

**CONTRACT FOR EXPERT ADVISERS ON THE SOCIAL MOBILITY COMMISSION'S  
POLICY AND EVIDENCE ADVISORY PANEL**

**THIS CONTRACT IS DATED 9 MARCH 2022**

**Parties**

- 1) The Social Mobility Commission whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT ("the Commission"); and**
- 2) EDSK (Companies House number 11795717) whose address/registered office is at 6 Sherborne Way, Croxley Green, Hertfordshire WD3 3PF ("the Contractor")**

**Recitals**

The Contractor has agreed to be a Policy expert adviser on the Social Mobility Commission's Policy and Evidence Advisory Panel, within the Education (further education) (Lot 6) role.

The Commission's reference number for this Contract: SMC2122-35

# 1 Interpretation

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

<b>Agreement</b>	means this Contract;
<b>Affected Party</b>	means the Customer or the Supplier affected by the event
<b>Associates</b>	A Party's employees, officers, agents, sub-contractors or authorised representatives.
<b>Authorised Supplier Approver</b>	Any personnel of the Supplier who have the authority to contractually bind the Supplier in all matters relating to Contract. They must be named in the applicable Schedule of Work, and the Customer must be notified if they change.
<b>Authorised Customer Approver</b>	Any personnel of the Customer who have the authority to contractually bind the Customer in all matters relating to this Contract. They must be named in the applicable Schedule of Work, and the Supplier must be notified if they change.
<b>Contract</b>	This contract between the Customer and the Supplier, which consists of the terms set out in the Contract Terms, the Schedules and any Schedule of Work.
<b>Contract Terms</b>	The terms and conditions set out in this Contract including this Schedule 1 but not including any other Schedules or Schedule of Work.
<b>Central Government Body</b>	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: Government Department; Non- Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Supplier.
<b>Change of Control</b>	Change of Control has the same meaning as in section 416 of the Income and Corporation Taxes Act 1988.
<b>Customer Affiliates</b>	Any organisation associated with the Customer that will directly receive the benefit of the Project. Customer Affiliates must be named in a Schedule of Work, or subsequently notified to the Supplier.
<b>Customer Project Specification</b>	The document containing the Customer's requirements issued either as part of the Call For Competition Process, or as set out in a Schedule of Work from time to time.
<b>Customer Cause</b>	A situation where the Customer does not fulfil its obligations in connection with this Contract (including its payment obligations), and as a consequence the Supplier is prevented from performing any of the agreed Project.
<b>Customer Confidential Information</b>	All Customer Data and any information that the Customer or CCS gives to Agencies that is designated as being confidential, or which ought to be reasonably be considered to be confidential (whether or not it is marked "confidential"). This may include information, however conveyed, that is politically or security sensitive and/or relates to the Customer's business, affairs, developments, trade secrets, Know-How, personnel and suppliers.
<b>Customer Data</b>	Data, text, drawings, diagrams, images or sounds (together with any database made up of any of these), including any Customer's Confidential Information, supplied to the Supplier by or on behalf of the Customer, or which the Supplier is required to generate, process, store or transmit in connection this Contract, and any Personal Data for which the Customer is the Data Controller.
<b>Customer Materials</b>	Any Customer Data, Customer equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Customer which are provided to the Supplier or its Associates by or on behalf of the Customer.

<b>Contracting Body</b>	CCS, the Customer, the Cabinet Office and any other bodies listed in the Contracts Finder notice.
<b>Contract Charges</b>	All charges payable by the Customer for the Project provided under this Contract.
<b>Confidential Information</b>	The Customers Confidential Information and/or the Supplier Confidential Information.
<b>Contractor Personnel</b>	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.
<b>Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer</b>	The meaning given in the GDPR.
<b>Contract Year</b>	A consecutive 12- month period during the Term commencing on the Effective Date or each anniversary thereof.
<b>Data Loss Event</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>DPA 2018</b>	Data Protection Act 2018
<b>Data Protection Impact Assessment</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>Data Subject Access Request</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>Data Protection Legislation or DPA</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>Default</b>	Any breach of the obligations of the Supplier (including but not limited failing to provide any Deliverables by any date set out in the applicable Schedule of Work (or any other deadline agreed by the Parties in writing), and abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any of its staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Customer.
<b>Deliverables</b>	The applied services that are to be provided as specified in a Schedule of Work.
<b>Dispute</b>	Any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Project, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure.
<b>Dispute Resolution Procedure</b>	The dispute resolution procedure set out in Contract Schedule 4 (Dispute Resolution Procedure).
<b>Effective Date</b>	The date this Contract starts.
<b>Environmental Information Regulations or EIRs</b>	The Environmental Information Regulations 2004 together with any related guidance and/or codes of practice issued by the Information Commissioner or relevant Government department.
<b>Expenses</b>	Reasonable travelling, hotel, subsistence and other expenses incurred by the Supplier in connection with the supply Services of and Deliverables, provided that such Expenses have either received the Customers Approval or are in

