

Attachment 1

Terms and Conditions

CONTRACT FOR THE SUPPLY OF SERVICES TO SUPPORT LOCAL AUTHORITIES TO DELIVER 30 HOURS FREE CHILDCARE PLACES FOR WORKING PARENTS IN ENGLAND

THIS CONTRACT IS DATED 8th November 2016.

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 whose registered office is at Mott Macdonald House, 8-10 Sydenham Road, Sydenham Road Croydon CR0 2EE. (“the Contractor”)

Recitals

The Contractor has agreed to provide support to local authorities (LAs) to deliver 30 hours free childcare for working parents which will include but is not limited to; monitoring and supporting the early implementers ensuring key learning and messages are disseminated to and from the department, a universal and targeted approach to help LAs deal with their sufficiency challenges, support to help providers remain sustainable and generic support to LAs with the continued expansion of the early learning for two year olds programme, flexibility and SEND on the terms and conditions set out in this Contract.

The Department's reference number for this Contract is **CCW Support 2016 -18**.

1 Interpretation

1.1 In this Contract the following words shall mean:-

- | | |
|---------------------------|--|
| “the Services” | the services to be performed 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"

[REDACTED],
Sanctuary Buildings
Department for Education,
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"

[REDACTED]
Mott Macdonald House,
8-10 Sydenham Road
Croydon
CR0 2EE.

"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;

Core Attendees

Shall mean the following personnel:

- [REDACTED], Mott MacDonald
- [REDACTED], Hemsall's Consultancies
- [REDACTED], Action for Children

Subject to variation or amendment as agreed by both parties in writing, with such agreement not being unreasonably withheld.

"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 " Regulatory Body " 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. References to a person include any individual, firm, unincorporated association or body corporate.

2 Commencement and Continuation

The Contractor shall commence the Services on **10th October 2016** and, subject to Clause 10.1 shall complete the Services on or before 9th **October 2018**

This Contract shall be deemed to have been effective from **10th October 2016**

There will be the possibility of a one-year extension for period **10th October 2018 to 17th October 2019** as indicated in invitation to tender specification at a value of £1million. This is not guaranteed and will be subject to government priorities at the 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 and 2.
- 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.
- 3.4 The performance fees due to the Contractor are in relation to the achievement of the KPIs, as set out in Table 3, Schedule 2.
- 3.5 The KPI's shall be reviewed and changed in agreement with the Contractor, where reasonable to suit the Department's needs. Any changes to KPI's shall be kept to a minimum to ensure continuity of data collection and to establish performance trends.

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 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.
- 6.3** The Contractor shall acknowledge receipt of email(s) that require action by the Contractor or its Sub-contractors under the terms of this agreement within 3 working days. Where such action is not considered a material change and therefore subject to the provisions of Clause 5 the Contractor shall take such action within any reasonable deadline set out in the email/correspondence or set out why the deadline cannot reasonably be met and propose a new deadline.
- 6.4** The Contractor shall reasonably ensure all contract meetings arranged by the Department are adhered to with the Core Attendees present and where unable to attend should take all reasonable action to provide either of the following:
- a) alternative dates and times within 3 working days of acknowledging receipt; or
 - b) a representative of equal or higher seniority to attend such meetings on the required date and time.

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. It will be the Contractor's responsibility to replace a sub-contractor if one or more parties decide to cease their activity within the 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

- 8.1** 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 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 and quality 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 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. The maximum liability of the Contractor under this clause, or for any claim arising under or in connection with this Contract in contract or in tort, in negligence or for breach of statutory duty, indemnity or otherwise, shall be £3m.
- 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** Providing that such insurance is available in the London market at commercially reasonable rates or on a self-insured basis, 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 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 sign a confidentiality undertaking before commencing work in connection with the 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 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 European Economic Area, 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 European Economic Area;
- (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 European Economic Area;
- (c) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; 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 European Economic Area;

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 European Economic Area 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 European Economic Area 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 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.

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

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.

