

This contract is made on 30th day of March 2021

- 1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and
- 2 Mott MacDonald Ltd registered in England and Wales under number 01243967 whose registered office is Mott MacDonald House, 8-10 Sydenham House Croydon CR0 2EE (the "**Contractor**")

each a "**Party**" and together the "**Parties**".

It is agreed that:

1. this contract, together with the attached schedules and annexes, collectively form the "**Contract**"; and
2. if there is a conflict between the provisions of the clauses of the Contract and the provisions of the schedules, the following order of precedence shall apply:
 - (a) schedule 2 (Terms and Conditions);
 - (b) schedule 1 (Specification);
 - (c) schedules 3 to 9; and
 - (d) schedule 10 (Contractor's Solution).

The Contract has been executed on the date stated at the beginning of this page.

SIGNED by the CONTRACTOR acting by

Authorised Signatory

Name

Occupation

Address

Date

SIGNED by DFE acting by

Authorised Signatory

Name

Position

Occupation

Address

Date

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Schedule 1
The Specification

Introduction

The following document outlines the Delivering Better Outcomes Together (DBOT) Consortium response to the Targeted Delivery Support direct award specification issued on the 8th February 2021. Since April 2015, Mott MacDonald (MM) has been leading the DBOT consortium. We manage this contract through our consortium of Mott MacDonald as lead contractor with The National Development Team for Inclusion (NDTi) and Council for Disabled Children (CDC), part of the National Children's Bureau.

Detailed in the document is the proposed overarching scope for the Targeted Delivery Support Contract Direct Award 2021/2022 for approval. Consortium partners have been requested to develop proposals based on the strand budgets included in the specification.

Table 1 below provides an overview of proposed strand values for the contract year 1st April 2021 – 31st March 2022 as detailed by the DfE in the specification.

Section 1 of this document provides a more detailed summary of the proposed scope of works for each strand. Where the DfE have requested specific options in the specification, these have been included along with their impact and where possible an indication of cost.

Section 2 provides our response to the proposed KPIs to be included in individual strands.

Section 3 is the detailed cost breakdown of our proposals, Table 2 provides a more detailed breakdown of costs against each strand.

Section 4 is our response to the contract template.

Table 1: 2021/22 DBOT Direct Award – Contractual Value Limit

Number	Strand Name	Specification Strand Budget 2021/22	Mott MacDonald	CDC Multi-agency Working	CDC Social Care	National Development Team for Inclusion	DBOT Consortium Proposed Strand Budget
1	SEND Adviser Service						
2	Targeted Delivery Support and National and Local Training						
3	Regional Networks						
4	National Trial of Single Route of Redress						
5	External Evaluation Programme						
6	Programme Management						
Total							£2,377,999.85

1. Proposed Scope of Works

Table 2: Summary of strand requirements for 2021/22¹

SEND Adviser Service (excluding Inspection Management)	
Strand	<p><i>The contractor will provide a SEND Advisory service that will work closely with the Lead Professional SEND Adviser and a team of DfE Regional and Case Leads to support local areas in continuing to develop and implement robust, realistic, and achievable plans to improve their SEND services.</i></p> <p><i>Provide 1500 Adviser days at a rate of [REDACTED] per day (excluding expenses).</i></p>
Summary of client requirements	<p>1.1) Provide a professional SEND Advisory service that maintains the current broad range of skills, experience, and expertise to lead and drive whole system improvement for SEND Services.</p> <p>1.2) Payroll and expenses management for the team.</p>
High Level Proposals	<p>1.1) Targeted flexible support to provide direct advice, challenge and support via the specialist MM SEND Adviser team. Demand for MM SEND Adviser services has grown in recent years with the Advisers continuing to provide a crucial link between local authorities, regional co-ordinators, DBOT stakeholders and the DfE. The SEND Advisers will continue to play this key role in the targeted support process, providing both the initial contact point with the local authority to discuss the possibility of support and directing that support to the relevant delivery partner.</p> <p>1.2) Managing the SEND Adviser service which includes:</p> <ul style="list-style-type: none"> • Recruitment and ongoing management of the team • Due diligence prior to recruitment to assure SEND Adviser standards are maintained • Progress tracking, analysis and reporting of Adviser activity over the duration of the contract • Maintenance of appropriate levels of warranty and indemnities as required by the Department for Education • Handling of all expense and timesheet claims on behalf of the Department for Education • Ensuring all claims comply with Department for Education expense policies • Payroll management to ensure Advisers receive payment promptly and efficiently • Compliance with HM Government employment law, including obligations under IR35.

¹ All values in table exclusive of VAT

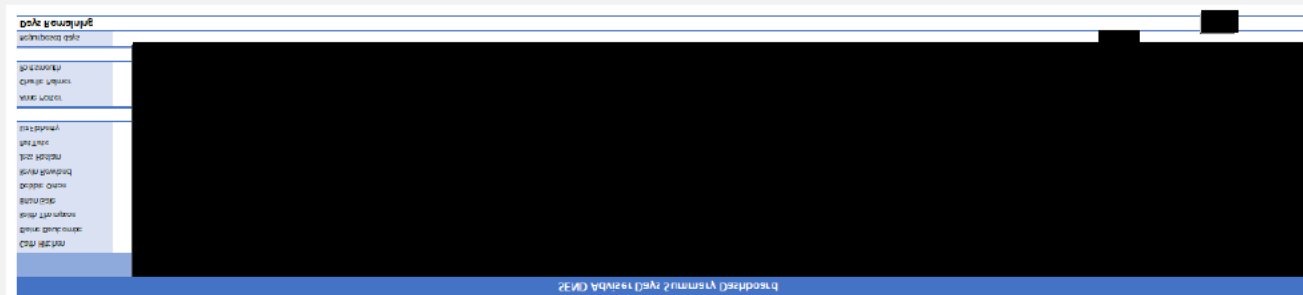
Recruitment and management of DfE SEND Advisers

- Mott MacDonald will continue to manage the recruitment of DfE SEND Advisers in consultation with the DfE Lead Professional SEND Adviser. We have a robust due diligence process in place for engaging contract workers which includes carrying out IR35 assessments before they are appointed. We will agree with the DfE the number of Advisers to be appointed ensuring there is enough cover to allow for sickness, succession planning and that we are not in breach of IR35.
- Mott MacDonald suggests a further option could be to have an additional pool of appointed SEND Advisers who could be called upon when needed. These could include local authority secondments who have expertise in this field. This option could offer developmental opportunities for LA staff, would provide the Department an additional pool of Advisers able to reflect on experience of meeting SEND challenges, and would further mitigate against risks posed by legislation around IR35.

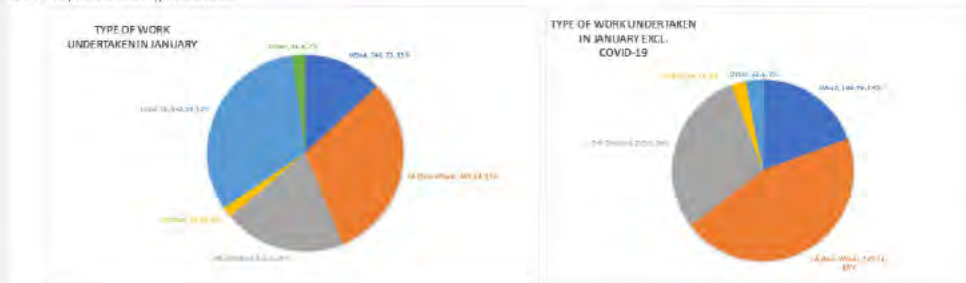
Recording, reporting and management of time and expenses

- Mott MacDonald will continue to manage the SEND Advisers timesheets and expenses, ensuring they are in line with the relevant DfE policies. We will ensure that all payments are made within the 30-day payment terms.
- The overall spend against budget will continue to be closely managed, with a monthly report provided to the DfE including a dashboard showing how each SEND Adviser is progressing against their contracted days, the overall proportion of the type of work they are undertaking, and a breakdown of which local authorities have received their advice. A utilisation chart will map the trajectory of days, enabling the Lead SEND Adviser to monitor future work requests against likely available resources.
- In addition to monthly reporting, there will be two separate reviews of the SEND Adviser service throughout the contract. These will ensure the DfE are satisfied with the quality of the SEND Adviser service based on regular feedback and intelligence provided. These reviews will take place after 4 and 9 months.

Examples of the monthly dashboard:



Overall Proportion of Work Type Undertaken:



Linking the SEND Adviser Service with the work of the SEND Regional Networks, DfE priorities and other DBOT support

- SEND Advisers will continue to contribute to the SEND Regional Network strand meetings, which are to be agreed with the DfE, to share progress and learning, plan coordinated support and address key challenges. This is to ensure that good practice is shared and support, where possible, is targeted based on Adviser feedback.
- The SEND Advisers will input across wider SEND delivery support contracts, in addition to wider priorities within DfE, such as the review of plans to address significant deficits in local authority high needs budgets.
- The monthly team meetings, where all SEND Advisers come together, continue to be an important opportunity for discussing national and local issues, sharing intelligence and practice, and interacting with DfE teams.

