

## **Terms and Conditions**

### **CONTRACT FOR Delivery Support to Local Authorities and their partners for implementation of the SEN and disability reforms**

**THIS CONTRACT IS DATED: 20 March 2015**

#### **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) Mott Macdonald registered number 1243967 Mott MacDonald House, 8-10 Sydenham Road Croydon, CR0 2EE ("the Contractor")**

#### **Recitals**

The Contractor has agreed to Provide delivery support to local authorities and their partners to assist in the implementation of the SEN and disability reforms on the terms and conditions set out in this Contract.

The Department's reference number for this Contract is CSD002/2014

## **1 Interpretation**

### **1.1 In this Contract the following words shall mean:-**

- |                                  |  |
|----------------------------------|--|
| <b>"the Services"</b>            | the services to be performed by the Contractor as described in Schedule 1;   |
| <b>"Central Government Body"</b> | 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:<br><br><ol style="list-style-type: none"><li>(a) Government Department;</li><li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(c) Non-Ministerial Department; or</li></ol> |

(d) Executive Agency;

"the Contract Manager"	Mia Spreadbury Special Educational Needs and Disability, Level 1, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT
"the Contractors Contract Manager"	Kerry Hancock
"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;
"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 owned by the department, 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 issued 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.
"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.
"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. References to a person include any individual, firm, unincorporated association or body corporate.

## **2 Commencement and Continuation**

The Contractor shall commence the Services on **1 April 2015** and, subject to Clause 10.1 shall complete the Services on or before 31 March 2016. This contract may be extended for up to one year, should it continue to align with Government priorities and subject to performance and funding becoming available.

## **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 and the special conditions set out in Schedule 3. Where there is any conflict between the terms of this Contract and the special conditions set out in Schedule 3, the special conditions shall prevail.

**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 Departments 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, by way of addition omission substitution or other amendment, may instruct a variation to the Services from time to time in writing to the Contractor. Where the Department requires a variation to the Services the Contractor shall as soon as is reasonably practicable notify the Department of the likely impact (if any) of the variation on the Services both in terms of the additional or reduced fees and time to complete the Services. The Contractor shall not be required to commence the varied Services until such time as the Department has given his written approval of the fees and additional time associated with the varied Services. The Contractor shall use reasonable endeavours to minimise the adverse effect of any variation upon the Services.
- 5.2 Pursuant to sub-clause (i) above the Contractor shall be entitled to compensation from the Department where the Services are varied, delayed or disrupted and any adjustment to the fees or the time for performance of the Services shall be calculated in accordance with the provisions of Schedule 2.

## **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 promptly 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 Copyright**

Copyright in all reports and other documents and materials arising out of the performance by the Contractor of their duties under this Contract are to be assigned to and shall vest in the Crown absolutely. This condition shall apply during the continuance of this Contract and after its termination howsoever arising.

## **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 Contractor using the standard of performance set out in the first sentence of this clause to ensure, to the extent possible using that standard of performance, 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.
- 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 Consultant shall only be liable to pay compensation to the Client under or in connection with this Consultancy Agreement if a failure to perform with reasonable skill, care and diligence is established against the Consultant.
- 9.3.1 Notwithstanding any other term to the contrary in this Consultancy Agreement or any related document and whether the cause of action for any claim arises under or in connection with this Consultancy Agreement in contract or in tort, in negligence or for breach of statutory duty or otherwise, in relation to any and all causes of action as aforesaid the total liability of the Consultant in the aggregate for all claims shall be limited to the lesser of
- a) a sum equivalent to four (4) times the fee payable under this Consultancy Agreement; or
  - b) £1,000,000 (One million Pounds).

9.3.2 Further and without prejudice to the aforesaid limit of liability any such liability of the Consultant for any loss or damage ("the loss or damage") in respect of any claim or claims shall be limited to such sum or sums as it would be just and equitable for the Consultant to pay having regard to the Consultant's responsibility for the same and on the basis that:

- a) all other parties appointed or to be appointed by the Client to perform related services in connection with the Project shall be deemed to have provided undertakings on terms no less onerous than this Consultancy Agreement and shall be deemed to have paid to the Client such contribution as it would be just and equitable for them to pay having regard to their responsibility for the loss or damage; and
- b) it shall be deemed that all such other parties have not limited or excluded their liability to the Client for the loss or damage in any way which may be prejudicial to the Consultant's liability under this clause.

9.3.3 Further and without prejudice to the foregoing the total liability of the Consultant under or in connection with this Consultancy Agreement for any and all claims in respect of contamination or pollution shall be limited to the lesser of

- a) £250,000 (Two hundred and Fifty Thousand Pounds), or
- b) the direct cost incurred by the Client in removing the contamination or pollution

9.3.4 The Consultant shall have no liability to the Client in respect of any claim for loss or damage arising from acts of war or terrorism, nuclear or radioactive emissions, any incidence of toxic mould, or from or related to asbestos.