	accordance with any expenses policies which have been supplied to the Supplier and set out in the agreed Schedule of Work.
<b>Expiry Date</b>	The date this Contract ends.
<b>Extension Expiry Date</b>	The latest date this Contract can end.
<b>FOIA</b>	The Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that 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.
<b>Force Majeure</b>	<p>Means:</p> <ul style="list-style-type: none"> <li>• acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party</li> <li>• riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare</li> <li>• fire, flood, any disaster and any failure or shortage of power or fuel</li> <li>• an industrial dispute affecting a third party for which a substitute third party is not reasonably available but does not mean: <ul style="list-style-type: none"> <li>• any industrial dispute relating to the Supplier, its staff, or any other failure in the Supplier's (or a subcontractor's) supply chain</li> <li>• any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned, and</li> </ul> </li> </ul> <p>any failure of delay caused by a lack of funds</p>
<b>GDPR</b>	Means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> )
<b>Good Industry Practice</b>	Standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector.
<b>Guarantor</b>	The person, in the event that a Guarantee is required under this Contract, acceptable to the Customer to give a Guarantee.
<b>Information</b>	The same meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time
<b>Insolvency Event</b>	<p>Means, in respect of the Supplier:</p> <ol style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or</li> <li>b) a winding-up resolution is considered or passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to</li> </ol>

	<p>Schedule A1 of the Insolvency Act 1986; or</p> <p>h) where the Supplier is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or</p> <p>d) any event analogous to these listed in this definition occurs under the law of any other jurisdiction</p>
<b>Intellectual Property Rights or IPR</b>	<p>The following rights, wherever in the world enforceable, or such similar rights, which have equivalent effect, including all reversions and renewals and all applications for registration:</p> <ul style="list-style-type: none"> <li>• any patents or patent applications</li> <li>• any trade marks (whether or not registered)</li> <li>• inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration</li> <li>• copyright or design rights (whether registered or unregistered)</li> <li>• database rights</li> <li>• performer's property rights as described in Part II of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world</li> <li>• any goodwill in any trade or service name, trading style or get-up and</li> <li>• any and all other intellectual or proprietary rights</li> </ul>
<b>Key Individuals</b>	Individuals named by the Supplier in this Contract as having a major responsibility for delivering the Project.
<b>Law</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
<b>LCIA</b>	means London Court of International Arbitration
<b>LED</b>	means Law Enforcement Directive (Directive (EU) 2016/680)
<b>Losses</b>	Any losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses) to either Party.
<b>Malicious Software</b>	Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
<b>Materials</b>	Any questionnaires, discussion guides, transcripts, tables, data files, reports, pre-notifications, stimulus materials or any other material protected by Intellectual Property Rights or produced as part of a Project.
<b>Moral Rights</b>	All rights described in Part I, Chapter IV of the Copyright Designs and Patents act 1988 and any similar rights of authors anywhere in the world.
<b>Party</b>	Means a Party to this Agreement.
<b>Personal Data</b>	Personal Data has the same meaning as set out in the Data Protection Act 2018
<b>Prohibited Act</b>	<p>To directly or indirectly offer, promise or give any person working for or engaged by a Customer or CCS a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>a) induce that person to perform improperly a relevant function or activity</li> <li>b) reward that person for improper performance of a relevant function or activity</li> <li>c) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance</li> </ul>