Delivering a viable SEND Adviser Service

- Our proposal includes all of the above delivery, management, monitoring and reporting of the SEND Adviser service, and also includes:
 - A SEND Adviser day rate increased by [REDACTED] per day (which at 1500 days would increase cost by [REDACTED] for the contract year).
 - Provision for overheads at not less than 7.5%. In common with typical commercial supply agreements, at Mott MacDonald all sub-contractors incur overhead costs, which cover a small contribution to overheads incurred in the delivery of the services contracted.
 - Expenses provided at cost to the department, offering the prospect of converting part of the [REDACTED] suggested expense

provision to additional SEND Adviser days. It is proposed this is reviewed as part of the 9 month review.

Targeted Delivery Support and National and Local training

Strand *A programme of targeted delivery support and national and local training for local areas with weaknesses in their multi- agency SEND system.*

Summary of client requirements

There are **three areas of focus** for this strand:

- **Multi agency working.** Bringing together education, Local Authority, health, social care, providers, and VCS organisations to enable improved service delivery, commissioning, and strategic planning.
- **Social Care.** Ensuring the role of social care in the SEND system is understood and effectively embedded at a local and regional level, and improvement plans are developed and actioned in line with identified local priorities.
- **Preparing for Adulthood (PfA).** Improving outcomes across PfA via bespoke plans. A menu of support will be developed including key themes such as PfA from the earliest years, employment, friends, relationships, and community participation, independent living, good health, and partnership working with parent carers and children and young people

2.1 Targeted Delivery Support

- Bespoke individual packages of support
- Collective support

2.2 Training and resources

- Leadership
- Preparing for Adulthood (PfA) awareness
- Learning to improve understanding of statutory compliance designed with DfE and Regional Co-ordinators
- Learning to support increased use of data designed with DfE and Regional Co-ordinators.

High Level Proposals

It is proposed that Mott MacDonald will provide the coordination and administrative support to both the individual and collective targeted support days process. The proposal below is our initial thoughts on how the process could work, but we envisage this being refined and agreed with the DfE once the revised Targeted Support process has been finalised.

All partner business cases will include time required to undertake the evaluation process of the proposed support to be provided.

Mott MacDonald (2.1)

Individual local areas

- Once the targeted support request is initiated as per the DfE's process, Mott MacDonald can organise an initial scoping call with all the necessary parties including, but not limited to, the DfE SEND Adviser, delivery support partner, LA representative and NHSE representative. The scoping call will enable the agreed party to complete the targeted request form in preparation for the next moderation panel.
- We will work with DBOT partners to check and quality assure the number of support days submitted aligns with those allocated prior to submission to the moderation panel.

- We will continue to monitor the status of targeted days and provide the total number of days which are awaiting approval, approved, delivered and remaining on a weekly basis and therefore acting as the central database to feedback to the DfE and the consortium. We will work with the delivery support partners to ensure a robust process for providing and reviewing the targeted support data is embedded, which will deliver a clear and consistent snapshot of the targeted support delivery process.

Collective Targeted Support Days

- Supporting the targeted support days process, Mott MacDonald will monitor and report on the status of collective targeted days utilised. A shared calendar will be created and maintained by our PMO to ensure partner support is captured.
- To provide the DfE and the consortium with oversight on the national picture of the individual and collective targeted support days, we will use, as agreed with the DfE, a Excel spreadsheet to track which local areas have received DBOT support on both a regional and national level.

It is proposed that Mott MacDonald will coordinate consortium training events and resources via a calendar of events.

Mott MacDonald training and resources (2.2)

Training

- At the start of the contract, Mott MacDonald will create the agreed training programme for the 2021-22 contract year. The training schedule will be reviewed monthly and a new appendix will be added to the monthly reporting documents to show the upcoming training events.
- With training events being virtual, gaining workshop evaluation has been more difficult. Nevertheless, we have learnt how to increase attendee feedback response rates. During the SEND Decision and the Law workshops between October and November 2020, we received an average response rate of 25% for the post-workshop questionnaire and during the most recent Annual Review workshops between January and February 2021, we received a 59% overall response rate from the post-workshop questionnaire. In agreement with the DfE and the consortium, we propose to re-word the feedback questionnaires, so the questions and answers align more directly with the proposed KPIs. Please refer to the KPI section at the end of the report for further information on KPIs.
- Training courses will be created with the focus on, but not limited to, the four training sub-sections identified. We will work with the consortium to shape pre-existing training courses based on learning from previous contract years. This will include SEND Decision Making and the Law and Annual Review workshops.

Resources

- We will continue to manage the SEND Pathfinder website and update this regularly with resources.
- The SEND Delivery Support helpline and helpdesk will continue to provide guidance and support, with responses within one working day.

Strand Management

- A strand manager from Mott MacDonald with relevant experience and capabilities will be identified to have oversight of this strand.

Multi-agency working (2.1)

Bespoke individual LA Targeted Support days

110 targeted days for use with local areas as identified in collaboration with DfE SEND Advisers and case leads; intervention will be developed and delivered to meet the specific needs of LA and partners. This may include, but is not limited to: interventions to improve local area data

capture; outcomes framework development; joint commissioning of services consultancy. This includes the option to draw down days from a Senior Consultant at NEL Commissioning Support Unit who provides technical advice related to health and LA joint commissioning and contracting.

In Quarter 1 (Q1) and Quarter 2 (Q2) all interventions will be delivered virtually, in Quarter 3 (Q3) and Quarter 4 (Q4), restrictions permitting, there will be some flexibility to allow for face to face delivery where necessary and in agreement with DfE and local areas. Expenses will be costed accordingly. Staffing costs include additional tech support where delivery is virtual.

Collective support

22 days for delivery of interventions to 2 or more local areas with similar needs. Interventions could be delivered within a region or cross-regionally. CDC will work with Regional Coordinators, SEND Advisers and partners to identify best use of resource. All interventions will be delivered virtually. Staffing costs include additional technical support for virtual delivery.

Social Care (2.1)

Bespoke individual LA Targeted Support days

20 targeted days for use with local areas as identified in collaboration with DfE SEND advisors and case leads; intervention will be developed and delivered to meet the specific needs of LA and partners. This may include, but is not limited to: interventions to ensure the role of social care in the SEND system is understood and effectively embedded at a local level; improvement plans are developed and actioned in line with identified local priorities.

Q1 and Q2 all interventions will be delivered virtually, in Q3 and Q4, restrictions permitting, there will be some flexibility to allow for face to face delivery where necessary and in agreement with DfE and local areas. Expenses costed accordingly. Staffing costs include necessary tech support where delivery is virtual.

Collective support

6 days for delivery of interventions to 2 or more local areas with similar needs. Interventions could be delivered within a region or cross-regionally. CDC will work with Regional Coordinators, SEND Advisers and partners to identify best use of resource. Q1,2&3 interventions will be delivered virtually with the option for 1 face to face session during Q4. Staffing costs include necessary technical support for virtual delivery.

Preparing for Adulthood (PfA) (2.1)

132 Bespoke individual LA Targeted Support days

100 days for use with local areas as identified by DfE SEND Advisers, and regional coordinators, to meet the specific needs of LAs and partners. Days to include support around the key themes of PfA from the earliest years, employment, friends and relationships and community participation, independent living and good health and improved partnership working with young people and their families. A menu of support to be developed with regional coordinators and key partners.

Q1 and Q2 all support will be delivered virtually with some flexibility in Q3 and Q4 for face-to-face delivery in agreement with partners.

Collective support

32 days of support to be provided for regions or sub regions to be co-designed with regional coordinators, DfE SEND Advisers, case leads and partners.

Multi-agency working training and resources (2.2)

Delivery of 3x national events (virtual)

Building on the success of national events hosted in 2020/21; CDC will deliver 3 live online national events (1 per term) for an audience of local area strategic health and LA reps with responsibility for SEND, with regional places for strategic Parent Carer Forum (PCF) attendance. Using a format of plenary sessions for national updates and a series of between 12 and 16 workshops at each event which will focus on specific projects and themes that are related to multi-agency working, CDC will be able to reach a multiagency audience of up to 300 attendees per event.

Learning to support increased use of data

CDC will host 7 regional events focussing on data. As CDC will do focussed data work in East and West Midlands, these sessions will be delivered in the 7 other regions allowing CDC to share learning from Midlands work and to agree a data agenda with each region based on their data priorities. This will include sharing effective practice and may include (but not limited to): using the NHS number on EHC plans; use of CDC dashboard; the opportunities for effective data management offered by the move to Integrated Care Systems. Events will be virtual.