9.3.5 Neither party shall be liable to the other for any indirect, special or consequential loss (including but not limited to loss of profit whether direct or indirect, loss of production, loss of contracts, loss of use, loss of business, and loss of business opportunity).

9.3.6 No action or proceedings under or in connection with this Consultancy Agreement shall be commenced against the Consultant after the expiry of 6 (six) years from completion of the Services.

9.3.7 Nothing in this clause shall operate to exclude or limit the Consultant's liability for death or personal injury.

**9.4** 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.

**9.5** Provided always that such insurance is available in the London market at commercially reasonable rates and terms, the Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover its liabilities 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, certificates 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 3 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 his/their 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 his/their 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 confidentiality 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 his 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 Contractor's 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.
- 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.
- 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 should provide and the period within which that information should 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 3 months, 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. The Department will give the Contractor one month's notice of the information to be disclosed (to the extent permitted by law) and will allow the Contractor to redact any information that has not specifically been requested by HM Revenue and Customs
- 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 where the Department is obliged as a matter of law to comply with such and, to the extent permitted by law, will give the Contractor one month's notice of the information to be disclosed and to which department or agency.

**17** **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.

**18** **Assignment and Sub-contracting**

The benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by the Contractor 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.

**19** **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.

**20** **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.

**21** **Notices**

Any notices to be given under this Contract shall be delivered personally or sent by post or by facsimile transmission to the Contract Manager (in the case of the Department) or to the address set out in this Contract (in the case of the Contractor). Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, 48 hours after posting or, if sent by facsimile transmission, 12 hours after proper transmission.

**22** **Dispute resolution**

- 22.1** 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.

**22.2** Any dispute not capable of resolution by the parties in accordance with the terms of Clause 22 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

**22.3** 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. This clause shall not operate so to exclude or limit a party's right to seek injunctive or declaratory relief.

## **23 Discrimination**

**23.1** 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.

**23.2** The Contractor shall take all reasonable steps to secure the observance of Clause 23.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

## **24 Ethics**

**24.1** In the performance of their obligations under or in connection with this Consultancy Agreement the parties, their agents and employees shall comply with all applicable laws rules regulations including but not limited to the Bribery Act 2010 and where appropriate the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

## **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

STUART MILLER

Position in Organisation

Deputy Director  
0- 25 SEND Unit

Address in full  
1<sup>st</sup> Floor

Authorised to sign for and on  
behalf of Mott MacDonald

Signature

Name in CAPITALS

R DOUGLAS WILSON

Position in Organisation

Unit MD

Address in full  
10 Fleet Place

Sanctuary Buildings  
Great Smith Street  
London SW1P 3BT

London  
EC4M 7RB

Date

Date

## **Schedule 1**

### **1 Background**

1.1 On 1 September, the Children and Families Act 2014 became law, offering simpler, improved and more consistent help for children and young people with special educational needs (SEN) and disabilities.

1.2 As well as extending provision from birth to 25 years of age, the new system will:

- replace SEN statements and learning disability assessments with a new birth-to-25 education, health and care plan - setting out in one place all the support families will receive;
- require better co-operation between councils and health services to make sure services for children and young people with SEN and disabilities are jointly planned and commissioned;
- give parents and young people with education, health and care plans the offer of a personal budget - putting families firmly in charge;
- require councils to publish a 'local offer' showing the support available in the area to all children and young people who have disabilities or SEN;
- introduce mediation for disputes; and
- introduce a new legal right for children and young people with an education, health and care plan to express a preference for state academies, free schools and further education (FE) colleges - currently limited to maintained mainstream and special schools.

1.3 The changes are being phased in from September 2014 - ensuring that all children and young people with SEN and disabilities and their families can benefit from the improved arrangements as soon as possible, while at the same time ensuring that the best possible service is maintained during the transition. As the changes bed in during the course of the 2015-16 Financial Year, the Government expects that there will be an ongoing need for a Strategic Reform Partner with extensive networks and high levels of credibility to support culture change in Voluntary and Community Sector (VCS) organisations and provide expert advice and feedback to the Department for Education.

### **2 Aim**

2.1 The Contractor shall use reasonable endeavours to achieve the following aims:

- coordinate regional local authority (LA) regional leads and providing support for their work providing peer support
- provide a support and challenge function through the provision of an SEND adviser service
- provide specialist advice and support to LAs and their partners including:
  - cross-cutting support on all main aspects of the SEN and disability reforms, including the local offer, co-ordinated assessment and EHC plans, focusing on outcomes, personal budgets, joint commissioning,

- preparation for adulthood and participation of children, young people and parents
- training on keyworking approaches
- support to local information, advice and support services through training, regional networking and sharing good practice
- support for the preparation for adulthood strand of the reforms to include brokering relationships with Further Education (FE) colleges, provision of resources on preparation for adulthood, and promotion of supported internships.
- Delivering a pilot training and development programme aimed at senior SEN and disability managers in local authorities.