	<p>of a relevant function or activity in connection with this Agreement;</p> <p>d) commit any offence:</p> <ul style="list-style-type: none"> <li>• under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>• under legislation or common law concerning fraudulent acts; or</li> <li>• defrauding, attempting to defraud or conspiring to defraud the Customer; or</li> <li>• any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;</li> </ul>
<b>Project</b>	Any project(s) agreed between the Parties from time to time whereby the Supplier performs the Project which are the subject of this Contract and supplies Deliverables to the Customer as more fully described in the applicable Schedule of Work;
<b>Project Commencement Date</b>	The date a Project will start, as set out in the relevant Schedule of Work.
<b>Project Completion Date</b>	The date by which a Project is to be completed, as set out in the relevant Schedule of Work.
<b>Project Notice Period</b>	The period of notice for cancellation of a Project as set out in Clause 10.
<b>Project Specific Materials</b>	Means: Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or Intellectual Property Rights in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same.
<b>Project Term</b>	The period during which the Project for each Project will be provided as specified in the applicable Schedule of Work.
<b>Protective Measures</b>	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
<b>Purchase Order (PO) Number</b>	The order number provided to the Supplier by the Cabinet Office.
<b>Records</b>	The accounts and information maintained by the Supplier related to the operation and delivery of this Contract, including all expenditure which is reimbursable by the Customer, as are necessary for the provision of management information and to enable the Customer to conduct an audit as set out in Clause 21.
<b>Rectification Plan</b>	The rectification plan pursuant to the Rectification Plan Process.
<b>Regulations</b>	The Public Contracts Regulations 2015.
<b>Relevant Requirements</b>	All applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>Request for Information</b>	A request for information or an apparent request relating to this Contract or the provision of the Project or an apparent request for such information under the FOIA or the EIRs.
<b>Schedule</b>	Any Schedule attached to this Contract.
<b>Services</b>	The Project to be supplied by the Supplier under this Contract, as set out in the

	relevant Schedule of Work. This includes the provision of Deliverables.
<b>Special Terms</b>	Any terms specifically designated as varying these Contract Terms or the terms of any schedule, as set out in the applicable Schedule of Work.
<b>Standards</b>	Any: standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; <ul style="list-style-type: none"> <li>standards detailed in the specification;</li> <li>standards detailed by the Customer in the Contract and any Schedule of Work or agreed between the Parties from time to time;</li> <li>relevant Government codes of practice and guidance applicable from time to time i.e. including but not limited to Market Research Society (MRS) Code of Conduct and Social Research Association (SRA).</li> </ul>
<b>Schedule of Work</b>	One or more documents describing the relevant Project(s) as agreed and signed by the parties and which shall comprise both the Customer Project Specification and the Supplier's Proposal (whether agreed as part of a Call for Competition or during the Term of this Contract).
<b>Sub-Contract</b>	A contract entered into between the Supplier and a Sub- Contractor.
<b>Sub-Contractor</b>	Any person or Supplier appointed by the Supplier to provide elements of the Project on behalf of the Supplier to the Customer.
<b>Sub-Processor</b>	Means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement
<b>Supplier Affiliate</b>	Any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with the Supplier, including as a subsidiary, parent or holding company.
<b>Supplier Confidential Information</b>	Any information that the Supplier gives to CCS or to Customer's that is designated as being confidential, or which ought to be reasonably be considered to be confidential (whether or not it is marked "confidential"). This may include information, however it is conveyed, that relates to the Supplier's business, affairs, developments, trade secrets, Know-How, personnel and suppliers including all Intellectual Property Rights.
<b>Supplier Materials</b>	Those Materials specifically created by any officers, employees, sub-contractors or freelancers of the Supplier for the purposes of a Project, whether or not these materials are incorporated into Deliverables during the Term. (Includes any Materials adapted, modified or derived from the Customer Materials).
<b>Supplier Proprietary Materials</b>	Software (including all programming code in object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Supplier and which: <ul style="list-style-type: none"> <li>were in existence prior to the date on which it is intended to use them for a Project, or are created by or for the Supplier outside of a Project and which are intended to be reused across its business</li> </ul>
<b>Supplier Proposal</b>	The Supplier's solution in response to the Customer's Project Specification, as set out in any Schedule of Work.
<b>Tender</b>	The tender submitted by the Supplier in response to the Invitation to Tender.
<b>Term</b>	The period from the Effective Date to the earlier of: <ul style="list-style-type: none"> <li>the Expiry Date or New Expiry Date; and</li> <li>any date of termination</li> </ul>
<b>Territory</b>	The United Kingdom, unless specified otherwise in the Contract. Publication and marketing on globally accessible mediums such as the internet shall not mean

