

## CONTRACT FOR:

### PSYCHOMETRIC SERVICES TO SUPPORT DEVELOPMENT OF THE NATIONAL ASSESSMENT AND ACCREDITATION SYSTEM FOR CHILD AND FAMILY SOCIAL WORKERS

THIS CONTRACT IS DATED 7 July 2017

#### Parties

- 1) The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown (“the Department”); and
- 2) ACS Ventures LLC whose registered office is at 11035 Lavender Hill Drive #160-433, Las Vegas, Nevada, 89135, UNITED STATES OF AMERICA (“the Contractor”)

#### Recitals

The Contractor has agreed to provide psychometric advice and services in relation to the standard-setting and development of the National Assessment and Accreditation System (NAAS) for child and family social workers, on the terms and conditions set out in this Contract.

The Department's reference number for this Contract is NAAS0617

## 1 Interpretation

1.1 In this Contract the following words shall mean:-

“the Services”	the services to be performed and specialist professional advice to be offered by the Contractor as described in Schedule 1;
"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to

time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“the Contract Manager”

Joshua Bennett, Social Work Reform Unit, Department for Education, 1<sup>st</sup> Floor, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT

"Contractor Personnel"

all employees, agents, Contractors and contractors of the Contractor and/or of any Sub-contractor;

“the Contractors Contract Manager

Chad Buckendahl, ACS Ventures LLC, 11035 Lavender Hill Drive #160-433, Las Vegas, Nevada, 89135, USA

“Confidential Information”

the Department's Confidential Information and/or the Contractor's Confidential Information;

"Contracting Department"

any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department;

"Contractor Personnel"

all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor;

"Control"

means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "**Controls**" and "**Controlled**" shall be interpreted accordingly;

“Crown”

means Queen Elizabeth II and any successor

"Crown Body"

any department, office or agency of the Crown;

"Department's Confidential Information"	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Department, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;
"FOIA"	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 or relevant Government Department in relation to such legislation;
"Her Majesty's Government"	means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Property"	means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Department and " <b>Regulatory Body</b> " shall be construed accordingly.

"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"SME"	means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions.
"Sub-contractor"	the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

**1.2** References to "Contract" mean this contract (and include the Schedules). References to "Clauses" and "Schedules" mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.

**1.3** Reference to the singular include the plural and vice versa and references to any gender include both genders and the neuter. References to a person include any individual, firm, unincorporated association or body corporate.

## **2 Commencement and Continuation**

The Contractor shall commence the Services on **10 July 2017** and, subject to Clause 10.1 shall complete the Services on or before **31 December 2017**. Any extensions to this completion date must be agreed by both parties, following any formal procedures for amending or varying contracts which the Department may have in place from time to time.

## **3 Contractor's Obligations**

**3.1** The Contractor shall promptly and efficiently complete the Services in accordance with the provisions set out in Schedule 1.

**3.2** The Contractor shall comply with the accounting and information provisions of Schedule 2.

**3.3** The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.

## **4 Department's Obligations**

The Department will comply with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Contractor for work completed to the satisfaction of the Department.

## **5 Changes to the Department's Requirements**

- 5.1 The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.
- 5.2 The Contractor shall use its best endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.

## **6 Management**

- 6.1 The Contractor shall promptly comply with all reasonable requests or directions of the Contract Manager in respect of the Services.
- 6.2 The Contractor shall address any enquiries about procedural or contractual matters in writing to the Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.

## **7 Contractor's Employees and Sub-Contractors**

- 7.1 Where the Contractor enters into a contract with a supplier or contractor for the purpose of performing its obligations under the Contract (the "**Sub-contractor**") it shall ensure prompt payment in accordance with this clause 7.1. Unless otherwise agreed by the Department in writing, the Contractor shall ensure that any contract requiring payment to a Sub-contractor shall provide for undisputed sums due to the Sub-contractor to be made within a specified period from the receipt of a valid invoice not exceeding:

7.1.1 10 days, where the Sub-contractor is an SME; or

7.1.2 30 days either, where the sub-contractor is not an SME, or both the Contractor and the Sub-contractor are SMEs,

The Contractor shall comply with such terms and shall provide, at the Department's request, sufficient evidence to demonstrate compliance.