### **3 Methodology**

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

## SCHEDULE OF WORK

<b>1</b>	<b>Overall Programme Management</b>
1a	Set up and deliver coordinated reporting and management information.
1b	Deliver a coordinated support approach across all strands and with other key partners/stakeholders.
1c	Provide contract management: attend contract meetings, provide updates/intelligence and issue invoices.
<b>2</b>	<b>Supporting the SEN and Disability Regional Lead Programme</b>
2a	Provide support and challenge to SEND regional leads, ensuring a broadly consistent offer across all regions and sharing intelligence where required.
2b	Provide reporting and input to support overall programme management.
2c	Plan and Deliver National Accelerated Working Groups (AWG) to promote change and support continuous improvement within the regions.
2d	Ensure a seamless offer of regional support between the SEND regional leads and other strands of the contract, providing flexible support to meet gaps in the regions.
2e	Join up with and build on existing relationships with expertise in the voluntary, community and non-profit sectors and other DfE/DH delivery and strategic partners.
2f	Provide strand management
2g	Support and work with the SEND regional leads and other stakeholders to the develop a sustainable approach
<b>3</b>	<b>Provision of the SEND Adviser Service</b>
3a	Agree focus and strategic direction of the SEND Adviser Service and then review.
3b	Recruit and manage the expert SEND advisers in consultation with the DfE.
3c	Provide direct advice, challenge and support via the specialist SEND adviser team.
3d	Link in the SEND Adviser Service with the work of the SEND Regional Lead programme and other specialist support to ensure that good practice is shared and support targeted on adviser feedback.
<b>4</b>	<b>Key working</b>
4a	Update the core KW training offer developed through the ES programme.
4b	Develop, host and make widely available 5 themed E-learning modules that meet the needs of those working across education, health and social care.
4c	Manage a national KW training programme on the basic principles of KW across the country and where need is identified.
<b>5</b>	<b>Preparing for Adulthood</b>
5a	Develop and deliver regional support around preparing for adulthood that brings together key stakeholders and supports implementation of SEND reforms for young people aged 14-25 and their families.

5b	Develop and deliver regional support around Supported Internships and preparing for employment that brings together key stakeholders and supports implementation of SEND reforms for young people aged 14-25 and their families.
5c	Share best practice, information and resources for preparing for adulthood so that the requirements are understood.
5d	Provide advice and support to DfE and other government departments on policy and implementation of PfA agenda.
5e	Provide effective management support to the PfA programme and reporting and input to overall programme management.
<b>6</b>	<b>IASS Network</b>
6a	Provide annual benchmarking about the state of IAS around the country.
6b	Develop an IASS quality standards assessment framework.
6c	Ensure legal training is offered to all IAS Services and is well targeted, delivered and useful.
6d	Facilitate a group of organisations working in the area of SEND information and advice to facilitate better working by identifying key areas of work and agreement, and share best practice and information.
6e	Provide additional training including specifically on health and social care to enhance IAS being offered.
6f	Provide support and training to IAS to develop/ enhance their IAS provision to children and young people.
6g	Ensure support, information and news is provided to all IAS through various communications channels.
6h	Ensure parents, children and young people have access to the details of their local IASS through our website and national phone line.
6i	Provide reporting and input to support overall programme management.
<b>7</b>	<b>Leadership Programme</b>
7a	Develop detailed programme content
7b	Recruit participants
7c	Deliver Programme to participants
7d	Evaluate Programme
<b>8</b>	<b>Tribunal Pilot Programme</b>
8a	Establish a PMO / coordination function.
8b	Provide support and challenge to pilot sites.
8c	Provide reporting and input to support overall programme management.
8d	Attendance and contribution at relevant meetings to help share learning and address challenges/problem solve.

End of schedule 1

## Schedule 2

### 1 Table

#### Schedule 2

Task	Cost	Total	Invoice date <sup>1</sup>
Delivery of:  ■ Information, Advice and Support Services Network Strand: ■  <ul style="list-style-type: none"> <li>• Key working Strand: ■</li> <li>• Preparing for Adulthood Strand: ■</li> <li>• Senior Leadership Programme Strand: ■</li> <li>• Regional Lead Programme Strand: ■</li> <li>• SEND Advisor Strand: ■</li> <li>• Tribunal Pilot Programme Strand: ■</li> </ul> Overall Programme Management Strand: ■ Total monthly invoice: ■	■	■	April 2015
Delivery of:  <ul style="list-style-type: none"> <li>• Information, Advice and Support Services Network Strand: ■</li> <li>• Key working Strand: ■</li> <li>• Preparing for Adulthood Strand: ■</li> <li>• Senior Leadership Programme Strand: ■</li> <li>• Regional Lead Programme Strand: ■</li> <li>• SEND Advisor Strand: ■</li> <li>• Tribunal Pilot Programme Strand: ■</li> </ul> Overall Programme Management Strand: ■ Total monthly invoice: ■	■	■	May 2015