Learning to support improved statutory compliance x 9 regional events (virtual)

Delivered in partnership with the Social Care programme, CDC will deliver one session per region on Health & Social Care Advice in EHC Plans. These sessions will be for frontline practitioners or team leaders who can disseminate learning to colleagues. It will complement CDC's existing e-learning programmes. CDC will work in partnership with SEND Advisers to develop and agree this element.

Programme of 3 national webinars (SEND Leads forum support)

Delivery of one webinar per term on a single theme related to multi-agency working. CDC will work with the existing SEND Leads online forum, DCO forum, regional coordinators and national colleagues to identify themes. Webinars will be recorded and uploaded as additional practice resource.

Development of e-learning resource

Building on CDC's successful suite of e-learning resources, CDC will work with Regional Coordinators, NHSE SEND leads and SEND Advisers to identify a topic based on priorities, which will be developed into interactive online training. From initial conversations with NHSE, possible topics include support for health colleagues on the tribunals or specific support for therapists. Costs include all development and hosting.

Social Care training and resources (2.2)

Delivery of 2x national train the trainer events (virtual)

Building on the success of the train the trainer e-learning and local area training model developed in 20/21; CDC will deliver 2 online training sessions for an audience of local area Social Care and SEND champions.

Learning to support improved statutory compliance x 9 regional events (virtual)

Delivered in partnership with the Multi-Agency Working programme, CDC will deliver one session per region on Health & Social Care Advice in EHC Plans. These sessions will be for frontline practitioners/team leaders who can disseminate learning to colleagues. It will complement CDC's existing e-learning programmes.

Development of e-learning resource to support DSCO induction for those new to the post.

Costs include all development and hosting.

Preparing for Adulthood (PfA) training and resources (2.2)

Up to six PfA resources are developed in line with current challenges and sharing of best practice

Resources to be multimedia including webinars, podcasts and stories.

PfA website is kept fully up to date, quickly and easily directing viewers to the key aspects of PfA SEND and related policy and good practice resources. Key resources shared via social media and across the DBOT partnership.

Signpost phone number and email address via PfA website, social media, and e-bulletin and across DBOT. Co-ordinate response to enquiries across the PfA programme and wider DBOT consortium and other delivery partners where appropriate

Building on the successful development of resources NDTi will work with DfE SEND Advisers, regional coordinators, and partners to create resources based on identified priorities.

SEND Leadership Programme

Design and delivery of a SEND Leadership Programme, which includes number of participants that builds on feedback from the most recently delivered programme. Module one and Module four to have some element of face-to-face delivery where possible with the other modules delivered virtually. Up to 40 participants recruited following process of selection in partnership with DfE. Priority given to LA's and CCG's where leadership has been identified as a key area for improvement either following an inspection or from feedback from the RC's and SEND Advisers.

Regional Networks

Strand	<i>Work to develop the SEND system's infrastructure through regional networks and identifying and sharing effective approaches to improvement.</i>
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|---------------------------------------|---|
| Summary of client requirements | 3.1) SEND Regional Networks
3.2) Support for Regional Coordinators
3.3) Multi-agency regional programme
3.4) Preparing for Adulthood regional programme
3.5) Social Care regional programme |
|---------------------------------------|---|

High Level Proposals	To act as conduit for all regional delivery within the DBOT programme.
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3.1) SEND Regional Networks

This year we will continue to support regions to successfully develop their wider strategic vision with an increased focus on ensuring all LAs in the region are benefitting from shared practice and peer-to-peer support. We will achieve this through a programme of sector-led, peer-to-peer improvement support and delivery support as well as through learning through networks, meetings, and practice sharing. Each region will be allocated a Mott MacDonald (MM) support adviser who will work closely with the regional coordinator and their allocated regional SEND Adviser. It should be noted that the following strand assumes that the DfE sponsor will take an effective leadership position with the SEND regional coordinators to resolve issues and resource prioritisation as this will be critical to successful delivery.

- **Strategic vision:** Following on from the successes achieved this year we will work with the regional coordinators to develop strategic vision plans for all 9 regions. To ensure we are supporting regional innovation and improvement alliances the plans will be coproduced with the regional coordinators, the three focus area leads (multi-agency, social care and PfA), and other relevant regional network stakeholders.
- **Effective Practice:** We will work with the regional coordinators to develop an approach for identifying and sharing effective practice which we will submit to DfE for approval before the end of July. Once agreed we will work with the regional coordinators to deliver the agreed methodology, monitoring output and providing co-ordination and support to collate and share the best practice identified. To ensure the areas identified are relevant and applicable we will work closely with the emerging DfE Sector-led improvement programme to align, review and feedback.
- **Cross-regional interactions:** We will organise and deliver a series of cross-regional meetings that will provide the regions with opportunities to share practices and exchange updates, facilitate discussions on local, regional and national issues and encourage peer-to-peer support. The meetings will also bring together workforce and/or sector leaders across education, health, and care to encourage a collective drive and support a sector-led approach to improvement. All meetings will be coordinated with targeted support events and added to the DBOT events calendar for effective cross-regional and cross-strand planning.

All events will be delivered virtually and will include:

- Delivery of 5 SEND regional coordinators network meetings over the contract period alongside the focus area leads within the strand. 2 of these meetings will be longer to help regions develop their wider strategic vision.
- Delivery of 18 Team Around the Region Meetings (2 per region)
- Delivery of 2 national SEN inclusion events to be run in Q3 and Q4.
- Delivery of 18 joint high needs funding meetings, 2 per region, to include all SEND leads and LA finance officers.

All of the above meeting and events will include the opportunity to identify and share effective approaches to improving the quality of practice across the SEND system; they will provide an opportunity for reflection, challenge and support between peers. Feedback will be requested off the back of all these meetings, and summary reports will be provided to DfE to input into the future planning and feed into the strategic vision plans.

Proposed meetings:

Meeting level	Name of Meeting	Frequency	Quarter	Attendees required
National	Regional Coordinator Network meeting Purpose: to bring RCs together with all DBOT leads and key stakeholders to share updates, discuss issues arising and identify any emerging support requirements. Includes a closed session for just RCs to share and exchange.	5 meetings	Q1, Q2, Q3 and Q4	Regional Coordinators, DBOT consortium strand leads including representation from the 3 focus area leads, 1 SEND Adviser. Optional: NNPCF, Contact, Regional Improvement Alliance regional, NHSE, WSS
Regional	Regional Strategic Vision and Improvement Planning meeting Purpose: TBA with RC. Could be bringing together key players to help kick off the strategic vision or it could be a review meeting to check a draft before submission.	1 x per region (9 meetings)	Q1	Regional Coordinator, focus area leads, Regional Improvement and Innovation Alliances, and other relevant stakeholders (NNPCF, DBOT strand leads). Optional: DfE policy lead
Regional	Regional Check Ins Purpose: to create an opportunity for RCs and DfE policy leads to exchange updates, share intelligence, discuss any issues arising.	Bi-annual (1 x region)	Q2 and Q4	Regional coordinator and DfE policy lead.
Regional	Team Around the Region Meetings Purpose: Focused on the regional delivery of DBOT support, progress towards strategic and against improvement plan. Opportunity to review support requests and identify issues emerging at the local level.	2 x per region (18 meetings)	Q2 and Q4	Regional Coordinator, SEND Adviser, DBOT consortium partners regional representatives, NNPCF and Contact regional representatives. Further stakeholders as per the regional coordinators discretion i.e. NHSE, WSS.

We will continue to work and collaborate with wider SEND delivery support partners to ensure they are utilising the SEND Regional Networks and supporting sustainability. This will include:

- Providing information and updates in relation to the SEND Regional Networks for the Contractor meetings.
- Providing SEND delivery support partners with up-to-date contacts for SEND Regional Coordinators as required.

3.2) Support for Regional Coordinators

Coordinating the work of the regional coordinators:

- Strategic vision plans: We will monitor progress against delivery plans and strategic visions through periodic emails and calls. We will co-ordinate one planning and/or review meeting with the regional coordinator to provide additional support working with the regional SEND Adviser and DfE policy lead to response to any concerns or requests for advice.
- Requesting support for LAs: We will support regional coordinators in identifying where support is requested work with them to ensure they understand the targeted regional delivery support process to secure the support required.

97 regional days for use by regional coordinators broken down as follows:

- **Regional targeted support days:** Each region will receive up to 8 regional targeted support days (15 days for London) to support them to develop their strategic vision, help them as they deliver their improvement plans and to respond to any issues emerging.
- **Intelligence:** We will continue to provide regional coordinators with latest updates and intelligence from across regions and from a national strategic level as it emerges. This will include:
 - continued contact with each SEND regional coordinator every month to ensure that:
 - support requirements are identified and discussed
 - key messages and national updates are reinforced
 - they can raise issues and share regional intelligence
- **Team Around the Region:** 2 days allocated per region (up to 18 days total) for 2 meetings to be held in the year.