- 7.2 The Department shall be entitled to withhold payment due under clause 7.1 for so long as the Contractor, in the Department's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with clause 7.1. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment.

- 7.3 The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.
- 7.4 The Contractor shall immediately notify the Department if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.
- 7.5 The Contractor, its employees and sub-contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- 7.6 The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Department's reasonable security requirements as required from time to time.

## **8 Intellectual Property Rights**

- 8.1 It is acknowledged and agreed between the parties that all existing or future Department's Intellectual Property Rights shall vest in the Crown absolutely.
- 8.2 Any Intellectual Property Rights of the Contractor which are in existence at the date of this Contract and which are comprised in or necessary for or arising from the performance of the Consultancy Services owned by the Contractor ("**Background Intellectual Property**") shall remain in the ownership of the Contractor but in consideration of the fees payable pursuant to this Contract, the Contractor hereby grants to the Department in respect of such Background Intellectual Property an irrevocable, non-exclusive, royalty-free, perpetual licence with rights to grant sub-licences.
- 8.3 The Contractor agrees that at the request and cost of the Department it will and procure that its officers, employees and agents will at all times do all such reasonable acts and execute all such documents as may be reasonably necessary or desirable to ensure that the Department receives the full benefit of all of its rights under this Contract in respect of the Department's Intellectual Property Rights or to assist in the resolution of any question concerning the Intellectual Property Rights.
- 8.4 The Contractor hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.
- 8.5 The Contractor warrants:
- 8.5.1 that the Department's Intellectual Property Rights comprise the original work of and were created by or on behalf of the Contractor;
  - 8.5.2 that the Department's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material;
  - 8.5.3 That the use of or exercise by the Department of the Department's Intellectual Property Rights and the Background Intellectual Property will not infringe the

rights of any third party;

8.5.4 that the Contractor has not granted or assigned any rights of any nature in the Department's Intellectual Property Rights to any third party.

8.6 The Contractor shall ensure that any copyright materials produced by or on behalf of the Contractor shall be marked with the following copyright notice " © Crown Copyright 2017".

## **9 Warranty and Indemnity**

9.1 The Contractor warrants to the Department that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.

9.2 Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract then the Department shall be entitled, where appropriate to:

9.2.1 require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or

9.2.2 assess the cost of remedying the failure ("the assessed cost") and to deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continues.

9.3 The Contractor shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Department or otherwise arising out of or in the course of or caused by the provision of the Services.

9.4 The Contractor shall be liable for and shall indemnify the Department against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Contract or otherwise through the default of the Contractor

9.5 All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.

**9.6** The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Contractor shall upon request produce to the Department, its policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

## **10** **Termination**

**10.1** This Contract may be terminated by either party giving to the other party at least 1 months' notice in writing.

**10.2** In the event of any breach of this Contract by either party, the other party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate this Contract with immediate effect by notice in writing.

**10.3** In the event of a material breach of this Contract by either party, the other party may terminate this Contract with immediate effect by notice in writing.

**10.4** This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:-

**10.4.1** the Contractor passes a resolution that it be wound-up or that an application be made for an administration order or the Contractor applies to enter into a voluntary arrangement with its creditors; or

**10.4.2** a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor's property, assets or any part thereof; or

**10.4.3** the court orders that the Contractor be wound-up or a receiver of all or any part of the Contractor's assets be appointed; or

**10.4.4** the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986.

**10.4.5** there is a change in the legal or beneficial ownership of 50% or more of the Contractor's share capital issued at the date of this Contract or there is a change in the control of the Contractor, unless the Contractor has previously notified the Department in writing. For the purpose of this Sub-Clause 10.4.5 "control" means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power.