<p>Delivery of:</p> <ul style="list-style-type: none"> <li>Information, Advice and Support Services Network Strand: [REDACTED]</li> <li>Key working Strand: [REDACTED]</li> <li>Preparing for Adulthood Strand: [REDACTED]</li> <li>Senior Leadership Programme Strand: [REDACTED]</li> <li>Regional Lead Programme Strand: [REDACTED]</li> <li>SEND Advisor Strand: [REDACTED]</li> <li>Tribunal Pilot Programme Strand: [REDACTED]</li> </ul> <p>Overall Programme Management Strand: [REDACTED]</p> <p>Total monthly invoice: [REDACTED]</p>	[REDACTED]	[REDACTED]	June 2015
<p>Delivery of:</p> <ul style="list-style-type: none"> <li>Information, Advice and Support Services Network Strand: [REDACTED]</li> <li>Key working Strand: [REDACTED]</li> <li>Preparing for Adulthood Strand: [REDACTED]</li> <li>Senior Leadership Programme Strand: [REDACTED]</li> <li>Regional Lead Programme Strand: [REDACTED]</li> <li>SEND Advisor Strand: [REDACTED]</li> <li>Tribunal Pilot Programme Strand: [REDACTED]</li> <li>Overall Programme Management Strand: [REDACTED]</li> </ul> <p>Total monthly invoice: [REDACTED]</p>	[REDACTED]	[REDACTED]	July 2015
<p>Delivery of:</p> <ul style="list-style-type: none"> <li>Information, Advice and Support Services Network Strand: [REDACTED]</li> <li>Key working Strand: [REDACTED]</li> <li>Preparing for Adulthood Strand: [REDACTED]</li> <li>Senior Leadership Programme Strand: [REDACTED]</li> <li>Regional Lead Programme Strand: [REDACTED]</li> </ul>	[REDACTED]	[REDACTED]	August 2015

<ul style="list-style-type: none"> <li>• SEND Advisor Strand: [REDACTED]</li> <li>• Tribunal Pilot Programme Strand: [REDACTED]</li> <li>• Overall Programme Management Strand: [REDACTED]</li> </ul> <p>Total monthly invoice: [REDACTED]</p>			
<p>Delivery of:</p> <ul style="list-style-type: none"> <li>• Information, Advice and Support Services Network Strand: [REDACTED]</li> <li>• Key working Strand: [REDACTED]</li> <li>• Preparing for Adulthood Strand: [REDACTED]</li> <li>• Senior Leadership Programme Strand: [REDACTED]</li> <li>• Regional Lead Programme Strand: [REDACTED]</li> <li>• SEND Advisor Strand: [REDACTED]</li> <li>• Tribunal Pilot Programme Strand: [REDACTED]</li> <li>• Overall Programme Management Strand: [REDACTED]</li> </ul> <p>Total monthly invoice: [REDACTED]</p>	[REDACTED]	[REDACTED]	September 2015
<p>Delivery of:</p> <ul style="list-style-type: none"> <li>• Information, Advice and Support Services Network Strand: [REDACTED]</li> <li>• Key working Strand: [REDACTED]</li> <li>• Preparing for Adulthood Strand: [REDACTED]</li> <li>• Senior Leadership Programme Strand: [REDACTED]</li> <li>• Regional Lead Programme Strand: [REDACTED]</li> <li>• SEND Advisor Strand: [REDACTED]</li> <li>• Tribunal Pilot Programme Strand: [REDACTED]</li> <li>• Overall Programme Management Strand: [REDACTED]</li> </ul> <p>Total monthly invoice: [REDACTED]</p>	[REDACTED]	[REDACTED]	October 2015
<p>Delivery of:</p> <ul style="list-style-type: none"> <li>• Information, Advice and Support Services Network Strand: [REDACTED]</li> </ul>	[REDACTED]	[REDACTED]	November 2015