	that the Territory is deemed to be worldwide.
<b>Third Party Materials</b>	Any Materials used in the Deliverables which are either commissioned by the Supplier from third parties or which have already been created by a third party and the Supplier proposes to use. Excludes software which is owned or licensed by a third party.
<b>Transparency Principles</b>	The principles set out at <a href="http://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public">www.gov.uk/government/publications/transparency-of-suppliers- and-government-to-the-public</a> detailing the requirement for the proactive release of contract information under the Government's transparency commitment.
<b>Transparency Reports</b>	The information relating to the Project and performance of this Contract which the Supplier is required to provide to the Customer, or to CCS in accordance with its reporting requirements.
<b>Variation</b>	A change in this Contract that is formally agreed by both Parties, as detailed in Clause 18.
<b>Working Day</b>	Any day other than a Saturday, Sunday or public holiday in England and Wales.

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

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

## **2 Commencement and Continuation**

The Contractor shall commence the Services on **9 March 2022** and, subject to Clause 10.1 shall complete the Services on or before **9 March 2023**.

The Contract may be extended by a further 6 months subject to satisfactory performance.

This Contract shall be deemed to have been effective from **9 March 2022**.

## **3 Contractor's Obligations**

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

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

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



- 3.4** The Contractor shall co-operate fully with the Commission in order to enable an efficient and detailed knowledge transfer from the Contractor to the Commission at the end of the Term and shall provide the Commission free of charge with full access to Personnel, copies of all documents, codes, reports, summaries and any other information requested by the Commission.

## **4 Commission's Obligations**

The Commission shall, or shall procure that the Department shall, comply with the payment provisions of Schedule 2 provided that the Commission, or the Department as applicable, 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 Commission.

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

- 5.1** The Commission shall notify the Contractor of any material change to the Commission'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 Commission provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.

## **6 Management**

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

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

- 7.1** Where the Contractor enters into a sub-contract with a Sub-contractor it shall ensure prompt payment in accordance with this Clause 7.1. Unless otherwise agreed by the Commission 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 Commission's request, sufficient evidence to demonstrate compliance.

- 7.2** The Commission shall be entitled to withhold payment due under Clause 7.1 for so long as the Contractor, in the Commission'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 Commission 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 give to the Commission if so requested a list 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 Commission may reasonably require.
- 7.5** If the Commission 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 all such steps as the Commission considers necessary to remedy the situation or, if so required by the Commission, shall remove the said employee or Sub-contractor from providing the Services and shall provide a suitable replacement (at no cost to the Commission).
- 7.6** The Contractor shall take all 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.
- 7.7** The Contractor shall immediately notify the Commission 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.
- 7.8** The Contractor, its employees and Sub-contractors (or their employees), whilst on the Commission's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- 7.9** The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with any applicable sensitivity considerations notified to the Contractor verbally or in writing.

## **8 Intellectual Property Rights**

- 8.1** It is acknowledged and agreed between the parties that all existing or future Commission's Intellectual Property Rights shall vest in the Commission.

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

## **9 Warranty and Indemnity**

- 9.1** The Contractor warrants to the Commission 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 Commission to expect in all the circumstances. The Commission will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.

- 9.2** Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract then the Commission 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 Commission; 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 Commission 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 Commission 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 Commission against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Contract or otherwise through the default of the Contractor.
- 9.5** All property of the Contractor whilst on the Commission's premises shall be there at the risk of the Contractor and the Commission shall accept no liability for any loss or damage howsoever occurring to it.
- 9.6** The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Contractor shall upon request produce to the Commission, its policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

## **10 Termination**

- 10.1** This Contract may be terminated by either party giving to the other party at least 30 days' 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 Commission 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;
- 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;
- 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;
- 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 Commission in writing. For the purpose of this Sub-Clause 10.4.5 "control" means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power;
- 10.4.6** the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct;
- 10.4.7** the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;
- 10.4.8** the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to the payment of social security contributions, national insurance contributions (NICs) or such other applicable statutory payments;
- 10.4.9** the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to payment of taxes; or
- 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 Commission 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 Commission.

**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 Commission.

## **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 12.1 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 Commission's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services 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 Commission's Confidential Information received otherwise than for the purposes of this Contract.