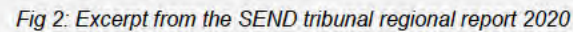
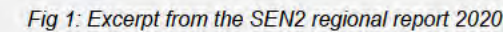
100 national days to be used as follows:

Package of support to regional coordinators: To ensure regional coordinators are able to use their time in the most efficient way we will provide them with a comprehensive package of support that will equip them with the knowledge, intelligence and tools to help them work effectively. We will look at all opportunities to work with RIAs on the support we provide. We propose allocating half of the national targeted support days (50) to provide the following package of support which builds on the previous model and offers new innovation to help minimise effort and maximise output.

To ensure we continue to adapt and are responding to need we will seek to identify new ways to streamline and improve support through feedback and requests from regional coordinators and to identify issues emerging in the sector. All requests to employ the remaining targeted days will follow the DfE approval process.

- **Communication:** To improve efficiencies we will aim to reduce the number of emails to regional coordinators by introducing a monthly DBOT bulletin that will provide a summary of key information and updates including high level information on targeted support approved personalised for each region. We would work across the consortium to collate the updates which could include requests for input, event dates to cascade, links to new resources etc. It will also provide a route to share key learning whilst linking up activity and knowledge.
- **Menu of Support:** To make it as easy as possible for regional coordinators to share and cascade the support and opportunities available to local authorities available we will review and develop the current menu of support document to set out the training and support available in the DBOT contract and if required by DfE we can add wider DfE SEND contracts. The document will detail the policy areas, audience and learning objectives and set out the process for requesting targeted support from the DBOT.
- **Event diary:** All meetings and events delivered in this strand will be added to the central DBOT event diary which will be available to regional coordinators to view and to DBOT partners to populate.

Data: The data dashboards that we have produced this year have been well-received by regional coordinators and have provided an essential tool to visualise trends and identify areas of concern, make regional comparisons and to target support. In the previous contracts this has included monthly joint inspection reports, annual SEN 2 analysis reports broken down by region and LA, and annual SEND tribunal reports. We will look at how we can best continue to develop these data dashboards working closely with CDC to ensure it compliments their SEND Data Dashboard workstream.



National events: we will deliver two national events that have been resourced previously from the national day allocation and which we proposed delivering again in the same way. These are 2 SEN Inclusion events aimed at Associate Directors (Head of Education), School Leaders, Academy Chains, Lead Members, Commissioning Leads and 18 joint high needs funding meetings (2 x region) for regional coordinators, LA SEND leads and LA finance officers.

Strengthening links and improving visibility

We will continue to drive improvements in the Team Around the Region meetings. We will work with the allocated regional SEND Adviser as advocates of the meeting, and support the regional coordinators to drive these meetings by ensuring key priorities are identified in preparation of and ahead these meetings via monthly calls and/or emails based on the delivery plans and strategic visions for the regions.

To support links between regional coordinators and DfE policy leads we will host bi-annual regional calls to create an opportunity for regions to discuss regional priorities, share progress on improvement priorities and to share any issues arising.

Through the proposed meeting schedule above we will ensure there is effective coordination between the regional coordinators and the Multi-agency working, PfA and Social Care regional programmes.

Strand Management

Provide effective ongoing strand management through:

- Agreeing strand plan
- Managing and quality assuring delivery of regional support
- Monthly KIT call with the DfE strand lead
- Inputting and attending programme and delivery meetings
- Regular (every 6-8 weeks) check-in virtual calls with focus group leads (Multi-Agency, Social care and PfA) to co-ordinate and align our approach to working with regional coordinators.

Support that will not continue in 2021-22

Due to the changes to the previous flexible support day model, there will be no resource to provide ad hoc support, or to attend or organise further events such as supporting the 2-day DfE SIIU event.

3.3) Multi-agency Working Regional Programme

50x targeted days to be used for interventions supporting regional improvement plans

This is based on 10 days per region in 5 regions (CDC are already working with 4 regions on agreed priorities as detailed below). Interventions will be coproduced with regional coordinators, SEND Advisers and health & social care colleagues and all within the context of joint commissioning and multi-agency working.

Multi-agency regional working groups

For the Data and Outcomes Based Commissioning working groups, CDC will develop tools to ensure learning is transferable and replicable. In Q1 and Q2 all interactions will be delivered virtually, in Q3 and Q4, restrictions permitting, there will be some flexibility to allow for face to face interaction where necessary and in agreement with DfE and regions. Expenses costed accordingly.

Data: In partnership with East and West Midlands, including regional coordinator and NHSE regional SEND lead, CDC will build on the work done on their data dashboard to enhance the outcomes data and explore other data capture tools. The findings from this work will be reviewed collectively with Mott MacDonald to understand and agree a unified approach that can be delivered to all regions via the regional support package.

Outcomes Based Commissioning: Working with the North West Region, and in-depth with Rochdale, to support their development of an integrated SEND service. CDC will work with them using an outcomes-based accountability approach to support their move to an integrated commissioning model. CDC have exec level support in Rochdale for this work and an agreement from the NW ADCS SEND group to work closely on the replicability of this work to ensure wider sharing and learning. Using Rochdale as a pilot, we will develop case studies and resources to enable other areas to replicate effective practice.

Building Health Capacity in schools

Working with a region (to be identified) CDC will identify effective practice in relation to Ordinarily Available Provision; health input into the annual review process to support local areas in meeting their duties. CDC will also be responsive to related findings in the SEND review to ensure that local areas have a coherent health offer for schools. Whole School SEND have agreed in principle to support this strand of work. Any learning will be written up to ensure it is transferable and replicable. This piece of work will be delivered in Q3 and Q4, to allow for publication of SEND review findings and health landscape changes. Restrictions permitting, there will be some flexibility to allow for face to face interaction where necessary and in agreement with DfE and regions. Expenses costed accordingly.

Liaison with regional partners and coordinators: 27 days capacity to ensure that CDC can work with regional coordinators and NHS regional colleagues (through existing forums) when developing their priorities; CDC will use their intelligence from practice to share effective approaches and to scope out how they can support and develop regional interventions.

National stakeholder days and liaison: 10 days capacity to feed into national conversations across DfE, NHSE, PHE, DHSC; sharing effective practice and intelligence. CDC will also use this capacity to ensure alignment of national priorities with the interventions regional and in local areas.

3.4) Preparing for Adulthood (PfA) Regional Programme

Up to 186 days to be discussed with DfE PfA strand lead for final agreement, to cover the following areas:

Regional support and liaison

Support across the 9 regions for regional liaison including attendance and follow up Team Around the Region meetings.

PfA regional network delivery

Up to 4 per region to support peer to peer learning at a regional level (including learning from other regions) to share what works in the delivery of PfA across Education, Health and Care. Regional PfA networks to include the continued development of employment forums for sharing best practice and support. Regional networks to look at consistent delivery of PfA agenda and explore greater measurement of PfA outcomes.

Post 19 support

Days to be used across the regions to continue work to tackle Post 19 challenges. This work to include supporting greater pathways into adult life for young people with the label of complex needs.

Employment Pathways

Days to be used across the regions to build on the successful support around employment pathways to ensure all stakeholders understand what is needed to ensure clear pathways to employment locally, regionally, and nationally. To include up to 4 regional, sub regional or national employment conferences building on successful conferences previously delivered to share challenges and best practice across the sector. Produce three case studies of best practice that shows positive examples of employment pathways and how challenges have been overcome to support employment as the demonstrated outcome.

Outcomes

Stakeholders understand what is available regarding clear pathways to employment, locally, regionally and nationally. Specific support to continue to develop and establish new Local SEND Employment forums which includes supported internships.

Accelerated working groups

25 days to be used to explore with the regions how to address issues and barriers with PfA delivery. These days to be delivered in partnership with other key stakeholders, for example Whole School SEND, AOC, ETF

Delivery might include:

- Consideration of PfA from the earliest years supporting the SEND school's workforce in understanding the PfA agenda.
- Thinking about how to promote independence skills for young people post COVID-19.
- Young people's mental wellbeing in a Post COVID-19 world.

Expenses for face to face AWG sessions for Q3 and Q4 where possible.

3.5) Social Care regional programme

Communications

Develop and implement a targeted communications plan across local areas/regions focusing on solution-building and improvement and action planning for SEND and social care including clear plans for how national community of practice sessions; regional Action Learning Sets (ALS) and linked outputs will support effective shared learning. Build on system improvement by extending and disseminating best practice approaches to social care and SEND policy and practice including:

- Social Care and SEND bulletins (x3)

DSCO role

Support improvements in how social care inputs to the SEND system in local areas and increase the DSCO footprint across regions through continued facilitation of online forum and delivery of 2 x DSCO community of practice sessions 1 delivered virtually in Q2 and 1 delivered face to face in Q3/4. Gather intelligence to monitor impact of the DSCO role through the CoPs, 2 x surveys June and January. Update the DSCO handbook and develop 4 x learning examples to share good practice. Build on national 'train the trainer' model (set out in strand 2) for social care/SEND champions to support DSCOs as local trainers and workforce development coordinators in local areas.