<ul style="list-style-type: none"> <li>• Key working Strand: [REDACTED]</li> <li>• Preparing for Adulthood Strand: [REDACTED]</li> <li>• Senior Leadership Programme Strand: [REDACTED]</li> <li>• Regional Lead Programme Strand: [REDACTED]</li> <li>• SEND Advisor Strand: [REDACTED]</li> <li>• Tribunal Pilot Programme Strand: [REDACTED]</li> <li>• Overall Programme Management Strand: [REDACTED]</li> </ul> <p>Total monthly invoice: [REDACTED]</p>			
<p>Delivery of:</p> <ul style="list-style-type: none"> <li>• Information, Advice and Support Services Network Strand: [REDACTED]</li> <li>• Key working Strand: [REDACTED]</li> <li>• [REDACTED] Preparing for Adulthood Strand: [REDACTED]</li> <li>• Senior Leadership Programme Strand: [REDACTED]</li> <li>• Regional Lead Programme Strand: [REDACTED]</li> <li>• SEND Advisor Strand: [REDACTED]</li> <li>• Tribunal Pilot Programme Strand: [REDACTED]</li> </ul> <p>Overall Programme Management Strand: [REDACTED]</p> <p>[REDACTED] Total monthly invoice: [REDACTED]</p>	[REDACTED]	[REDACTED]	December 2015
<p>Delivery of:</p> <ul style="list-style-type: none"> <li>• Information, Advice and Support Services Network Strand: [REDACTED]</li> <li>• Key working Strand: [REDACTED]</li> <li>• Preparing for Adulthood Strand: [REDACTED]</li> <li>• Senior Leadership Programme Strand: [REDACTED]</li> <li>• Regional Lead Programme Strand: [REDACTED]</li> <li>• SEND Advisor Strand: [REDACTED]</li> <li>• Tribunal Pilot Programme Strand: [REDACTED]</li> </ul>	[REDACTED]	[REDACTED]	January 2016

Overall Programme Management Strand: ██████████ Total monthly invoice: ██████████			
Delivery of: <ul style="list-style-type: none"> <li>Information, Advice and Support Services Network Strand: ██████████</li> <li>Key working Strand: ██████████</li> <li>Preparing for Adulthood Strand: ██████████</li> <li>Senior Leadership Programme Strand: ██████████</li> <li>Regional Lead Programme Strand: ██████████</li> <li>SEND Advisor Strand: ██████████</li> <li>Tribunal Pilot Programme Strand: ██████████</li> </ul> Overall Programme Management Strand: ██████████ Total monthly invoice: ██████████	██████████	██████████	February 2016
Delivery of: <ul style="list-style-type: none"> <li>Information, Advice and Support Services Network Strand: ██████████</li> <li>Key working Strand: ██████████</li> <li>Preparing for Adulthood Strand: ██████████</li> <li>Senior Leadership Programme Strand: ██████████</li> <li>Regional Lead Programme Strand: ██████████</li> <li>SEND Advisor Strand: ██████████</li> <li>Tribunal Pilot Programme Strand: ██████████</li> </ul> Overall Programme Management Strand: ██████████ Total monthly invoice: ██████████	██████████	██████████	March 2016
<b>Grand Total (excluding VAT)</b>		██████████	██████████

VAT will be payable at the prevailing rate

<sup>1</sup> Invoice to be issued at the end of the third week of each month.

Activity will be monitored on a monthly basis via the monthly highlight report and contract meeting. Where activities are not delivered the final invoice will be reduced to reflect this.

- 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. Input and output VAT shall be included as separate items in such accounts.
- 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 monthly in arrears and shall be detailed against the expenditure headings set out in the Table. The Contractor or his or her 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 **within 30 days** of the end of the relevant month to Purchase to Pay, Shared Services, 3<sup>rd</sup> floor Companies House, Crown Way, Cardiff, CF14 3UW, quoting the Contract reference number. The Department undertakes to pay correctly submitted invoices within 10 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 may 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 Contractor's 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** Save where there has been early termination 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.

**End of Schedule 2**

### Schedule 3

#### **1. Intellectual Property Rights and Copyright**

"Intellectual Property Rights" means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, know-how, rights protecting databases, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom).

"the Act" means the Copyright Designs and Patents Act 1988;

"Copyright" means any and all copyright, design right (as defined by the Act) and all other rights of a like nature which may, during the course of this Contract, come into existence in or in relation to any Work (or any part thereof);

"Crown and/or Her Majesty" both mean Queen Elizabeth II and any successor to Her Majesty;

"HMSO" means Her Majesty's Stationery Office;

"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;

"Work" means any and all Works including but not limited to literary, dramatic, musical or artistic works, sound recordings, films, broadcasts or cable programmes, typographical arrangements and designs (as the same are defined in the Act) which are created from time to time during the course of this Contract by the Contractor or by or together with others at the Contractor's request or on its behalf and where such works directly relate to or are created in respect of the performance of this Contract or any part of it.

#### **1      Intellectual Property Rights and Copyright**

1.1      The Contractor agrees that the Crown shall be legally and beneficially entitled to any and all Intellectual Property Rights and Copyright and

the Contractor hereby assigns to the Crown any and all residual title which it may have in any and all such Intellectual Property Rights and/or Copyright.

