



Department
for Education

Research contract terms and conditions

Updated 10 November 2014

Contents

1. Contractor's Obligations	4
2. Department's Obligations	4
3. Changes to the Department's Requirements	4
4. Management	4
5. Contractor's Employees and Sub-Contractors	5
6. Ownership of Intellectual Property Rights and Copyright	6
7. Data Protection Act	6
8. Department's Data	10
9. Warranty and Indemnity	11
10. Termination	13
11. Status of Contractor	15
12. Freedom of information	15
13. Confidentiality	16
14. Access and Information	18
15. Transfer of Responsibility on Expiry or Termination	19
16. Tax indemnity	19
17. Amendment and variation	22
18. Assignment and Sub-contracting	22
19. The Contract (Rights of Third Parties) Act 1999	22
20. Waiver	22
21. Notices	22
22. Dispute resolution	23
23. Law and Jurisdiction	23
24. Discrimination	23

25. Safeguarding children who participate in research	23
26. Project outputs	24

1. Contractor's Obligations

- 1.1 The Contractor shall promptly and efficiently complete the Project in accordance with the provisions set out in Schedule One.
- 1.2 The Contractor shall comply with the accounting and information provisions of Schedule Two.
- 1.3 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.
- 1.4 The Contractor shall inform the Department immediately if it is experiencing any difficulties in meeting its contractual obligations.

2. Department's Obligations

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

3. Changes to the Department's Requirements

- 3.1. The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.
- 3.2. 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.

4. Management

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

5. Contractor's Employees and Sub-Contractors

5.1 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 5.1. 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:

5.1.1 10 days, where the Sub-contractor is an SME; or

5.2.1 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.

5.2 The Department shall be entitled to withhold payment due under clause 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 5.1. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment.

5.3 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.

5.4 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.

5.5 The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Project, in accordance with the Department's reasonable security requirements as required from time to time.

5.6 If the Department notifies the Contractor that it considers that an employee or sub-contractor is not appropriately qualified or trained to perform the Project or otherwise is not performing the Project in accordance with this Contract, then the Contractor shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if so required by the Department, shall remove the said employee or sub-contractor from performing

the Project and shall provide a suitable replacement (at no cost to the Department).

- 5.7 The Contractor shall take all reasonable steps to avoid changes of employees or sub-contractors assigned to and accepted to perform the Project under the Contract except whenever changes are unavoidable or of a temporary nature. The Contractor shall give at least four week's written notice to the Project Manager of proposals to change key employees or sub-contractors

6. Ownership of Intellectual Property Rights and Copyright

- 6.1 Ownership of Intellectual Property Rights including Copyright, in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other materials prepared by or for the Contractor on behalf of the Department for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Contractor
- 6.2 The Contractor hereby grants to the Department a non-exclusive licence without payment of royalty or other sum by the Department in the Copyright to:
- 6.2.1 do and authorise others to do any and all acts restricted by the Act as amended from time to time or replaced in whole or part by any statute or other legal means in respect of any Copyright Work in the United Kingdom and in all other territories in the world for the full period of time during which the Copyright subsists; and
- 6.2.2 exercise all rights of a similar nature as those described in Clause 6.1 above which may be conferred in respect of any Copyright Work by the laws from time to time in all other parts of the world.
- 6.3 Each party will at the request and reasonable expense of the other execute all such documents and do all such acts as may be reasonably necessary in order to vest in the other the rights granted to the other under this Clause 6.