Deliver a national social care and SEND learning event to share emerging learning and build peer support approaches.

Learning and Development

Develop solutions to challenges which hinder social care engagement with the SEND system in order to support social workers, social care practitioners, DSCOs, Education and Health practitioners through promoting and enabling regional and local ownership of social care/SEND improvement plans through a peer support and challenge model. Bring together practitioners across education, health and social care focused on solution building in relation to social care issues and system challenges through 2 x ALS per region. Share examples of good practice and create supportive long-term links and relationships between practitioners focused on social care systems and support.

Liaison with regional partners and coordinators: capacity to ensure that CDC can work with regional coordinators when developing their priorities; CDC will use their intelligence from practice to share effective approaches and to scope out how they can support and develop regional interventions.

National stakeholder days and liaison: capacity to feed into national conversations across DfE, NHSE, PHE, DHSC; sharing effective practice and intelligence. CDC will also use this capacity to ensure alignment of national priorities with the regional ALS and in local areas.

National Trial of a single route of redress

f *A programme of work to facilitate the National Trial of a single route of redress.*

Summary of client requirements

- 4.1) Provide support to DfE to manage local area expenses throughout the trial.
- 4.2) Provide intelligence on SEND Tribunal appeal activity through a data dashboard of HMCTS SEND tribunal data
- 4.3) Support the LAs, CCGs and other relevant partners through the transitional period of the national trial as necessary and act as a first point of contact for them throughout the Trial.
- 4.4) Ongoing organisation and facilitation of the steering group

High Level Proposals

4.1 Expenses

We will continue to provide support to DfE to manage local area expenses throughout the trial, following the robust process agreed in line with DfE process and standards. We will receive, collate and check validated expense claims in line with DfE policy and standards for up to 125 claims. This number is based on the fact that we have not received more than 90 claims in any one year since the national trial began. We recognise that the national trial ends in August but also that claims may continue to be submitted up to the end of this contractual period. The claims will be billed on a per claim basis of £150. This increase reflects the additional time it now takes to process an expense claim following changes introduced by the DfE in 2019 and 2020. This includes the introduction of the three-month submission deadline in 2019 and the exceptional circumstances process, and the additional tasks liaising with the DfE's finance team and the tracking, clarification and communications with LAs on payments received. These changes have increased the number of steps from 6 to 9 (50% increase) and therefore increased the average time required to process a claim by 52%. Furthermore, since the introduction of the 3-month deadline 29% of claims have included an application for exceptional circumstance. We will provide quarterly reports of expenses with associated breakdown and management information to share with DfE.

As requested by DfE we will also provide the department with support to organise and administer the process of receiving the End of Grant Usage reports from LAs when they become due from 1 September 2021.

4.2 Data dashboard

We will assist the DfE to draw intelligence on SEND tribunal appeal activity from data provided by HMCTS by creating a data Power Bi dashboard that will provide a breakdown of data by locality, frequency, and type of appeal. We will update the dashboard on a quarterly basis and provide the DfE with a monthly report to show national and regional trends in SEND tribunal activity. We will also provide up to 4 additional bespoke reports on specific topics, issues, or areas that DfE decide. For example, Please note that delivery is entirely dependent on DfE securing access to the HMCT SEND tribunal data prior to contract commencement.

If the HMCTS data is not available it will be agreed by the end of Q1 what this work will be re-purposed to support the effective implementation of the extended powers, based on feedback from the sector and emerging issues. Activities could include:

- Training for local authorities and CCGs

- The development of new resources (e.g. guidance, FAQs, recorded webinars)
- Communications activity to local authorities, CCGs and other partners
- Focus groups with local authorities, CCGs or parents/carers

1. National View

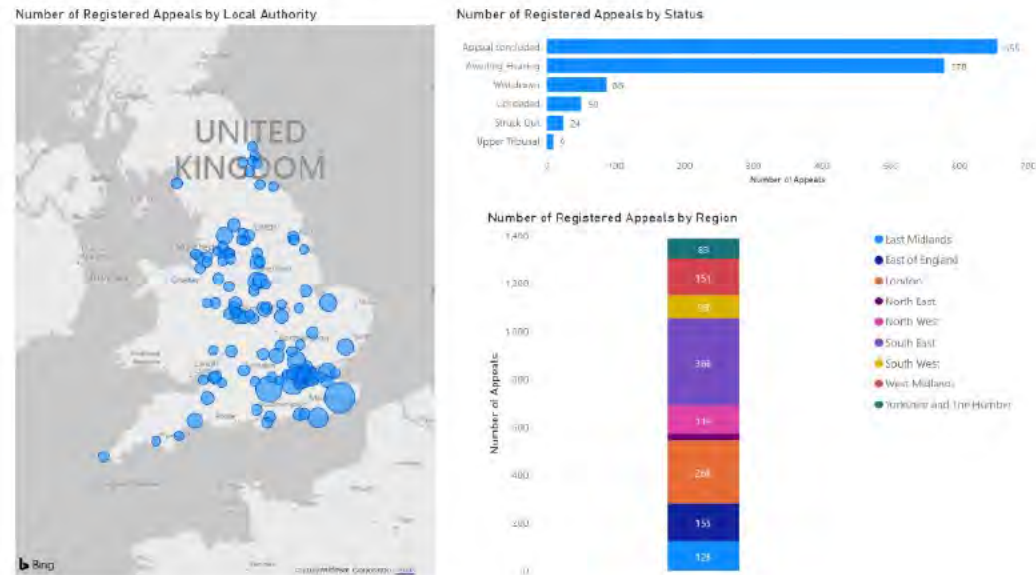


Fig 3: Excerpt from the National Trial Data Dashboard 2019

4.3 Communication, Information and supporting transition

We will continue to provide LAs, CCGs and other relevant partners with information, support and advice on the national trial and act as a first point of contact. This will include:

- Dissemination of information nationally via two further quarterly newsletters to all local area contacts and other stakeholders who have signed up to the national trial mailing list
- Managing and maintaining an up to date contact list for all LAs, CCGs and other key partners ensuring that DfE Manager is kept up to date with changes and/or amendments up until the 30 September 2021.
- Maintaining the helpdesk function which is available 5 days a week via telephone and email for up to 5 queries per week (130 in total). This

service will cease from 30 September 2021 and queries will be re-directed to the DfE.

- Maintaining the National Trial Online Toolkit hosted on Mott MacDonald SEND delivery support website to host key documents throughout the national trial including regular upload of documentation until 30 March 2022
- Facilitating development or changes to the toolkit, FAQs, and guidance document throughout the trial. Ensure the information in the toolkit is kept up to date. As requested by DfE we will cease to make updates to toolkit from 30 September 2021

In the period leading up to the end of the trial and the period immediately after (July – October) we will provide the following targeted activity to support the transition:

- Issue four “End of Trial” news updates between July and October to ensure stakeholders are informed about the end of the national trial and any actions they need to take.
- Update the Online Toolkit to archive or refresh all documents to reflect the end of the national trial.
- Develop a FAQ document and slide pack that provides stakeholders with key information about the end of the national trial.

As we will not have the ministerial decision on what a post-national trial SEND tribunal system will look like until after Easter we do not know what level of information and support the sector may need in terms of understanding their statutory duties after 31 August 2021. As such any additional requirements for further support such as training, information events, co-produced guidance, resources, webinars, or toolkits, will need to be agreed as a contract variation or delivered through the targeted support strand.

4.4 National trial steering group

We will continue to provide ongoing organisation and facilitation of the national trial steering group to host one further meeting prior to the end of the trial. We will work with DfE to agree scope and set the agenda, organise the meeting, and provide a write up of the meeting.

End of support

As we approach the end of the national trial there will be a reduction in the level of support as reflected in the reduced the budget for this strand. As such the following support will cease from 31 March 2021:

- Flexible support days to action requests from DfE and/or stakeholders and respond to issues arising i.e. attending or presenting at events, reports, or research
 - Development of new resources and/or co-production of materials
 - Delivery of training or learning events
 - Production of webinars
 - Support in relation to the work of the independent evaluators or the evaluation report
- Any substantial actions arising from Steering Group or requests for significant support from the Steering Group members or the Evaluation Sub-Group members (beyond what is provided via the helpline).