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

A handwritten signature in black ink, appearing to be 'K. G.' or similar, written in a cursive style.

Name in CAPITALS

██████████

Position in Organisation

Deputy Director

Address in full

Department for Education
Sanctuary Buildings
Great Smith Street
London

Date

14 November 2016

Authorised to sign for and on behalf of Mott Macdonald.

Signature

Name in CAPITALS

Position in Organisation

Address in full

Date

Schedule 1

Activity planned for YEAR ONE (Oct 16 - Sep 17)	Delivery month
PMO planning and implementation	Oct-16
Develop and agree Stakeholder Engagement Plan	Oct-16
Develop Communication Plan	Oct-16
Reconfigure Knowledge Portal	Nov-16
Early Implementers Progress Update (Using Prior Knowledge & Information)	Nov-16
Agree with DfE initial support packages	Nov-16
Delivery of support packages to priority LA's	Nov 16 – Jan 17
Progress Review Form Agreed with DfE	Oct-16
Progress Review Form Issued to All LAs	Nov-16
Progress Review Form Returned	Nov-16
Analysis of Returns	Nov-Dec 16
Agree Risk Profile of All LAs	Dec-16
Agree with DfE Target LA List	Dec-16
Progress Review Form Agreed with DfE	Jan-Feb 17
Progress Review Form Issued to All LAs	Feb-17
Progress Review Form Returned	Mar-17
Analysis of Returns	Mar-17
Agree Risk Profile of All LAs	Mar-17
Agree with DfE Target LA List	Mar-17
Progress Review Form Agreed with DfE	Apr-17
Progress Review Form Issued to All LAs	May-17
Progress Review Form Returned	May-17
Analysis of Returns	Jun-17
Agree Risk Profile of All LAs	Jun-17
Agree with DfE Target LA List	Jun-17
Delivery of Support Packages (1) to Target LAs	Nov 16 – Mar 17
Delivery of Support Packages (2) to Target LAs	Apr 17 – Jun 17
Delivery of Support Packages (3) to Target LAs	Jul 17 – Sep 17
Progress Share Meetings x 8 (Round 1)	Dec-16
LED events (London) x1	Nov-16
LED events (non-London) x 5	Nov-16
National Dissemination Event	March 2017
Progress Share Meetings x 8 (Round 2)	Feb-Mar 17
LED events (London) x1	Feb-Mar 17
LED events (non-London) x 5	Feb-Mar 17
Progress Share Meetings x 8 (Round 3)	Jun-17
LED events (London) x1	May-17
LED events (non-London) x 5	May-17
In-Depth Programme (x 16)	Dec 16 – Sep 17
Progress monitoring report 1	Dec-16
Progress monitoring report 2	Mar-17
Progress monitoring report 3	Jun-17
Progress updates	Oct 16 – Sep 17
Contract Meetings	Oct 16 – Sep 17
SEND Advisory Group Meetings x 3	Dec 16, Mar 17, Jun 17

Activity undertaken during YEAR TWO (Oct 17 - Sep 18)	Delivery month
Progress Review Form Agreed with DfE	Oct-17
Progress Review Form Issued to All LAs	Oct-17
Progress Review Form Returned	Oct-17
Analysis of Returns	Oct-17
Agree Risk Profile of All LAs	Oct-17
Agree with DfE Target LA List	Oct-17
Progress Review Form Agreed with DfE	Nov-Dec 17
Progress Review Form Issued to All LAs	Dec-17
Progress Review Form Returned	Dec-17
Analysis of Returns	Dec 17-Jan 18
Agree Risk Profile of All LAs	Jan-18
Agree with DfE Target LA List	Jan-18
Progress Review Form Agreed with DfE	Mar-18
Progress Review Form Issued to All LAs	Mar-18
Progress Review Form Returned	Apr-18
Analysis of Returns	Apr-18
Agree Risk Profile of All LAs	Apr-18
Agree with DfE Target LA List	Apr-18
Delivery of Support Packages (4) to Target LAs	Dec 17-Feb 18
Delivery of Support Packages (5) to Target LAs	Mar-Jun 18
Delivery of Support Packages (6) to Target LAs	Jul-Sep 18
Progress Share Meetings x 8 (Round 4)	Oct-17
LED events (London) x1	Nov-17
National Dissemination Event	Dec-18
Progress Share Meetings x 8 (Round 5)	Jan-18
LED events (London) x1	Feb-18
LED events (non-London) x 5	Feb-18
Progress Share Meetings and Exit Meetings x 8 (Round 6)	Jun-18
LED events (London) x1	May-18
LED events (non-London) x 5	May-18
In-Depth Programme (x 16)	Oct 17-Jul 18
Progress monitoring report 4	Dec-17
Progress monitoring report 5	Mar-18
Progress monitoring report 6	Jun-18
Progress Updates	Oct 17-Sep 18
Contract Meetings	Oct 17-Sep 18
SEND Advisory Group Meetings x 3	Oct 17, Jan 18, Apr 18
www.childcareworks.co.uk content management	Oct 17-Sep 18

