <p>Reduced social services costs (<math>&gt; 40\% \leq 100\%</math> of total funded amount).</p> <p>Reduced social services costs (<math>&gt; 100\% \leq 120\%</math> of total funded amount) and improved school performance.</p> <p>Reduced social services costs (<math>&gt; 120\%</math> of total funded amount).</p>

Then we calculate outputs and outcomes by collecting the data about the indicators (and compare them to target values)

Even though we assessed an outcome, **we never know:**

- If all the observed change can be attributable to the intervention or what would have happened anyway.
- To what extent the action of others also contributes to the outcomes.
- Or, what were other unintended consequences of the intervention.

That is why, we should **adjust the observed outcomes for the results that would happen even without the intervention, results of other factors, possible negative effects elsewhere**, etc. This is often referred to as **impact evaluation**.

To evaluate social impact we calculate outcomes, however, then adjust them (for)

- What would have happened anyway, meaning even without the intervention (“**deadweight**”)?

- The action of others that also contributed to the outcomes (“**attribution**”).
- How far the outcome of the initial intervention is likely to be reduced over time (“**drop-off**”).
- The extent to which the original situation was displaced elsewhere or outcomes displaced other potential positive outcomes (“**displacement**”), and for unintended consequences (which could be negative or positive).

Evaluation is about causal inference and analyzing causal relationship in social context is a challenging task

Causality is the relationship between **cause and effect**. In a particular context, we are interested to what extent an intervention is a cause for the results we observe (effect). The impact of the intervention is **the difference in the results for the same individuals with and without the intervention**.

The evaluator is faced with the problem of **unobservable counterfactuals:**

- What would be the results on the target population if not being treated by the intervention?
- We cannot observe the same individual in two different situations, so the results without the intervention cannot be observed.

## Estimating counterfactuals

Hypothetically, an evaluator would need a clone for each treated individual in the intervention (not available in reality).

We have to rely on **statistical tools to generate two groups of individuals that are statistically indistinguishable from each other**:

- A group of **participants** (the treatment group) and
- A group of **non-participants** (the control group).

If the two groups are identical, except that one group participates in the intervention and the other does not, we can attribute the difference to the results of the intervention.

Evaluation in the SIB model is done by an independent (professional) evaluator, the commissioner organizes and manages the process (Gertler et al., 2011)



## The core elements of a well-designed impact evaluation

- A concrete policy question—grounded in a theory of change—that can be answered with impact evaluation.
- A valid identification strategy, consistent with the operational rules of the intervention that shows the causal relation between the intervention and outcomes of interest.
- A well-powered sample that allows policy-relevant impacts to be detected and a representative sample that allows results to be generalized to a larger population of interest.
- A high-quality source of data that provides the appropriate variables required by the analysis, of both treatment and comparison groups, using both baseline and follow-up data.
- A well-formed evaluation team that works closely with policymakers and staff managing the intervention.
- An impact report and associated policy briefs, disseminated to key audiences in a timely manner and feeding both program design and policy dialogues.

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