7. Data Protection Act

- 7.1 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 7, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.
- 7.2 The Contractor shall:

- 7.2.1 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);
- 7.2.2 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;
- 7.2.3 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;
- 7.2.4 Take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 7.2.5 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;
- 7.2.6 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 Clause 7;
- 7.2.7 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;
- 7.2.8 Notify the Department within five Working Days if it receives:
 - 7.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 7.2.8.2 a complaint or request relating to the Department's obligations under the Data Protection Legislation;
- 7.2.9 Provide the Department with full cooperation and assistance in relation to any complaint or request made, including by:
 - 7.2.9.1 providing the Department with full details of the complaint or request;

- 7.2.9.2 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;
 - 7.2.9.3 providing the Department with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Department); and
 - 7.2.9.4 providing the Department with any information requested by the Department;
- 7.2.10 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;
- 7.2.11 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
- 7.2.12 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:
- 7.2.12.1 the Contractor shall submit a request for change to the Department which shall be dealt with in accordance with any Change Control Procedure.
 - 7.2.12.2 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;

7.2.12.4 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

7.2.12.4 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).

7.3 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.

8. Department's Data

- 8.1 The Contractor shall employ appropriate organisational, operational and technological processes and procedures to keep the Department's Data safe from unauthorised use or access, loss, destruction, theft or disclosure. The organisational, operational and technological processes and procedures adopted are required to comply with the requirements of ISO/IEC 27001 as appropriate to the services being provided to the Department.
- 8.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Department's Data.
- 8.3 The Contractor shall not store, copy, disclose, or use the Department's Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Department.
- 8.4 To the extent that the Department's Data is held and/or processed by the Contractor, the Contractor shall supply that the Department's Data to the Department as requested by the Department in the format specified by the Department.
- 8.5 The Contractor shall take responsibility for preserving the integrity of the Department's Data and preventing the corruption or loss of the Department's Data.
- 8.6 The Contractor shall ensure that any files containing the Department's Data are stored on the Contractor's secure servers and/or secured IT equipment. The Contractor shall ensure that the Department's Data relating to the project is segregated from other data on their IT systems.
- 8.7 The Contractor shall not keep the Department's Data on any laptop or other removable drive or device unless that laptop, other removable drive or device is protected by being fully encrypted and password protected, and the use of the device or laptop is necessary for the provision of the services set out in the Contract. Laptops should have full disk encryption using either a CESG (Communications Electronic Security Group) CAPS approved product or alternatively a product that complies with the FIPS 140-2 Standard. USB devices used for transferring the Department's Data should be encrypted to the FIPS 140-2 Standard.
- 8.8 The Contractor shall keep an audit trail of where the Department's Data is held, including hardware, laptops, drives and devices.
- 8.9 The Contractor shall ensure that the Department's Data is stored in locked cabinets.

- 8.10 The Contractor shall ensure that the Department's Data is securely removed from their systems and any printed copies securely destroyed at the end of this work, or on termination of the contract. In complying with this clause, electronic copies of the Department's Data shall be securely destroyed by either physical destruction of the storage media or secure deletion using appropriate electronic shredding software, using a minimum setting of US DOD overwriting standard (7 passes). Any hard copy shall be destroyed by cross-cut shredding and secure re-cycling of the resulting paper waste.
- 8.11 The Contractor shall perform secure back-ups of all the Department's Data and shall ensure that up-to-date back-ups are stored off-site. The Contractor shall ensure that such back-ups are available to the Department at all times upon request.
- 8.13 The Contractor shall ensure that any of the Department's Data to be sent between the Contractor's offices/staff, and/or the sub-contractors, and/or any other third party are sent by CD or DVD and are fully encrypted and password protected. The Contractor shall ensure that the password for files is sent separately from the data to the named recipient of the data. The Department's Data shall be transferred by a secure courier or registered postal service (special delivery) and not by e-mail or on USB pens.
- 8.13 If the Department's Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Department may:
- 8.13.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Department's Data shall do so as soon as practicable and/or
 - 8.13.2 itself restore or procure the restoration of the Department Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 8.14 If at any time the Contractor suspects or has reason to believe that the Department's Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Department immediately and inform the Department of the remedial action the Contractor proposes to take.