The delivery of support packages to LAs and providers shall be considered to include, but not be limited to, the most appropriate of the following activities necessary to maximise the achievement of the KPIs and within the overall resource allocated to deliver them:

Sufficiency
LA support

[Redacted text block]

Provider Support

[Redacted text block]

Sustainable business models
LA support

[Redacted text block]

[Redacted text block]

Provider Support

[Redacted text block]

Flexibility
LA support

[Redacted text block]

Provider Support

Support to manage the planning for, and delivery of, models which offer increased flexibility considering:

[Redacted text block]

[Redacted]

Supporting children with SEND
LA Support

[Redacted]

Provider Support

[Redacted]

Supporting LAs to continue delivering the early learning for the two-year-olds programme
LA Support

[Redacted]

Provider Support

Schedule 2

Table 1- Fee schedule

Activity planned for YEAR ONE (Oct 16 - Sep 17)	Fee (ex VAT)	Fee (inc VAT @ 20%)
Progress Share Meetings x 8 (Round 2)		
LED events (London) x1		
LED events (non-London) x 5		
Progress Share Meetings x 8 (Round 3)		
LED events (London) x1		
LED events (non-London) x 5		
In-Depth Programme (x 16)		
Progress monitoring report 1		
Progress monitoring report 2		
Progress monitoring report 3		
Progress updates		
Contract Meetings		
SEND Advisory Group Meetings x 3		
www.childcareworks.co.uk content management		
Total for YEAR ONE	1,362,033.64	1,634,440.36

Activity undertaken during YEAR TWO (Oct 17 - Sep 18)	Fee (ex VAT)	Fee (inc VAT @ 20%)
Progress Review Form Agreed with DfE		
Progress Review Form Issued to All LAs		
Progress Review Form Returned		
Analysis of Returns		
Agree Risk Profile of All LAs		
Agree with DfE Target LA List		
Progress Review Form Agreed with DfE		
Progress Review Form Issued to All LAs		
Progress Review Form Returned		
Analysis of Returns		
Agree Risk Profile of All LAs		
Agree with DfE Target LA List		

Progress Review Form Agreed with DfE	████████	████████
Progress Review Form Issued to All LAs	████████	████████
Progress Review Form Returned	████████	████████
Analysis of Returns	████████	████████
Agree Risk Profile of All LAs	████████	████████
Agree with DfE Target LA List	████████	████████
Delivery of Support Packages (4) to Target LAs	████████	████████
Delivery of Support Packages (5) to Target LAs	████████	████████
Delivery of Support Packages (6) to Target LAs	████████	████████
Progress Share Meetings x 8 (Round 4)	████████	████████