**12.5** The Contractor shall ensure that their employees, servants or such professional advisors or consultants are aware of the Contractor's obligations under this Contract.

**12.6** Nothing in this Contract shall prevent the Commission 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 Commission 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 Commission (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 Commission 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 Commission'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 Commission shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

**12.10** Subject to Clause 12.9, the Contractor hereby gives its consent for the Commission to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

**12.11** The Commission may consult with the Contractor to inform its decision regarding any redactions but the Commission shall have the final decision in its absolute discretion.

**12.12** The Contractor shall assist and cooperate with the Commission to enable the Commission to publish this Contract.

## **13 Freedom of Information**

**13.1** The Contractor acknowledges that the Commission is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and

cooperate with the Commission to enable the Commission 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 Commission 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 Commission with a copy of all Information in its possession, or power in the form that the Commission requires within five Working Days (or such other period as the Commission may specify) of the Commission's request; and

13.2.3 provide all necessary assistance as reasonably requested by the Commission to enable the Commission 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 Commission 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 Commission.

**13.5** The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Commission 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 Services:

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 Commission 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 Commission 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 Commission's internal auditors or other duly authorised staff or agents to inspect such documents as the Commission 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 Commission, promptly provide such assistance and comply with such timetable as the Commission may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Commission 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 Schedules.
- 15.3** The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Commission 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 and all other statutes and regulations relating to income tax in respect of that consideration. Where the Contractor is deemed to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Commission reserves the right to calculate Income Tax and pay it to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 16.2** Where the Contractor is liable to NICs in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration. Where the Contractor is deemed to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Commission reserves the right to calculate primary (employee) NICs and pay them to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 16.3** The Commission 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 Commission 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) the Commission 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 Commission 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 Commission that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and NICs 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 the Commission 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 the Commission in connection with any such assessment or claim.
- 16.10** The Contractor authorises the Commission to provide the HM Revenue and Customs and all departments or agencies of Her Majesty's 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 the Commission is obliged as a matter of law to comply with such request.
- 16.11** The Contractor shall register for value added tax if and when required by law and shall promptly notify the Department for Work and Pensions of its liability for Class 2 and, where appropriate, Class 4 NICs.

## **17 Data Protection**

- 17.1** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Commission is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 3a. The only processing that the Processor is authorised to do is listed in Schedule 3a by the Controller and may not be determined by the Processor.
- 17.2** The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 17.3** The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.4** The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with Schedule 3a , unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 3a);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Processor's duties under this Clause;
  - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

**17.5** Subject to Clause 17.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

**17.6** The Processor's obligation to notify under Clause 17.5 shall include the provision of further information to the Controller in phases, as details become available.

**17.7** Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under

Clause 17.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

**17.8** The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

**17.9** The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

**17.10** Each party shall designate its own data protection officer if required by the Data Protection Legislation.

**17.11** Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 17 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

**17.12** The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

**17.13** The Controller may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

**17.14** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **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 Commission 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 Commission. Such consent may be given subject to any conditions which the Commission considers necessary. The Commission may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Contractor.

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

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

## **21 Waiver**

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

## **22 Notices**

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

**22.2** The notice, demand or communication shall be deemed to have been duly served:

22.2.1 if delivered by hand, when left at the proper address for service;

22.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;

22.2.3 if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Working Day (such times being local time at the address of the recipient).

## **23 Dispute resolution**

- 23.1** The parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.
- 23.2** Any dispute not capable of resolution by the parties in accordance with the terms of Clause 23 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution 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

### 1 Background

1.1 The Social Mobility Commission (SMC) monitors progress towards improving social mobility in the UK and promotes social mobility in England. It is an independent statutory body created by an Act of Parliament and is sponsored by the Cabinet Office (CO).

For information, please see the [2021 State of the Nation Report](#), which is our annual report as required by [statute](#).

1.2 The SMC has established a Policy and Evidence Advisory Panel of subject-matter experts to provide advice on a range of issues that impact social mobility:

Academic roles:

1. Education (Lot 1)
2. Measurement (quantitative analysis) (Lot 2)
3. Routes to employment and the labour market (Lot 3)
4. Families expert (Lot 4)

Policy roles:

5. Education (schools) (Lot 5)
6. Education (further education) (Lot 6)
7. Families expert (Lot 7)
8. Levelling up - geographic/ place inequalities (Lot 8)

The Contractor has agreed to be a Policy expert adviser on the Social Mobility Commission's Policy and Evidence Advisory Panel, within the Education (further education) (Lot 6) role.