**10.4.6** the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct

**10.4.7** the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;

**10.4.8** the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to the payment of Social Security contributions;

**10.4.9** the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to payment of taxes;

**10.4.10** the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract.

**10.5** Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

## **11 Status of Contractor**

**11.1** In carrying out its obligations under this Contract the Contractor agrees that it will be acting as principal and not as the agent of the Department.

**11.2** The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Department.

## **12 Confidentiality**

**12.1** Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:

12.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

12.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

**12.2** Clause 12 shall not apply to the extent that:

12.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 13 (Freedom of Information);

12.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

12.2.3 such information was obtained from a third party without obligation of confidentiality;

12.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

12.2.5 it is independently developed without access to the other party's Confidential Information.

- 12.3** The Contractor may only disclose the Department's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Project and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 12.4** The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Department's Confidential Information received otherwise than for the purposes of this Contract.
- 12.5** The Contractor shall ensure that their employees, servants or such professional advisors or consultants are aware of the Contractor's obligations under this Contract.
- 12.6** Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:
- 12.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Department or of the relevant Central Government Body;
- 12.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 12.6.3 to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 12.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 12.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 12.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or
- 12.6.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
- 12.7** The Department shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 12 is made aware of the Department's obligations of confidentiality.

- 12.8** Nothing in this clause 12 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 12.9** The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.10** Subject to Clause 12.9, the Contractor hereby gives its consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 12.11** The Department may consult with the Contractor to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
- 12.12** The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.

### **13 Freedom of Information**

- 13.1** The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its information disclosure obligations.
- 13.2** The Contractor shall and shall procure that its Sub-contractors shall:
- 13.2.1 transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
  - 13.2.2 provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and
  - 13.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 13.3** The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

**13.4** In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.

**13.5** The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:

13.5.1 in certain circumstances without consulting the Contractor; or

13.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 13.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

**13.6** The Contractor shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

#### **14 Access and Information**

The Contractor shall provide access at all reasonable times to the Department's internal auditors or other duly authorised staff or agents to inspect such documents as the Department considers necessary in connection with this Contract and where appropriate speak to the Contractors employees.

#### **15 Transfer of Responsibility on Expiry or Termination**

**15.1** The Contractor shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.

**15.2** Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the Schedule.

**15.3** The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.

#### **16 Tax Indemnity**

**16.1** Where the Contractor is liable to be taxed in the UK in respect of consideration

received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration. Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Department reserves the right to calculate Income Tax and pay it to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.

- 16.2** Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration. Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Department reserves the right to calculate primary (employee) National Insurance contributions (NICs) and pay them to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 16.3** The Department may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.
- 16.4** A request under Clause 16.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 16.5** The Department may terminate this contract if-
- (a) in the case of a request mentioned in Clause 16.3 above if the Contractor:
    - (i) fails to provide information in response to the request within a reasonable time, or
    - (ii) provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;
  - (b) in the case of a request mentioned in Clause 16.4 above, the Contractor fails to provide the specified information within the specified period, or
  - (c) it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Contractor is not complying with those Clauses.
- 16.6** The Department may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 16.7** The Contractor warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract or in relation to any

payments made by the Contractor to its officers or employees in connection with this Contract.

- 16.8** The Contractor will account to the appropriate authorities for any income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.
- 16.9** The Contractor shall indemnify Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim.
- 16.10** The Contractor authorises the Department to provide the HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not Department is obliged as a matter of law to comply with such request.

## **17 Data Protection Act**

**17.1** With respect to the parties' rights and obligations under this Contract, the parties agree that the Department is the Data Controller and that the Contractor is the Data Processor. For the purposes of this Clause 17, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing shall have the meaning prescribed under the DPA.