Activity undertaken during YEAR TWO (Oct 17 - Sep 18)	Fee (ex VAT)	Fee (inc VAT @ 20%)
LED events (London) x1	████████	████████
LED events (non-London) x 5	████████	████████
National Dissemination Event	████████	████████
Progress Share Meetings x 8 (Round 5)	████████	████████
LED events (London) x1	████████	████████
LED events (non-London) x 5	████████	████████
Progress Share Meetings and Exit Meetings x 8 (Round 6)	████████	████████
LED events (London) x1	████████	████████
LED events (non-London) x 5	████████	████████
In-Depth Programme (x 16)	████████	████████
Progress monitoring report 4	████████	████████
Progress monitoring report 5	████████	████████
Progress monitoring report 6	████████	████████
Progress Updates	████████	████████
Contract Meetings	████████	████████
SEND Advisory Group Meetings x 3	████████	████████
www.childcareworks.co.uk content management	████████	████████
Total for YEAR TWO	950,309.68	1,140,371.62

Table 2**Invoice Schedule**

Narrative	Total (ex VAT)	KPI payment (ex VAT) <i>actual value subject to performance as per Table 3</i>	Total (inc VAT @ 20%)	Invoice date
Invoice 1	20,000.00		24,000.00	31 October 2016
Invoice 2	290,987.08		349,184.49	30 November 2016
Invoice 3	117,564.14		141,076.97	30 December 2016
Invoice 4	69,750.18		83,700.22	31 January 2017
Invoice 5	127,890.99		153,469.19	28 February 2017
Invoice 6	167,684.20		201,221.04	31 March 2017
Invoice 7	68,877.80		82,653.36	28 April 2017
Invoice 8	131,728.18		158,073.81	31 May 2017
Invoice 9	164,352.79		197,223.35	30 June 2017
Invoice 10	69,099.37		82,919.25	31 July 2017
Invoice 11	69,099.37		82,919.25	31 August 2017
Invoice 12	64,999.54	110,435.16	210,521.64	29 September 2017
Invoice 13	86,550.42		103,860.50	31 October 2017
Invoice 14	81,865.16		98,238.19	30 November 2017
Invoice 15	95,957.28		115,148.73	29 December 2017
Invoice 16	104,115.62		124,938.74	31 January 2018
Invoice 17	109,938.47		131,926.17	28 February 2018
Invoice 18	60,486.29		72,583.55	30 March 2018
Invoice 19	67,844.53		81,413.44	30 April 2018
Invoice 20	102,409.61		122,891.53	31 May 2018
Invoice 21	120,053.55		144,064.26	29 June 2018
Invoice 22	44,538.80		53,446.56	31 July 2018
Invoice 23	38,274.98		45,929.98	31 August 2018
Final invoice	38,274.98	77,052.14	138,392.54	28 September 2018
Total	2,312,343.33	187,487.30	2,999,796.76	

Table 3 - KPIs

Subject to change and review as noted in clause 3.5.

Year 1

Total KPI Fee (inc VAT):

£132,522

KPI	Weighting	Detailed Description	Success criteria	KPI Fee Due (inc VAT)	
KPI 1: Sufficiency			Fully met: 100% of eligible children	██████████	
	a) % of available places for eligible children in Early Implementer authorities	10%	This is the total number of children in receipt of additional funded hours	Partially met: between 70% - 99%	██████████
				Not met: less than 70%	██
	b) % of available places for eligible children in all authorities	20%	Sept 16 - April 17 measured using LA estimates of supply May 17 - August 17 measured using offer of places made	Fully met: more than 65% of eligible children	██████████
Partially met: between 50%-65% of eligible children				██████████	
			Not met: less than 50%	██	
KPI2: Sustainable business models	a) % of providers who report an increase in business planning confidence	10%	For an agreed group of providers of both type and location, supported by the Childcare works programme (either indirectly via the LAs or directly) improve their confidence in business planning as measured by their business confidence score in the questionnaire	Fully met: more than 65% of providers increase their business confidence score	██████████
				Partially met: between 50%-65% of providers increase their business confidence score	██████████
				Not met: less than 50%	██
b) Improvement in LA readiness to implement	20%	Improvement in average confidence score between PR Forms during year 1	Fully met: confidence score increases by >25%	██████████	