- 1.2 The Contractor undertakes that it shall, from time to time, take all such steps and execute all such documents as the Crown or HMSO on its behalf may reasonably require to fully vest in the Crown any and all residual title, whether legal or beneficial, to the Intellectual Property Rights and/or Copyright.

### **COPYRIGHT WARRANTIES**

- 1.3 The Contractor now warrants to the Department that all Works will not infringe in whole or in part any copyright or like right or any other intellectual property right of any other person (wheresoever) and agrees to indemnify and hold harmless the Department against any and all direct claims, arising directly out of any act of the Contractor in relation to any Work, where such act is or is alleged to be an infringement of a third party's copyright or like right or other intellectual property right (wheresoever), provided that the Contractor shall not be liable to the extent that such claim is caused or contributed to by the Department or other third party.
- 1.4 The warranty and indemnity contained in Clause 1.3 above shall survive the termination of this Contract and shall exist for the life of the Copyright.

## **2. Contractors Employees and Sub-Contractors**

- 2.1 The Contractor shall give to the Department if so requested a list of [enter details required] of all persons who are or may be at any time directly concerned with the performance of this Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Department may reasonably require.
- 2.2 If the Department notifies the Contractor that it considers that an employee or sub-contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Contract, then the Contractor shall, as soon as is reasonably practicable, take such steps as the Department reasonably considers necessary to remedy the situation or, if so reasonably required by the Department, shall remove the said employee or sub-contractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).
- 2.3 The Contractor shall take reasonable steps to avoid changes of employees or sub-contractors assigned to and accepted to provide the Services under the Contract except whenever changes are unavoidable or of a temporary nature. The Contractor shall give at least one month's written notice to the Contract Manager of proposals to change key employees or sub-contractors.
- 2.4 the contractor shall use all reasonable endeavours to ensure that all its employees and sub contractors who are not EC Nationals are legally entitled to be resident in the UK and have a work permit, where applicable.'

## **3 Departmental Security Standards for Business Service Contracts**

"CESG"	is the UK government's National Technical Authority for Information Assurance. The website is <a href="http://www.cesg.gov.uk/Pages/homepage.aspx">http://www.cesg.gov.uk/Pages/homepage.aspx</a>
"Data", "Data Controller", "Data Processor", "Personal Data", "Sensitive Personal Data", "Data Subject", "Process" and "Processing"	shall have the meanings given to those terms by the Data Protection Act 1998
"Department's Data"	(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Department; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Department is the Data Controller;
"Departmental Security Standards"	means the Department's specification for security that the Contractor is required to deliver.
"Good Industry Practice"	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
"Good Industry Standard"	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
"IT Security Health Check"	means an assessment to identify vulnerabilities in IT systems and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.

- 3.1 The Contractor shall can comply with its Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 3.2 Where the Contractor will process personal data on behalf of the Department or other data deemed sensitive by the Department or supply ICT products or services to, or on behalf of, the Department, the Contractor will be expected to have achieved, and be able to maintain, certification to the appropriate level, under the HMG Cyber Essentials Scheme. The certification must have a scope relevant to the services supplied to, or on behalf of, the Department.
- 3.3 The Contractor will be expected to be able to conform to ISO/IEC 27001 (Information Security Management Systems Requirements), including the application of an appropriate selection of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).

- 3.4 The Contractor will adopt the UK Government Security Classification Policy in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification and Impact Level. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 3.5 Departmental Data being handled in the course of providing this service must be segregated from other data on the Contractor's own IT equipment to protect the Departmental Data and enable it to be securely deleted when required. In the event that it is not possible to segregate the Departmental Data then the Contractor is required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 13.
- 3.6 The Contractor will have in place and maintain physical (e.g. door access) and logical (e.g. identification and authentication) access controls to ensure only authorised access to Departmental Data.
- 3.7 The Contractor will have in place and maintain technical safeguards to protect Departmental Data, including but not limited to: Good Industry Standard anti-virus and firewalls; up-to-date patches for operating system, network device, and application software.
- 3.8 Any electronic transfer methods across public space or cyberspace must be protected via encryption which has been certified to FIPS140-2 or certified under a CESSG (e.g. CAPS or CPA) or CESSG-endorsed scheme, or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 3.9. Any portable removable media (including but not constrained to pen drives, memory sticks, CDs, DVDs, PDPs, USB devices) which handle, store or process in any way Departmental Data to deliver and support the service, shall be under the configuration management of the (sub-)contractors providing the service, shall be necessary to deliver the service, and shall be full-disk encrypted using a product which has been certified to FIPS140-2 or certified under a CESSG (e.g. CAPS or CPA) or CESSG-endorsed scheme or uses another encryption standard that is acceptable to the Department.
- 3.10 All portable ICT devices (including but not limited to laptops, PDAs, smartphones) which handle, store or process in any way Departmental Data to deliver and support the service, shall be under the configuration management of the (sub-)contractors providing the service, shall be necessary to deliver the service, and shall be full-disk encrypted using a product which has been certified to FIPS140-2 or certified under a CESSG (e.g. CAPS or CPA) or CESSG-endorsed scheme or uses another encryption standard that is acceptable to the Department.
- 3.11 Storage of Departmental Data on any portable devices or media shall be limited to the minimum required to deliver the business requirement.
- 3.12 All paper holding Departmental Data must be securely protected whilst in the Contractor's care and securely destroyed when no longer required using a cross-cutting shredder and/or a professional secure waste paper organisation.