**17.2** The Contractor shall:

17.2.1 Process the Personal Data only in accordance with instructions from the Department (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Department to the Contractor during the period of the Contract);

17.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any Regulatory Body;

17.2.3 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 17.2.4 Take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 17.2.5 Obtain prior written consent from the Department in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
- 17.2.6 Ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause17;
- 17.2.7 Ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Department;
- 17.2.8 Notify the Department within five Working Days if it receives:
  - 17.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
  - 17.2.8.2 a complaint or request relating to the Department's obligations under the Data Protection Legislation;
- 17.2.9 Provide the Department with full cooperation and assistance in relation to any complaint or request made, including by:
  - 17.2.9.1 providing the Department with full details of the complaint or request;
  - 17.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Department's instructions;
  - 17.2.9.3 providing the Department with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Department); and
  - 17.2.9.4 providing the Department with any information requested by the Department;
- 17.2.10 Permit the Department or the Department's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Department to enable the Department to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- 17.2.11 Provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Department); and
- 17.2.12 Not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Contractor (or any

Sub-contractor) wishes to Process and/or transfer any Personal Data outside the United Kingdom, the following provisions shall apply:

- 17.2.12.1 the Contractor shall submit a request for change to the Department which shall be dealt with in accordance with any Change Control Procedure
- 17.2.12.2 the Contractor shall set out in its request for change details of the following:
  - (a) the Personal Data which will be Processed and/or transferred outside the United Kingdom;
  - (b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the United Kingdom;
  - (c) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the United Kingdom; and
  - (d) how the Contractor will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Department's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the United Kingdom;
- 17.2.12.3 in providing and evaluating the request for change, the parties shall ensure that they have regard to and comply with then-current Department, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the United Kingdom and/or overseas generally; and
- 17.2.12.4 the Contractor shall comply with such other instructions and shall carry out such other actions as the Department may notify in writing, including:
  - (a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Contract or a separate data processing agreement between the parties; and
  - (b) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the United Kingdom enters into a direct data processing agreement with the Authority on such terms as may be required by the Department, which the Contractor acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation)."

**17.3** The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Department to breach any of its applicable obligations under the Data Protection Legislation.

**18** **Amendment and variation**

No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the Department may have in place from time to time.

**19** **Assignment and Sub-contracting**

The Contractor may assign or sub-contract parts of this contract to Steve Ferrara (Ph.D.), Private consultant, Washington, DC, USA. In such circumstances, the Contractor will be wholly responsible for any payments owed to the sub-contractor.

Save for the Department's agreement above, the benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by the Contractor to any other individuals or organisations without the prior written consent of the Department. Such consent may be given subject to any conditions which the Department considers necessary. The Department may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Contractor.

**20** **The Contract (Rights of Third Parties) Act 1999**

This Contract is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a party to the Contract.

**21** **Waiver**

No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

**22** **Notices**

**22.1** Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, or e-mail, addressed to the recipient at its registered office or its address (or such other address, or e-mail address as may be notified in writing from time to time).

- 22.2** The notice, demand or communication shall be deemed to have been duly served:
- 22.2.1 if delivered by hand, when left at the proper address for service;
  - 22.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;
  - 22.2.3 if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

## **23 Dispute resolution**

- 23.1** The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.
- 23.2** Any dispute not capable of resolution by the parties in accordance with the terms of Clause 23 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 23.3** No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

## **24 Discrimination**

- 24.1** The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 24.2** The Contractor shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

## **25 Law and Jurisdiction**

This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts.

As witness the hands of the parties

Authorised to sign for and on  
behalf of the Secretary of  
State for Education

Signature

Name in CAPITALS  
SAM OLSEN

Position in Organisation  
Deputy Director – Social Work Reform

Address in full  
1<sup>st</sup> Floor  
Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

Date  
7 July 2017

Authorised to sign for and on  
behalf of ACS Ventures LLC

Signature

*Chad W. Buckendahl* (electronic)

Name in CAPITALS  
CHAD W. BUCKENDAHL

Position in Organisation  
Partner

Address in full  
11035 Lavender Hill Dr  
Ste 160-433  
Las Vegas, NV 89135  
USA