External evaluation programme

Strand	<i>Work to support a full external evaluation programme, focussing on the impact of activity delivered in the contract on the quality of SEND services experienced by children, young people, and families.</i>
Summary of client requirements	<p>5.1) Support the evaluation provider.</p> <p>5.2) Complete 3 month follow up calls with the last cohort of LAs from 2020-21 contract</p>
High Level Proposals	<p>Mott MacDonald</p> <p>8 days in total for 3-month evaluation follow up of SEND Decision Making and the Law and Annual Review training and liaison and support for evaluation provider.</p> <p>CDC – Multi-agency working</p> <p>8 days in total 2020/21 follow up work and liaison and support for evaluation provider.</p> <p>CDC – Social Care</p> <p>3 days in total for social care follow up evaluation and liaison and support for evaluation provider.</p> <p>NDTi</p> <p>7.5 days in total for follow up calls with 28 LAs and liaison and support for evaluation provider.</p>

Programme Management

Strand *The contract is well managed and reporting to DfE is comprehensive and timely. The data and information gathered and reported is relevant and informs DfE policy. The contract is delivered on time and to budget and can demonstrate value for money and impact.*

Summary of client requirements

- 6.1) Produce a contract Management Plan detailing:
- named persons
 - Meeting schedules, who attending type of meeting
 - Key Performance Indicators – monitoring and measuring
 - Agreed Exit Plan
- 6.5) DfE Data and Information Requirements.

High Level Proposals

6.1 Contract Management Plan

Having worked successfully alongside the Department for Education on the DBOT contract since 2015 and wider government for over 20 years, we understand that the success of the Targeted Delivery Support programme will be driven by robust governance, and that true partnership working will derive from the openness and integrity that underpins our performance and reporting procedures. We will continue to use the breadth of our project management and collaboration experience to adopt an agile approach to working, creating a culture that is open to challenge and a willingness to adapt to any emerging needs. We hope this approach has been evidenced in the last year in our responses to the COVID-19 pandemic. An example of this is our repurposing of expenses into additional delivery days.

As stated in the introduction, Mott MacDonald will be the lead contractor and we will sub-contract to The National Development Team for Inclusion and Council for Disabled Children, part of the National Children's Bureau.

In response to the strand specification our proposed governance mechanisms is displayed below:

Governance Measure	Description
Programme Manager / Contract Manager – Julie Huggins	<ul style="list-style-type: none"> • Building and maintaining strong client-supplier relationship • Providing a clear line of accountability and contact point for the delivery of the entire project • Overseeing resource allocation • Monitoring/Coordinating progress towards contract ambitions
Project Manager – Colleen Regan	<p>To provide the operational management and administrative support to the delivery of the contract with a focus on:</p> <ul style="list-style-type: none"> - Progress to plan - KPI monitoring - Financial monitoring - Contractual documentation - Capture and presentation of data - Client briefings, as requested by the DfE
Contract Management Plan	<p>Will be co-produced with partners and agreed by the DfE and will include:</p> <ul style="list-style-type: none"> - Names of persons involved in the contract - Operational & strategic meeting schedules - Key Performance Indicators - Including measurement linked to meeting schedule - The contract management plan will provide the detail behind the strand plan - Agreed Exit Plan (to be confirmed by the end of June 2021)
Telekits between client team and PM/PP (weekly to start and then as and when required)	To ensure quality assurance, monitoring, and continuous improvement
Monthly Contract Meetings	A electronic monthly report will be submitted reporting progress against the contract deliverables and KPIs. Meetings will be minuted and provided to the DfE no later than 5 working days after the date of the contract meeting
Exit Plan	<p>A plan detailing the exit arrangements for the programme and detailed plans for each of the following strands:</p> <ul style="list-style-type: none"> - SEND Adviser - Targeted Support / National and Local Training - Regional Networks - National Trial - Programme Management <p>This will be worked on in collaboration with the DfE strand leads and DfE Contract manager and final version produced by 31st July 2021</p>
Internal Monthly Project Control Meetings	Ensuring adherence to internal governance systems
External and Internal audits independent of the project team	Ensuring progress and performance reporting.

The quality of our MI has been augmented by our investment in technology to improve the visualisation of our reporting, as well as allowing us to highlight data trends and monitor progress towards KPIs and milestones. Most notably, this has been performed through our use of Microsoft Power BI within projects.

From the start of the project, the Programme Manager and Project Manager will work in collaboration with the DfE Contract manager in developing, agreeing, and implementing our data recording and reporting procedures. A key component of this will be mapping out the data requirements for the project and agreeing on key templates for data capture and delivery. This will ensure that we are able to supply the most up-to-date, accurate, and relevant information to the Department throughout the entire lifespan of the project. Following the initial project mobilisation, these procedures will become part of the basis of our monthly project reporting, led by the Programme Manager.

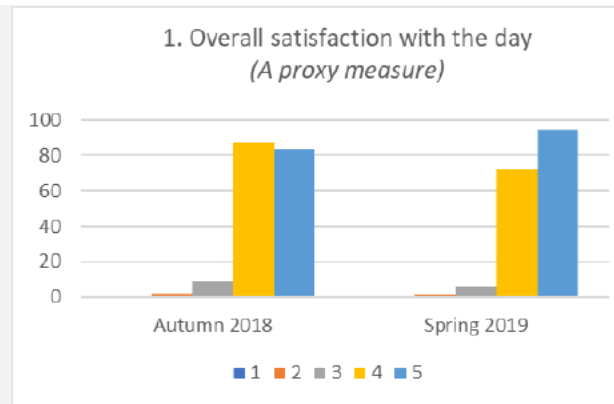
Monthly Contract Activities

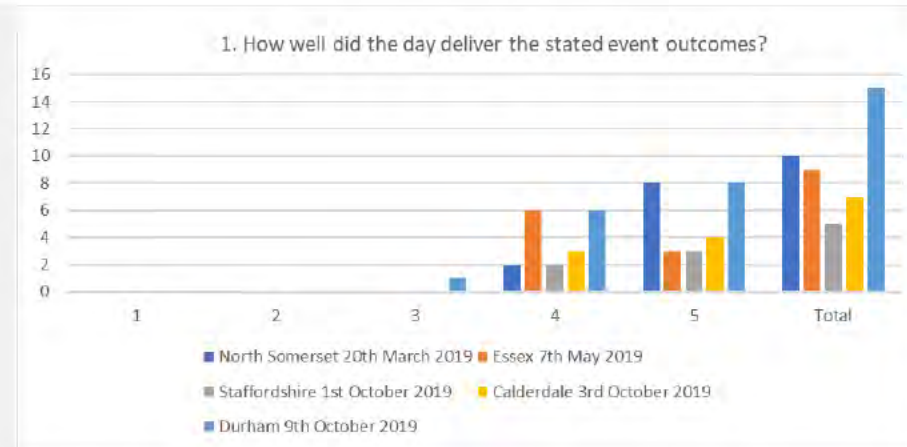
This will be in the form of a monthly summary report and confirmation of deliverables (CoD) that will track and record progress against contract milestones and objectives. Fixed sections will be reserved each month for the highlighting of key deliverables, as well as invoice summaries and overall contract spend. We will agree a revised workplan format alongside the DfE.

Key Performance Management

It is critical to agree and set Key Performance Indicators (KPIs) against the contract and the evaluation criteria in collaboration with the DfE, in order to set performance measures from the outset. This will allow us to monitor our performance against jointly agreed targets and evaluation criteria.

In order to monitor our performance against the contract, we will develop a performance dashboard through Power BI during mobilisation. To ensure fitness for purpose and ease of use for all parties, the format of this report will be jointly agreed upon during mobilisation. Example KPI Power BI report templates, taken from the Childcare Works projects is listed below:





Additional Reports

With ad hoc Delivery Centre responsibilities occurring in line with the delivery schedule, additional reporting will be issued when required. We anticipate this to include:

- Event feedback reports
- Annual report due March 2022 detailing trends, key facts on the service provided and overall performance.

Additional Meetings

In addition to the monthly contract meetings and KITs, we will run quarterly:

- Senior Leadership Meetings across all DBOT consortium partners
- DBOT consortium meeting held to:
 - Share and solve issues
 - Share intelligence across the strands of work
 - Agree support priorities and shape delivery
 - Coordinate and direct approach to make best use of available resources.

Risk and Issues Management

Mott MacDonald brings a robust approach to risk management, which will include:

- An initial risk workshop with the Department to clarify key risks and discuss/agree mitigation plans (this could be one of the early KIT

- meetings).
- Regular risk evaluation reviews and updates to inform revisions on mitigation activities.
- Contingency planning to cover the potential of risks converting into live issues.

We are proposing to use the template used on previous contracts as this has worked well.

6.5 DfE Data and Information Requirements

Our response to the DfE data and information requirements:

1. *The contractors proposals must allow for a flexible approach and to be 'digital by default', to ensure delivery can continue during Covid-19.*

We hope from our submission you can see that we have developed a framework of operational considerations and mitigations against all Covid-19 'tier scenarios' so that the Targeted Delivery Support programme can be agile and locally adaptable to suit local requirements. As we have done for this contract year, we are able to move swiftly to provide all services online, with minimal disruption to local areas and support provided. In addition, we have worked closely with the consortium partners in ensuring staff welfare during Covid-19 lockdowns.