			Partially met: confidence score increases by >15% Not met: less than 15% improvement in score	
KPI3: Flexibility & Demand % of parents able to access and offer that meets their needs including through partnership provision	20%	% of LAs reporting sufficient flexible/stretch offer supply to meet parental demand (from PR Forms)	Fully met: more than 75% of LAs	
			Partially met: between 50% and 75%	
KPI4: SEND The % increase in providers offering SEND places	20%	A measure of how embedded the SEND offer has become	Fully met: between 10 and 15% increase in the number of providers offering SEND places	
			Partially met: between 5% and 10% increase in the number of providers offering SEND places Not met: less than 5% increase in the number of providers offering SEND places	

Year 2

Total KPI Fee (inc VAT):

£92,463

KPI	Weighting	Description	Success criteria	KPI Fee Due (inc VAT)
KPI1: Take-up a) % of eligible children in Early Implementer authorities access their additional hours	0%	This is the total number of children in receipt of additional funded hours	Fully met: 100% of eligible children	£0
			Partially met: between 70% - 99%	£0
b) % of eligible children in all authorities access their additional hours	40%		Not met: less than 70%	£0
			Fully met: more than 65% of eligible children	
KPI2: Sustainable business models % of providers who report an increase in business planning confidence	20%	For an agreed group of providers of both type and location, supported by the Childcare works programme	Partially met: between 50%-65% of eligible children	
			Not met: less than 50%	
			Fully met: more than 65% of providers increase their business confidence score	
			Partially met: between 50%-65% of providers increase their business confidence score	
			Not met: less than 50%	

		(either indirectly via the LAs or directly) improve their confidence in business planning as measured by their business confidence score in the questionnaire		
KPI3: Flexibility % of parents able to access an offer that meets their needs including through partnership provision	20%	% of LAs reporting sufficient flexible/stretch offer supply to meet parental demand (from PR Forms)	Fully met: more than 75% of LAs Partially met: between 50% and 75% Not met: less than 50%	██████████ ██████████ ██
KPI4: SEND The %age increase in providers offering SEND places	20%	A measure of how embedded the SEND offer has become	Fully met: between 10 and 15% increase in the number of providers with a SEND child currently attending Partially met: between 5% and 10% increase in the number of providers with a SEND child currently attending Not met: less than 5% increase in the number of providers with a SEND child currently attending	██████████ ██████████ ██

**Total Maximum KPI Fee
(inc VAT)**

£224,985

- 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 in arrears and shall be detailed against the expenditure headings set out in the Table or performance 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 *30 days* to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool FY5 3TA, (and copied electronically to the Contract Manager) 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 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** 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

Attachment 2

Departmental Security Standards

12. Departmental Security Standards for Business Services and ICT Contracts

<p>“BPSS” “Baseline Personnel Security Standard”</p>	<p>a level of security clearance described as pre-employment checks in the National Vetting Policy.</p>
<p>“CESG”</p>	<p>is the UK government’s National Technical Authority for Information Assurance. The website is http://www.cesg.gov.uk/Pages/homepage.aspx</p>
<p>“CESG IAP” “CESG Information Assurance Policy Portfolio”</p>	<p>means the CESG Information Assurance policy Portfolio containing HMG policy and guidance on the application of ‘security assurance’ for HMG systems.</p>
<p>“CTAS” ”CESG Tailored Assurance”</p>	<p>is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks.</p>
<p>“CPA” “CESG Product Assurance”</p>	<p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry.</p>
<p>“CCSC” “CESG Certified Cyber Security Consultancy”</p>	<p>is CESG's approach to assessing the services provided by consultancies and confirming that they meet CESG's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors.</p>
<p>“CCP” “CESG Certified Professional”</p>	<p>is a CESG scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors.</p>