Date  
8 July 2017

### 1 Background

- 1.1 The Government is introducing a new National Assessment and Accreditation System (NAAS) for child and family social workers in England. The new system provides a specialist form of post-qualification accreditation for child and family social workers at two statuses: child and family practitioners, and practice supervisors.
- 1.2 Work on developing the content for the practitioner and practice supervisor assessments is now well underway. However, before the system can be rolled-out for these two groups, we need to set a national standard (“pass mark”) that candidates will have to meet to gain accreditation.
- 1.3 The purpose of this contract is to commission expert advice and recommendations on the standard-setting methodology and approach that the Department should consider adopting to set the pass marks for these assessments. The Department’s aim is to use a standard-setting process that is rigorous and meets recognised international best practice standards. This contract is designed to achieve this by securing high-quality expert advice and recommendations on the way forward through a collaborative partnership between the Department and Contractor. The contract also includes provision for additional, periodic, psychometric consultancy support and advice in relation to other technical matters arising in relation to the NAAS and its assessment processes.

### 2 Aim and Objectives

The Contractor shall use all reasonable endeavours to achieve the following aims and objectives:

- To work in partnership with the Department to identify and critique the main relevant standard-setting methodologies, providing clear advice and guidance to the Department on the core features, pros and cons, and the wider considerations surrounding each.
- In collaboration with the Department, draw together this analysis and provide clear conclusions/recommendations on:
  - the most suitable approach and way forward, taking account of the Department’s delivery objectives, the nature and planned shape of the assessment and the workforce group and numbers of candidates at whom the assessment is aimed.
  - how the recommended standard-setting process can be best delivered, over what timeframe, using what particular group of experts and with an indication of likely areas of costs involved.
  - issues that may require further work or development as the standard setting work proper evolves.
  - potential areas of opportunity for strengthening and enhancing processes; also on where risks need to be managed or where contingency planning needs to be put into place.

- To provide the Department with robust psychometric advice and professional recommendations on matters relating to the NAAS on an ad hoc basis, as required by the Department. These may include areas such as commenting on the test specification framework.

### **3 Quality Measures**

The Contractor shall use all reasonable endeavours to achieve the following quality measures:

- Clarity – the Contractor shall endeavour to ensure that all communications, advice and recommendations made to the Department are clear, avoiding technical language and jargon where possible, in line with the Plain English Campaign’s Crystal Mark standard. The Contractor is not expected to attain the Crystal Mark. [Further information and free guidance on the Crystal Mark standard is available at <http://www.plainenglish.co.uk/free-guides.html>].
- Accuracy – the Contractor shall use all reasonable endeavours to ensure that all advice and recommendations submitted to the Department are accurate and in line with international best practice. In order for the Contractor to do this, the Department shall ensure that the Contractor is provided with all relevant information, acknowledging where the Department is unsure, on a confidential basis.
- Robustness – the final recommendations submitted to the Department shall be rigorous and provide the basis for an approach that reflects international best practice.
- Ad hoc advice – following an agreed approach for handling ad hoc queries, the Contractor will work in partnership with the Department to resolve/provide expert timely advice on any additional technical issues relating to the assessment development process as and when required by the Department.

### **4 Methodology**

The Contractor shall perform the tasks detailed in the Schedule of Work.

#### **SCHEDULE OF WORK**

Setting-up/Discovery phase – expected w/c 10/07/2017

- Once the contract is signed, the Department will share the latest background information on the assessment and accreditation system that is planned.
- Workshop with the Department to build relationships, develop a greater understanding of what the Department is looking to achieve, and clarify any questions on the rollout process and assumptions surrounding test structure.
- Develop an understanding of each parties’ respective work pressures

Standard-setting scoping and recommendations phase – expected from w/c 10/07/2017 to 10/08/2017

- Explore, in collaboration with the Department, the key relevant standard-setting methodologies; mutually agreeing an approach that ensures that the Department receives the high-quality expert advice it requires in order to plan and take forward the work needed to set rigorous standards for NAAS, and to demonstrate that it has used to best methodology in line with industry best practice.
- Provide final recommendations to the Department on the best standard-setting methodology to adopt and how the process should be taken forward.