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 Project 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 Project 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 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 Project 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 Project 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.
- 8.1 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 performance of the Project.
- 9.4 Without prejudice to any other exclusion or limitation of liability in this Contract, the liability of the Contractor for any claim or claims under this Contract shall be limited to such sums as it would be just and equitable for the Contractor to pay having regard to the extent of his responsibility for the loss or damage giving rise to such claim or claims etc.
- 9.5 All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.
- 9.6 The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Contractor shall upon request produce to the Department, its policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

10. Termination

- 10.1 This Contract may be terminated by either party giving to the other party at least 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 Department with immediate effect by notice in writing if at any time:-

*****Use this set of termination clauses if the Contractor is a Company.*****

- 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.

*****Use this set of termination clauses if the Contractor is an individual or a partnership.*****

10.4.1 in England and Wales, a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or he or she makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors; or

10.4.2 in Scotland, if the Contractor becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) act 1985; or

10.4.3 where the Contractor is a firm or a number of persons acting together in any capacity (including as trustees), any event referred to in Sub-Clauses 10.4.1 or 10.4.2 occurs in respect of any partner in the firm or any of those persons (including any trustees);

10.4.4 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;

- 10.4.5 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;
 - 10.4.6 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;
 - 10.4.7 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;
 - 10.4.8 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. Freedom of information

- 12.1 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.
- 12.2 The Contractor shall and shall procure that its Sub-contractors shall:
 - 12.2.1 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;
 - 12.2.2 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

- 12.2.3 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.
- 12.3 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.
- 12.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.
- 12.5 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:
- 12.5.1 in certain circumstances without consulting the Contractor; or
- 12.5.2 following consultation with the Contractor and having taken their views into account;
- 12.5.3 provided always that where 12.5.1 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.
- 12.6 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.

13. Confidentiality

- 13.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
- 13.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- 13.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

- 13.2 Clause 13 shall not apply to the extent that:
- 13.2.1 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 12 (Freedom of Information);
 - 13.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 13.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 13.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 13.2.5 it is independently developed without access to the other party's Confidential Information.
- 13.3 The Contractor may only disclose the Department'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.
- 13.4 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.
- 13.5 At the written request of the Department, the Contractor shall procure that those members of the Contractor Personnel identified in the Department's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 13.6 Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:
- 13.6.1 to any Crown Body or any other Contracting Department. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Department;

13.6.2 to any consultant, contractor or other person engaged by the Department or any person conducting an Office of Government Commerce gateway review;

13.6.3 for the purpose of the examination and certification of the Department's accounts; or

13.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Department has used its resources.

13.7 The Department shall use all reasonable endeavours to ensure that any government department, Contracting Department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 13 is made aware of the Department's obligations of confidentiality.

13.8 Nothing in this clause 13 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 IPR.

13.9 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.

13.10 Subject to Clause 13.9, 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.

13.11 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.

13.12 The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.

14. Access and Information

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

15. Transfer of Responsibility on Expiry or Termination

- 15.1 The Contractor shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.
- 15.2 Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the Schedule.
- 15.3 The Contractor undertakes that it shall not knowingly do or omit to do anything that 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.

*****Use this set of tax clauses if the Contractor is a Company.*****

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.

*****Use this set of tax clauses if the Contractor is an individual or a partnership.*****

- 16.7 The Consultant warrants and represents to the Department that he 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 him in relation to any payments or arrangements made under this Contract. The Consultant shall promptly and regularly pay all National Insurance Contributions due from him as a self-employed person and shall account to the HM Revenue and Customs for all taxes due from him in respect of the payments made to him under this Contract.
- 16.8 If, notwithstanding Clause 16.7, the HM Revenue and Customs and/or any other appropriate agency consider that the Consultant is an employee of the Department for the purposes of tax and/or national insurance contributions; then the Department shall be entitled to terminate this Contract immediately and deduct from the payments payable to the Consultant under the terms of this Contract, such sums as the HM Revenue and Customs and/or other agencies require in respect of income tax and employee national insurance contributions. The deduction of such tax and national insurance contributions will not affect the status of the Consultant as self-employed for all other purposes.
- 16.9 Without prejudice to the provisions of Clause 16.8 above, the Consultant shall indemnify the 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 the Department in connection with any such assessment or claim.
- 16.10 The Consultant 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 the Department is obliged as a matter of law to comply with such request.
- 16.11 The Consultant shall register for value added tax if and when required by law and shall promptly notify the Department for Work and Pensions of his liability for Class 2 and, where appropriate, Class 4 national insurance contributions.