<p>“CC” “Common Criteria”</p>	<p>the Common Criteria scheme provides assurance that a developer’s claims about the security features of their product are valid and have been independently tested against recognised criteria.</p>
<p>“Cyber Essentials” “Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p>
<p>“Data” “Data Controller” “Data Processor” “Personal Data” “Sensitive Personal Data” “Data Subject”, “Process” and “Processing”</p>	<p>shall have the meanings given to those terms by the Data Protection Act 1998</p>
<p>“Department’s Data” “Department’s Information”</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <ul style="list-style-type: none"> (a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> (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;
<p>“DfE” “Department”</p>	<p>means the Department for Education</p>
<p>“Departmental Security Standards”</p>	<p>means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.</p>
<p>“Digital Marketplace / GCloud”</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.</p>

<p>“FIPS 140-2”</p>	<p>this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.</p>
<p>“Good Industry Practice” “Industry Good Practice”</p>	<p>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.</p>
<p>“Good Industry Standard” “Industry Good Standard”</p>	<p>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.</p>
<p>“GSC” “GSCP”</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: https://www.gov.uk/government/publications/government-security-classifications</p>
<p>“HMG”</p>	<p>means Her Majesty’s Government</p>
<p>“SPF” “HMG Security Policy Framework”</p>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.</p>
<p>“ICT”</p>	<p>means Information and communications technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution</p>
<p>IS5</p>	<p>this is HMG Information Assurance Standard No. 5 - Secure Sanitisation issued by CESG</p>
<p>“ISO/IEC 27001” “ISO 27001”</p>	<p>is the International Standard for Information Security Management Systems Requirements</p>
<p>“ISO/IEC 27002” “ISO 27002”</p>	<p>is the International Standard describing the Code of Practice for Information Security Controls.</p>
<p>“ISO 22301”</p>	<p>is the International Standard describing for Business Continuity</p>
<p>“IT Security Health Check” “Penetration Testing”</p>	<p>means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.</p>

<p>“Need-to-Know”</p>	<p>the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.</p>
<p>“OFFICIAL” “OFFICIAL-SENSITIVE”</p>	<p>1 the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.</p> <p>the ‘OFFICIAL–SENSITIVE’ caveat is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy.</p>
<p>“Security and Information Risk Advisor” “CCP SIRA” “SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the CESG CESG Certified Professional Scheme</p>

- 12.1. The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 12.2. Where the Contractor will provide ICT products or Services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 September 2014, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- 12.3. The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 12.4. The Contractor shall follow the UK Government Security Classification Policy (GSCP) 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. (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).
- 12.5. Departmental Data being handled in the course of providing the ICT solution or service must be segregated from other data on the Contractor’s or sub-contractor’s own IT equipment to both protect the Departmental Data and enable it to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 12.14.

- 12.6. The Contractor shall have in place and maintain physical security and entry control mechanisms (e.g. door access) to premises and sensitive areas and separate logical access controls (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
- 12.7. The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 12.8. Any electronic transfer methods across public space or cyberspace, including third party provider networks must be protected via encryption which has been certified to a minimum of FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 12.9. Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 12.10 and 12.11 below.
- 12.10. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
- 12.11. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
- 12.12. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure waste paper organisation.
- 12.13. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 12.14. At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed in accordance with the current HMG policy (HMG IS5) using a CESSG approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.

- 12.15. Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a “need-to-know” and the appropriate level of security clearance, as required by the Department for those individuals 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)
- 12.16. All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 12.17. The Contractor shall, as a minimum, have in place 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. An incident shall be defined as any situation that might be, or could lead to, a disruption, loss, emergency or crisis. When a certificate is not available it shall be necessary to verify the ongoing effectiveness of the ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures, to the extent that the Contractor must have tested/exercised these plans within the last 12 months and produced a written report of the test/exercise, outcome and feedback, including required actions.
- 12.18. Any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, or any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 12.19. 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 shall be subject to an independent IT Health Check (ITHC) using a CESG approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 12.20. The Contractor or sub-contractors providing the service will provide the Department with full details of any actual storage outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management or support function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 12.21. The Department reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor’s, and any sub-contractors, compliance with the clauses contained in this Section.
- 12.22. 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.