Ad-hoc advice – up to 15 consultancy days over the duration of the contract

- As part of the discovery phase, the parties will agree a process for handling ad hoc queries, including what is reasonable to expect in regards to notice, timings and turnaround times.
  - Following these agreed ways of working, the Contractor will work in partnership with the Department to resolve/provide expert advice on any additional technical issues relating to the assessment development process as and when required by the Department.
- 4.1 The dates specified within the schedule of work are expected and may be subject to change, in which case, revised dates will be mutually agreed between the parties.
- 4.2 The Department and Contractor will hold fortnightly ‘Keep in Touch’ meetings by teleconference to discuss and adjust the agreed approach to ensure the ways of working remain effective.

## **5 Additional Consultancy Days**

This contract includes provision for up to 15 additional consultancy days. As part of the discovery phase, the parties will agree a process for handling ad hoc queries, including what is reasonable to expect in regards to notice and timings.

## **6 Personnel**

- 6.1 The lead consultant working on this contract will be Chad Buckendahl (Ph.D.) Partner, ACS Ventures, LLC, USA.
- 6.2 The Department agrees that parts of this contract may be allocated or sub-contracted to Steve Ferrara (Ph.D.), Private consultant, Washington, DC, USA.
- 6.3 The Contractor will inform the Department of which pieces of work are being undertaken by the personnel listed above.

End of schedule 1

## Schedule 2

### 1 Table of costs

Phase	Cost	Total	Invoice date
Setting-up discovery phase	Chad x [REDACTED] @ p.d.  Steve x [REDACTED] @ p.d.	£5,360	Following the initial workshop/teleconference  Expected w/c 10/07/2017
Standard-setting scoping phase	Chad x [REDACTED] @ p.d.  Steve x [REDACTED] @ p.d.	£14,740	Following sign-off of the final recommendations  Expected 15/08/2017
Ad hoc advice	[REDACTED] x	Up to £20,100	Upon provision of the advice/recommendations commissioned
Call off days for as hoc advice, as required	[REDACTED] p.d. x	Up to £2,680	Upon provision of the advice/recommendations commissioned
<b>Grand total (excluding VAT)</b>		<b>Up to £42,800</b>	

- 2 Funds allocated to a particular expenditure heading in the table at paragraph 1 ("the Table") are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Table may not be altered except with the prior written consent of the Department.
- 3 The Contractor shall maintain full and accurate accounts for the Service against the expenditure headings in the Table. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Contract.
- 4 The Contractor shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time and shall furnish oral or written explanations of the account if required. The Department reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the Department's resources in the performance of this Contract.
- 5 Invoices shall be prepared by the Contractor on the invoice dates specified in the Table in arrears and shall be detailed against the expenditure headings set out in the Table. The Contractor or its nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Contractor on the Service in accordance with the Contract and that the invoice

does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.

- 6** Invoices shall be sent, within 30 days of the end of the month to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool FY5 3TA, quoting the Contract reference number. The Department undertakes to pay correctly submitted invoices within 5 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department. Any correctly submitted invoices that are not paid within 30 days will be subject to the provisions of the Late Payment of Commercial Debt (Interest) Act 1998. A correct invoice is one that: is delivered in timing in accordance with the contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, supplier name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address. If any problems arise, contact the Department's Contract Manager. The Department aims to reply to complaints within 10 working days. The Department shall not be responsible for any delay in payment caused by incomplete or illegible invoices.
- 7** The Contractor shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Contractor, would reasonably have been required for that purpose.
- 8** If this Contract is terminated by the Department due to the Contractors insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Contractor before the date of termination.
- 9** On completion of the Service or on termination of this Contract, the Contractor shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service.
- 10** The Department shall not be obliged to pay the final invoice until the Contractor has carried out all the elements of the Service specified as in Schedule 1.
- 11** It shall be the responsibility of the Contractor to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.
- 12** Payments will be issued in Great British Pounds (GBP) at the fixed day rates set out within the table of costs. The Contractor accepts the risk of varying exchange rates.

- 13** The fixed daily rates included with the table of costs are inclusive of any expenses incurred by the Contractor or sub-contractor.

End of Schedule 2