### 2 Aims

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

- a. To help shape the Commission's remit of improving social mobility for all.
- b. Advice arising from this contract will inform Commission thinking. However, the Contractor will not be expected to represent the Commission.
- c. To review and provide input into the Social Mobility Commission's annual statutory report, The State of the Nation.
- d. The Contractor shall act as a sounding board for the Commission's research pipeline, policy recommendations, as well as when the Commission is scoping new areas that may have causal links to social mobility.



### **3 Objectives**

- 3.1 The Contractor shall use all reasonable endeavours to achieve the following objectives:

The ultimate goal of the SMC is to help society to become more socially mobile. By providing scrutiny and challenge, policy and academic experts on the panel can help enhance the work done at the SMC through three distinct channels:

**a. Quality assurance (QA):**

Both policy and academic experts are expected to provide an extra layer of quality assurance (QA) on the statutory report and other research projects. This would include both work which has been commissioned out to suppliers and work done internally. As this is an advisory role, experts would not be held responsible for the quality of the final product.

**b. Policy recommendations:**

Both academic and policy experts are expected to input into proposed policy recommendations. We will draw on panel members as a sounding board on areas of their expertise, and to provide additional policy context as needed. The SMC will ultimately decide what final policy recommendations are.

**c. Research scoping and methodology:**

Experts will be expected to advise on the latest evidence related to social mobility in the area of their subject-matter expertise. This will also include informing us of where there are evidence gaps, or conflicting views.

Both academic and policy experts are expected to act as a sounding board on knowledge gaps and ideas for future research.

### **4 Methodology**

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

## SCHEDULE OF WORK

Task	Outputs	Date Required
Deliverable 1 <ul style="list-style-type: none"> <li>The Contractor shall provide quality advice on areas of their subject-matter expertise.</li> </ul>	Output 1: The Contractor shall provide views on potential research projects, evidence gaps, policy recommendations and any risks in framing based on their subject matter expertise. This will be through calls, emails and potential face to face meetings.	By 9 <sup>th</sup> of March 2023, or before this date if agreed in advance.
Deliverable 2 <ul style="list-style-type: none"> <li>The Contractor shall provide quality assurance.</li> </ul>	Output 2: The Contractor shall provide feedback on draft research reports, policy briefs and their recommendations. This may include the statutory report, State of the Nation, but will also extend to other research or policy briefings in the area of a panel member's subject-matter expertise.	By 9 <sup>th</sup> of March 2023, or before this date if agreed in advance.
Deliverable 3 <ul style="list-style-type: none"> <li>The Contractor shall provide thought leadership and upskilling.</li> </ul>	Output 3: At the request of the Commission, the Contractor shall from time to time present to the Secretariat or its Commissioners on the latest policy or evidence in the area of their subject-matter expertise.	By 9 <sup>th</sup> of March 2023, or before this date if agreed in advance.

End of schedule 1.

## Schedule 2

### 1 Table

Task	Total	Invoice date
Submission of output 1		As aligned to the schedule of work and successful completion of milestones up to that point.
Submission of output 2		As aligned to the schedule of work and successful completion of milestones up to that point.
Submission of output 3		As aligned to the schedule of work and successful completion of milestones up to that point.
<b>Grand Total (excluding VAT)</b>	<b>£6,000.00</b>	

'VAT will be payable at the prevailing rate'

- 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 Commission or the Department.
- The Contractor shall maintain full and accurate accounts for the Services 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.
- The Contractor shall permit duly authorised staff or agents of the Commission, 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 Commission 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 Commission or the Department's resources in the performance of this Contract.
- Invoices shall be prepared by the Contractor 'on the invoice dates specified in the Table' in arrears and shall be detailed against the expenditure headings set out in the Table. The Contractor or its nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Contractor on the Services 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 Commission or the Department within the terms of another contract.