17. Amendment and variation

- 17.1 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 that the Department may have in place from time to time.

18. Assignment and Sub-contracting

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

19. The Contract (Rights of Third Parties) Act 1999

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

20. Waiver

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

21. Notices

- 21.1 Any notices to be given under this Contract shall be delivered personally or sent by post or by facsimile transmission to the Project 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, forty-eight hours after posting or, if sent by facsimile transmission, twelve hours after proper transmission.

22. Dispute resolution

- 22.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.
- 22.2 Any dispute not capable of resolution by the parties in accordance with the terms of Clause 21 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 22.3 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

23. Law and Jurisdiction

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

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. Safeguarding children who participate in research

- 25.1 The Contractor will put in place safeguards to protect children from a risk of significant harm which could arise from them taking part in the Project. The Contractor will agree these safeguards with the Department before commencing work on the Project.
- 25.2 In addition, the Contractor will carry out checks with the Disclosure and Barring Service (DBS checks) on all staff employed on the Project in a Regulated Activity. Contractors must have a DBS check done every three years for each relevant member of staff for as long as this contract applies. The DBS check must be completed before any of the Contractor's employees work with children in Regulated Activity. Please see <https://www.gov.uk/crb-criminal-records-bureau-check> for further guidance.

26. Project outputs

- 26.1 Unless otherwise agreed between the Contractor and the Project Manager, all outputs from the Project shall be published by the Department on the Department's research website.
- 26.2 The Contractor shall ensure that all outputs for publication by the Department adhere to the Department's Style Guide and MS Word Template, available to download from: <https://www.gov.uk/government/publications/eoi-guide>
- 26.3 Unless otherwise agreed between the Contractor and Project Manager, the Contractor shall supply the Project Manager with a draft for comment at least eight weeks before the intended publication date, for interim reports, and eight weeks before the contracted end date, for final reports.
- 26.4 The Contractor shall consider revisions to the drafts with the Project Manager in the light of the Department's comments. The Contractor shall provide final, signed off interim reports and other outputs planned within the lifetime of the Project to the Department by no later than four weeks before the intended publication date, and final, signed off reports and other outputs at the end of the Project to the Department by no later than the contracted end date for the Project.
- 26.6 Until the date of publication, findings from all Project outputs shall be treated as confidential, as set out in the Clause 13 above. The Contractor shall not release findings to the press or disseminate them in any way or at any time prior to publication without approval of the Department.
- 26.6 Where the Contractor wishes to issue a Press Notice or other publicity material containing findings from the Project, notification of plans, including timing and drafts of planned releases shall be submitted by the Contractor to the Project Manager at least three weeks before the intended date of release and before any agreement is made with press or other external audiences, to allow the Department time to comment. All Press Notices released by the Department or the Contractor shall state the full title of the research report, and include a hyperlink to the Department's research web pages, and any other web pages as relevant, to access the publication/s. This clause applies at all times prior to publication of the final report.
- 26.7 Where the Contractor wishes to present findings from the Project in the public domain, for example at conferences, seminars, or in journal articles, the Contractor shall notify the Project Manager before any agreement is made with external audiences, to allow the Department time to consider the request. The Contractor shall only present findings that will already be in the public domain at

the time of presentation, unless otherwise agreed with the Department. This clause applies at all times prior to publication of the final report.



Department
for Education

© Crown Copyright 2014

You may re-use this document/publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence v3.0. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

email psi@nationalarchives.gsi.gov.uk

Any enquiries regarding this publication should be sent to us at:

RBU.Enquiries@education.gsi.gov.uk or www.education.gov.uk/contactus