2. *The contractors proposal must use an iterative and user-centred process for design in content, e.g. collecting evidence of user needs, designing prototypes, evaluating, creating final outputs.*

The consortiums proposals include the following approach to design in content, see below:

Discover and define	Fact finding and research
Design, develop and testing	With identified stakeholders, testing where appropriate, e.g. current Online e-learning Annual Review module
Delivery and evaluation and update	Delivery of final proof

An example of this is the e-learning Annual Review training, and co-design with regions to create resources that support them with challenging issues through a focus group approach and evaluation and review of resource before final output.

3. *Products and services provided by the contractor must follow government Accessibility Requirements and, where appropriate, the government Technology Code of Practice and Service Standard.*

We will work with DfE on an accessibility statement which will be appended to/included in the contract management plan.

4. *The DfE's management information requirements allow flexibility for them to request additional MI via ad-hoc requests in addition to any routine reporting.*

Our management information requirements allow for reasonable requests made in a timely manner for additional Management Information in addition to the contract routine reporting.

5. *The contractor must set out how they will handle the production, recording and retention of personal information, in line with data protection principles and General Data Protection Regulations.*

Mott MacDonald is committed to meeting its legal and regulatory obligations under privacy and data protection laws; and respecting the rights and freedoms of the individuals whose personal information we process.

When processing personal information, Mott MacDonald adopts a 'data protection by design and default' approach and adheres to the principles of the UK General Data Protection Regulation (UK GDPR): lawfulness, fairness and transparency; purpose limitation; data minimisation; accuracy; storage limitation; integrity and confidentiality; and accountability.

Our approach to processing personal information across our global operations, is intended to maintain compliance with the UK GDPR and any other privacy and data protection laws that apply in the jurisdictions where we operate.

Please see our [Privacy and data protection policy](#) for further information.

6. *The contractors should consider how they will put in place alternative data transfer mechanisms to safeguard against any interruption to the free flow of EU to UK personal data, where data is currently stored in the EU or EEA.*

We do not foresee any interruption to the free flow of data between the EU and UK on this project. The data for this project will be hosted in the UK and accessed by employees in the UK, with limited exceptions where necessary and covered by appropriate safeguards (e.g. standard contractual clauses). In the event that the UK does not receive an adequacy decision from the EU, we will put in place further appropriate safeguards as required to ensure that our services are not interrupted. We continue to closely monitor this situation and

guidance from the ICO.

Some quick links:

- [Template bid responses for privacy and data protection](#)
- [Privacy and data protection documentation](#) for our staff
- Further information about [data transfers](#)

Schedule 2
Terms and Conditions

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Version: 10.3

Last Update: 15/12/20

1. DEFINITIONS AND INTERPRETATION

1.1 In the Contract, the following expressions have the following meanings, unless inconsistent with the context:

“Area” means the geographical area within England in respect of which the Contractor is appointed to provide the Services.

“Associated Company” means any company which is, in relation to another company, its holding company or its subsidiary or a subsidiary of its holding company. “Holding company” and “subsidiary” will have the meanings attributed to them in section 736 and 736A of the Companies Act 1985 and section 1159 of the Companies Act 2006.

“Business Days” means Mondays to Fridays (inclusive) in each week, excluding bank and other public holidays in England.

“CCN” means a Change Control Note in the form set out in schedule 6.

“Charges” means the fees subject to clause 8 payable to the Contractor for the provision of the Services calculated in accordance with schedule 3.

“Commercially Sensitive Information” means the information set out in schedule 1 comprising the information of a commercially sensitive nature relating to:

- (a) the Price;
- (b) details of the Contractor's Intellectual Property Rights; and
- (c) the Contractor's business and investment plans

which the Contractor has indicated to DFE that, if disclosed by the Authority, would cause DFE significant commercial disadvantage or material financial loss.

“Confidential Information” (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:

- (i) the Disclosing Party Group; or
- (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, Model Services Contract Combined Schedules v1.09A 10 know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above, but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a nonconfidential basis from a third party who is not, to the

Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;

(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; Model Services Contract Combined Schedules v1.09A 11

(iv) was independently developed without access to the Confidential Information; or

(v) relates to the Supplier's:

(1) performance under this Agreement; or

(2) failure to pay any Subcontractor as required pursuant to Clause 15.15(a) (Supply Chain Protection);

"Consortium" means an association of 2 or more persons acting together to deliver the Services but excludes Sub-Contractors.

"Consortium Agreement" means, if the Contractor is a Consortium, an agreement:

(a) signed by all the Consortium Members as at the Effective Date; and

(b) adhered to by Consortium Members who join the Consortium after the Effective Date by signing a Deed of Adherence

which sets out, amongst other things, how the Consortium Members will work together to deliver the Services.

"Consortium Member" means a member of a Consortium (if any).

"Contractor Equipment" means the Contractor's ICT equipment.

"Contract Period" means the start and end date of the contract as set out in Clause 2 subject to any extensions.

"Contractor's Solution" means the Contractor's proposal submitted in response to the DFE's invitation to tender attached at schedule 10.

"Contracts Finder" means the Government's publishing portal for public sector procurement opportunities.

"Copyright" means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

"Crown" means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **"Crown Body"** is an emanation of the foregoing.

"Database Rights" means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

"Deed of Adherence" means a deed under which a new Consortium Member shall covenant with the other Consortium Members to adhere to the terms of the Consortium Agreement in either the form set out in schedule 10 or in any other form approved by DFE in writing.

"Default" means breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement due to the negligence of the relevant Party or the Personnel in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DFE Premises” means any premises owned by, leased or hired to or otherwise controlled by DFE or which DFE nominates as such by notice in writing to the Contractor.

“DFE Security Standards” means the security standards as set out in schedule 11

“DFE Trade Marks” means proprietary trade mark rights of DFE including those notified to the Contractor by DFE from time to time.

“Dispute” means any dispute between the Parties in connection with the Contract.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“DPA” means the Data Protection Act 2018

“Effective Date” means **01 April 2021**.

“EIR” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to them.

“Employment Liabilities” means all actions, proceedings, costs (including reasonable legal costs), losses, damages, fines, penalties, compensation, awards, demands, orders, expenses and liabilities connected with or arising from all and any laws including, without limitation, directives, statutes, secondary legislation, orders, codes of practice, contractual obligations and other common law rights whether of the European Union, United Kingdom or any other relevant authority relating to or connected with:

- (a) the employment and dismissal of employees (including their health and safety at work); and
- (b) the engagement, use and termination of individuals other than employees who provide services (including their health and safety at work),

and all wages, holiday pay and employment benefit costs due in respect of (a) or (b) above, including claims for protective awards.

“FOIA” means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to it.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take reasonable preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor's or any of its Sub-Contractor's organisation, or otherwise involving the Personnel; or
- (b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any sub-contract.

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

“Good Industry Practice” means the standards, practices, methods and procedures conforming to the law and 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 in a similar type of undertaking under the same or similar circumstances. Notwithstanding any other provision of the Contract, the Contractor’s obligation in the discharge of the Services shall be no greater than the exercise of the skill and care normally used by professionals providing services similar to the Services.

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“HMRC” means Her Majesty’s Revenue and Customs.

“ICT” means information and communications technology.

“Implementation Plan” means the plan and time schedule for the completion of the obligations of the Contractor under the Contract as set out in schedule 5 as the same may be replaced by any subsequent more detailed plan and time schedule as the Parties may agree in writing from time to time.

“Initial Term” means the period from the Effective Date to **31 March 2022**.

“Intellectual Property Rights” means patents, inventions, trade-marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade and/or business names, rights in confidential information and know how, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“IP Materials” means any materials used or developed for the purposes of the Contract including any programme materials, guidance, papers and research data, results, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs.

“KPIs” means the key performance indicators in relation to the Services set out in schedule 4 which the Contractor shall comply with.

“Key Personnel” means any of the Personnel identified as such in schedule 7 or otherwise identified as such by DFE pursuant to clause 6.

“Key Sub-Contractor” means any Sub-Contractor identified as such in schedule 7 or otherwise identified as such by DFE.

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the DFE would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses 9, 10, 12, 15, 17 and 33 and in schedule 8 and Schedule 11..

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Performance Measures/Standards” means the standards which the Contractor will measured against in respect of the delivery of the Services aligned to defined Key Performance Indicators (KPIs)

“Personnel” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the DFE a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) the defrauding, attempting to defraud or conspiring to defraud the DFE;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

“Regulations” means the Public Contract Regulations 2015.

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters

dealt with in the Contract or any other affairs of the DFE.