- 6 The Commission shall, or shall procure that the Department shall, accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this paragraph, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 7 Invoices shall be sent, within 30 days of the end of each invoice date noted in the table to [contact@socialmobilitycommission.gov.uk](mailto:contact@socialmobilitycommission.gov.uk), quoting the **purchase order number, contract reference number** and cc'ing the Project Manager, [REDACTED]. The Commission undertakes to pay, or procure that the Department shall pay, correctly submitted invoices within 5 days of receipt. The Commission is obliged to pay, or procure that the Department pays, invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Commission or 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 Contract Manager. The Commission aims to reply to complaints within 10 working days. The Commission shall not be responsible for any delay in payment caused by incomplete or illegible invoices.
- 8 The Contractor shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Commission's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Commission shall only be liable for the reimbursement so much (if any) of the expenditure disallowed as, in the Commission's reasonable opinion after consultation with the Contractor, would reasonably have been required for that purpose.
- 9 If this Contract is terminated by the Commission due to the Contractors insolvency or default at any time before completion of the Service, the Commission shall only be liable under paragraph 1 for the reimbursement of eligible payments made by, or due to, the Contractor before the date of termination.
- 10 On completion of the Services or on termination of this Contract, the Contractor shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Services. The final invoice shall be submitted not later than 30 days after the date of completion of the Services.
- 11 The Commission shall not be obliged to pay, or procure the payment of, the final invoice until the Contractor has carried out all the elements of the Service specified as in Schedule 1.
- 12 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 Commission or the Department all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the Commission shall have no further liability for reimbursement of any kind.

**13** End of Schedule 2.

Authorised to sign for and on  
behalf of the **Social Mobility  
Commission**

Signature

[REDACTED]

Name in CAPITALS

[REDACTED]

Position in Organisation

[REDACTED]

Address in full  
**Sanctuary Buildings,  
Great Smith Street,  
London, SW1P 3BT**

Date: 10/03/2022

Authorised to sign for and on  
behalf of EDSK

Signature

[REDACTED]

Name in CAPITALS

[REDACTED]

Position in Organisation

[REDACTED]

Address in full  
**6 Sherborne Way  
Croxley Green  
Hertfordshire WD3 3PF**

Date: 10/3/2022

## Annex 1: SMC Security Standards

### 1. SMC Security Standards for Business Services and ICT Contracts

“BPSS” “Baseline Personnel Security Standard”	a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a>
“Cabinet Office”	Supports the Prime Minister and ensures effective running of the UK Government. <a href="http://www.gov.uk">Cabinet Office - GOV.UK (www.gov.uk)</a>
“Cyber Essentials” “Cyber Essentials Plus”	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. There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers: <a href="https://www.iasme.co.uk/apply-for-self-assessment/">https://www.iasme.co.uk/apply-for-self-assessment/</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” “Department’s Information”	is any data or information owned or retained in order to meet departmental business objectives and tasks, including: (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: (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 security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
“The Commission” “SMC”	means the Social Mobility Commission
“FIPS 140-2”	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.
“Good Industry Practice” “Industry Good 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.

<p>“Good Industry Standard”</p> <p>“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”</p> <p>“GSCP”</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p>“HMG”</p>	<p>means Her Majesty’s Government</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”</p> <p>“OFFICIAL-SENSITIVE”</p>	<p>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>“Secure Sanitisation”</p>	<p>Secure sanitisation is the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. Secure sanitisation was previously covered by “Information Assurance Standard No. 5 - Secure Sanitisation” (“IS5”) issued by the former CESG. Guidance can now be found at: <a href="https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media">https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</a></p> <p>The disposal of physical documents and hardcopy materials advice can be found at: <a href="https://www.cpni.gov.uk/secure-destruction">https://www.cpni.gov.uk/secure-destruction</a></p>
<p>“SPF”</p> <p>“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. <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>

- 1.1 The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2 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).
- 1.3 Departmental Data being handled in the course of providing an ICT solution or service must be segregated from all other data on the Contractor's or sub-contractor's own IT equipment to protect the Departmental Data and enable the data 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 1.10.
- 1.4 The Contractor shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
- 1.5 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.
- 1.6 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 1.7 and 1.8 below.
- 1.7 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 FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.8 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 FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.9 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 disposal organisation.



- 1.10 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 either visual or physical 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.
- 1.11 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 and accounted for in accordance with the current HMG policy using a NCSC approved product or method.
- 1.12 Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or sub-contractor staff must complete this process before access to Departmental Data is permitted.
- 1.13 All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 1.14 Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 1.15 The Contractor or sub-contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development 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.
- 1.16 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.
- 1.17 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.