- 3.13 Paper documents containing Departmental Data shall be transmitted, both within and outside company premises in such a way as to make sure that no unauthorised person has access.
- 3.14 At the end of the contract or in the event of failure or obsolescence, all equipment holding Departmental Data must be securely cleansed or destroyed using a CESS approved product or method. Where this is not possible e.g. for legal or regulatory reasons, or technical reasons such as where there is storage area network (SAN) or shared backup tapes, then the Contractor must protect the equipment until the time (which may be long after the end of the contract) when it can be securely cleansed or destroyed.
- 3.15 Access by Contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" and whose access is essential for the purpose of their duties. All employees with direct or indirect access to Departmental Data must be subject to pre-employment checks equivalent to or higher than the Baseline Personnel Security Standard (BPSS): Details of the standard are available at the HMG website <https://www.gov.uk/government/publications/security-policy-framework>.
- 3.16 All Contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 3.17 The Contractor must have robust and ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures to ensure that the delivery of the contract is not adversely affected in the event of an incident or crisis;
- 3.18 Any non-compliance with these Departmental Security Standards for Contractors, or any suspected or actual breach of the confidentiality or integrity of Departmental Data being handled in the course of providing this service, shall be immediately escalated to the Department by a method agreed by both parties.
- 3.19 The Contractor shall ensure that any IT systems and hosting environments that are used to hold Departmental Data being handled, stored or processed in the course of providing this service are periodically (at least annually) subject to IT Health Checks, and that the findings of those which are relevant to the service provided to the Department are shared with the Department and necessary remedial work carried out.
- 3.20 The Contractor will provide details of any proposal to store or host Departmental Data outside the UK or to perform ICT management or support from outside the UK and will not go ahead with such a proposal without prior agreement from the Department.
- 3.21 The Department reserves the right to audit the Contractor with 24 hours' notice in respect to the Contractor's compliance with the clauses contained in this Section.
- 3.22 The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.

#### **4 Personnel Security Standard**

“Departmental Assets” Includes but not limited to Departmental premises, IT systems and information with a classification up to confidential.

“Personnel Security Standard” A government wide requirement including checks on identity, employment history, nationality and immigration status and the declaration of unspent criminal records.

4.1 The Contractor shall ensure that any personnel provided under this Contract including those of any sub-contractors, who have unsupervised access to Departmental Assets meet the Personnel Security Standards and shall provide evidence that the checks have been performed on request.

4.2 A breach of this Clause [22] shall entitle the Department to terminate the contract immediately.

#### **5 Sub-contracting**

5.1 The Contractor shall not sub-contract any of its obligations under this Contract without the Department's prior written consent, which, subject to clause 27.2, shall not be unreasonably withheld or delayed.

5.2 The Department may withhold or delay its consent where it considers that:

5.2.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Department; and/or

5.2.2 the proposed Sub-contractor is considered to be unreliable and/or has not provided reasonable services to its other customers; and/or

5.2.3 the proposed Sub-contractor employs unfit persons.

5.3 Subject to clause 27.4, in making a request pursuant to clause 27.1 the Contractor shall provide the Department with the following information about the proposed Sub-contractor:

5.3.1 its name, registered office and company registration number;

5.3.2 a copy of the proposed Sub-contract;

5.3.3 the purposes for which the proposed Sub-contractor will be employed, including the scope of any services to be provided by the proposed Sub-contractor;

5.3.4 if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant service levels;

- 5.3.5 where the proposed Sub-contractor is also an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Department that the proposed Sub-contract has been agreed on "arms-length" terms; and
  - 5.3.6 any further information reasonably requested by the Department.
- 5.4 If the supply of information required pursuant to clause 27.3 would amount to a breach of any rules and regulations of any exchange on which the shares of the Contractor are admitted for listing and/or trading, or any other rules or regulations with which the Contractor is obliged to comply as a result of that listing, the Contractor shall provide the Department with the relevant information to the fullest extent permitted by those rules and regulations.
- 5.5 The Department has consented to the engagement of the Sub-contractors listed in schedule XX (Notified Sub-contractors) subject to the provision by the Contractor of the information listed in clause 07.3 within 20 Working Days of the Commencement Date (or such other period that the Department may permit and notified to the Contractor in writing).
- 5.6 The Contractor shall not make use of a pre-existing contract with any Sub-contractor, listed as such in Schedule XX (Notified Sub-contractors), without the prior written consent of the Department, which shall not be unreasonably withheld or delayed.
- 5.7 Except where the Department has given its prior written consent under Clause 27.6, the Contractor shall ensure that each Key Sub-contract shall include:
  - 5.7.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Department to enforce the terms of that Key Sub-contract as if it were the Contractor;
  - 5.7.2 a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Department;
  - 5.7.3 a provision requiring the Key Sub-contractor to enter into a direct confidentiality agreement with the Department on the same terms as set out in clause 12 (Confidentiality);
  - 5.7.4 a provision requiring the Key Sub-contractor to comply with protection of data requirements pursuant to clauses XX (Department Data) and XX (Protection of Personal Data);
  - 5.7.5 a provision restricting the ability of the Key Sub-contractor to further Sub-contract elements of the service provided to the Contractor without first seeking the consent of the Department;
  - 5.7.6 a provision enabling the Contractor, the Department or any other person on behalf of the Department to step-in on substantially the same terms as are set out in clause XX (Step-in Rights);

## **Termination of Sub-contracts**

- 5.8 The Contractor shall not terminate or materially amend the terms of any Sub-contract without the Department's prior written consent, which shall not be unreasonably withheld or delayed.
- 5.9 The Department may require the Contractor to terminate a Key Sub-contract where the acts or omissions of the relevant Key Sub-contractor have given rise to the Department's right of termination and where the Department reasonably believes that there is a Liquid Key Sub-Contractor Market.
- 5.10 Any dispute as to the existence of a Liquid Market for the Key Sub-contract to be terminated pursuant to the Department's right under clause 27.9 should be dealt with through the Dispute Resolution Procedure

## **6 Safeguarding children and vulnerable adults**

### **Regulated Activity**

In relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

In relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

- 6.1 The Contractor will put in place safeguards to protect children and vulnerable adults from a risk of significant harm which could arise from the performance of this Contract . The Contractor will agree these safeguards with the Department before commencing work on the Contract.
- 6.2 In addition, the Contractor will carry out checks with the Disclosure and Barring Service (DBS checks) on all staff employed on the Contract in a Regulated Activity. Contractors must have a DBS check done every three years for each relevant member of staff for as long as this Contract applies. The DBS check must be completed before any of the Contractor's employees work with children in Regulated Activity.
- 6.3 The Contractor shall immediately notify the Department of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 29 have been met.
- 6.4 The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to children or vulnerable adults.

## **Schedule 4**

### **Register of Interests and Full Disclosure**

- 1.1** The Contractor is required in relation to the SEND Advisers to declare to the Contract Manager any interests and/or links, including other contracts or positions held whether they be paid or unpaid or relationships with, but not limited to, schools, education providers or other external organisations involved in the provision of education or education services that the Contractor reasonably believes may give rise to a conflict of interest so the Contract Manager may assess whether it agrees that any conflicts of interest, whether potential, actual or perceived, and as reasonably judged by the Contract Manager, may have the potential to present reputational, operational or legal or risks to the Contractor and to the Department in allocating any particular project.
- 1.2** In accordance with 1.1 the Contractor must inform the Contract Manager of any in-contract changes to their interests promptly and will be required to formally declare all material interests on a regular basis. In receiving project allocations, the Contractor must also carefully consider whether there is any conflict of interest, whether potential, actual or perceived, and inform the Contract Manager so a decision may be made on whether the project should be re-allocated.
- 1.3** In accordance with 1.1 the Contractor will not obtain or seek to obtain from their service to the Department any business benefit or financial gain beyond the payment terms of this contract. Further, the Contractor shall use reasonable endeavours to ensure that no actual or potential conflicts exist between the Contractor and the Department's stakeholders. If such a conflict of interest does arise, or may arise, the Contractor will declare it to the Department promptly and accept that the Department may ask the Contractor to promptly cease any involvement with the task giving rise to the conflict.
- 1.4** In accordance with 1.1 The Contractor must use reasonable endeavours to provide true, accurate, current and complete information about their self, in both a personal and private capacity that may have a material bearing on any risk to the reputation of the Department as reasonably judged by the Contract Manager, and promptly update the information provided to the Department to keep it true, accurate, current and complete
- 1.5** The Contractor's contract manager is required to declare to the Contract Manager any interests and/or links, including other contracts or positions held by the Contractor, that they are aware of, or ought to be reasonably aware of, that are reasonably likely in the opinion of the Contractor to present material reputational, operational or legal risks to the Department