“Relevant Conviction” means a conviction for an offence involving violence or dishonesty, of a sexual nature or against minors, or for any other offence that is relevant to the nature of the Services.

“Relevant Requirements” means 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.

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

“Replacement Contractor” means any third party supplier appointed by the DFE to supply any services which are substantially similar to any of the Services in substitution for the Contractor following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

“Restricted Country” means:

- a) any country outside the United Kingdom; and
- b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC

“Returning Employees” means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Term.

“Services” means the services described in the Specification.

“Services Commencement Date” means 01 April 2021.

“Service Credits” means the service credits specified in schedule 4 which shall be payable to the DFE by the Contractor in the event that the Service Levels are not met in respect of Services.

“Service Level” means the levels of Service defined in schedule 4.

“Service Period” means the following:

- (a) the first Service Period of the Contract shall begin on the Services Commencement Date and shall expire at the end of the calendar month in which the Service Commencement Date falls; and
- (b) after the first Service Period of the Contract a Service Period shall be a calendar month during the Contract save that the final Service Period of the Contract shall commence on the first day of the calendar month in which the Contract expires or terminates and shall end on the expiry or termination of the Contract.

“Service Users” means those receiving the Services.

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

“Specification” means the description of the Services to be supplied under the Contract set out in schedule 1.

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

“Sub-Contract” means a contract between 2 or more suppliers, at any stage of remoteness from DfE in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and **“Sub-Contractor”** shall be construed accordingly.

“Term” means the period from the Effective Date until the date the Contract ends for whatever reason.

“TFEU” means the Treaty on the Functioning of the European Union.

“Treaties” means the TFEU and the Treaty on European Union.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“Variation” means any variation to the Contract requiring a Change Control Note to be completed in accordance with schedule 6.

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

1.2 The following notes of construction and interpretation apply to the Contract:

- 1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;
- 1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;
- 1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
- 1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;
- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and
- 1.2.7 the schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.

2. TERM

- 2.1 The Contract commences on the Effective Date and, subject to any provision of this Contract for earlier termination, or extension set out in this clause 2, will terminate at the end of the Initial Term.
- 2.2 DfE may extend the Initial Term for such further period as the DfE may choose by giving not less than 3 months’ written notice to the Contractor prior to the expiry of the Initial Term.

3. THE SERVICES

- 3.1 The Contractor shall provide the Services in the Area in accordance with the Specification and undertake and be responsible for all obligations of the Contractor in respect of the Services.
- 3.2 The DFE may appoint other Contractors for the Services in the Area.
- 3.3 The Contractor shall, in performing its obligations under the Contract:
 - 3.3.1 conform to the requirements of the Specification and the Contractor's Solution or as otherwise agreed in writing between the Parties;
 - 3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time;
 - 3.3.3 comply with Good Industry Practice; notwithstanding any other provision of the Contract, the Contractor's obligation in the discharge of the Services shall be no greater than the exercise of the skill and care normally used by professionals providing services similar to the Services.
 - 3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;
 - 3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - 3.3.6 comply with the KPIs, Service Levels and Service Credit requirements set out in schedule 4;
 - 3.3.7 in so far as is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within 14 days of the same being brought to the attention of the Contractor by the DFE;
 - 3.3.8 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
 - 3.3.9 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the DFE, the Service Users and all other persons including members of the public; and
 - 3.3.10 comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it and procure that the Personnel also comply.
- 3.4 The DFE may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.
- 3.5 All equipment and other property brought onto DFE Premises shall be at the Contractor's own risk and the DFE shall have no liability for any loss of or damage to any such equipment and property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of the DFE.
- 3.6 Any land or DFE Premises made available from time to time to the Contractor by the DFE in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall

have the use of such land or DFE Premises as a licensee and shall vacate the same on completion, termination or abandonment of the Contract or the task in respect of which such land or DFE Premises was made available.

- 3.7 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the DFE retains the right at any time to use any DFE Premises in any manner.

4. CONSORTIA

- 4.1 If the Contractor is a Consortium it shall comply with the terms of this clause 4.
- 4.2 The Contractor may appoint additional or replacement Consortium Members to assist it in carrying out its obligations under the Contract subject to compliance with clause 4.3.
- 4.3 No new person or entity may become a Consortium Member until:
- 4.3.1 the DFE has given its prior written consent to the new Consortium Member;
 - 4.3.2 the new Consortium Member has signed a Deed of Adherence; and
 - 4.3.3 a copy of the Deed of Adherence has been given to the DFE.
- 4.4 The Contractor shall promptly inform the DFE if and how any Consortium Member breaches the terms of the Consortium Agreement.

5. TRANSFER AND SUB-CONTRACTING

- 5.1 Save as set out in this clause 5 the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Contract (a “**Transfer**”) without the prior written consent of the DFE.
- 5.2 If the DFE consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.
- 5.3 The Contractor may award Sub-Contracts with a value per annum not exceeding [REDACTED] without the DFE's consent.
- 5.4 Where the DFE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.
- 5.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE's prior written consent.
- 5.6 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE's right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to the DFE's satisfaction within 21 days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 5.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.8 If the DfE believes there are:
- 5.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or

5.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the DfE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.

Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain

- 5.9 The Contractor shall:
- 5.9.1 subject to clause 5.9.7, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of [REDACTED] that arise during the Contract Period;
 - 5.9.2 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
 - 5.9.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - 5.9.4 provide reports on the information at clause 5.9.3 to the DfE in the format and frequency as reasonably specified by the DfE;
 - 5.9.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
 - 5.9.6 Each advert referred to at clause 5.9.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.
 - 5.9.7 The obligation at Clause 5.9.1 shall only apply in respect of subcontract opportunities arising after the contract award date.
 - 5.9.8 Notwithstanding clause 5.9, the DfE may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.
 - 5.10 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, on request and at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the DfE including:
 - 5.10.1 the total contract revenue received directly on a specific contract;
 - 5.10.2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
 - 5.10.3 the total value of sub-contracted revenues to SMEs and VCSEs.

6. PERSONNEL

- 6.1 The DfE may refuse admission to DfE Premises and/or direct the Contractor to end the involvement in the Services of any Personnel whom the DfE believes is a security risk.
- 6.2 If the DfE require the removal of any Personnel pursuant to clause 6.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.
- 6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Personnel

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and to ensure that the turnover rate of Personnel is at least as good as the prevailing industry norm for similar services, locations and environments.

- 6.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the DFE's prior written consent.
- 6.5 For each of the Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the DFE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.
- 6.6 The Contractor acknowledges that Key Personnel and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Personnel and Key Sub-Contractors listed in schedule 7 as at the Effective Date.
- 6.7 Key Personnel shall not be released from supplying the Services without the DFE's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.8 Any replacements of Key Personnel shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.9 The DFE shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Personnel or Key Sub-Contractors.
- 6.10 DFE may require the Contractor to remove any Key Personnel who the DFE considers in any respect unsatisfactory.
- 6.11 The DFE shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify the DFE against all Employment Liabilities that may arise in this respect.
- 6.12 Except in respect of any transfer of staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.

7. TUPE

- 7.1 No later than 6 Months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE, within 30 days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:
 - 7.1.1 the total number of Staff whose employment/engagement shall terminate at the end of the Term;
 - 7.1.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.1.1;

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- 7.1.3 the terms and conditions of employment/engagement of the Staff referred to in clause 7.1.1, their job titles and qualifications;
- 7.1.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
- 7.1.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union

(together the “**TUPE Information**”).

- 7.2 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Contractor shall give the DFE updated TUPE Information.
- 7.3 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.
- 7.4 The DFE may use TUPE Information for the purposes of any retendering process.
- 7.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:
 - 7.5.1 the provision of TUPE Information;
 - 7.5.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
 - 7.5.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the DFE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
 - 7.5.4 any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - 7.5.5 any claim by any person who is transferred by the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 7.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.
- 7.7 This clause 7 applies during the Term and indefinitely thereafter.
- 7.8 The Contractor undertakes to the DFE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not)

without written approval of DFE (such approval not to be unreasonably withheld or delayed):

- 7.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
- 7.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- 7.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- 7.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

8. CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with the schedule 3 subject to the receipt of correct invoices pursuant to clause 8.8 being issued by the Contractor.
- 8.3 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.
- 8.4 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term.
- 8.5 The Charges are exclusive of Value Added Tax (“**VAT**”) and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 8.6 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.

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- 8.7 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.8 Invoices shall be submitted electronically by email to [REDACTED] within 30 days of the end of the relevant invoicing date. To request a statement, please email [REDACTED]. An invoice is a **“Valid Invoice”** if it is legible and includes:
- 8.8.1 the date of the invoice;
 - 8.8.2 Contractor's full name and address;
 - 8.8.3 Contract reference number;
 - 8.8.4 the charging period;
 - 8.8.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
 - 8.8.6 days and times worked (if applicable);
 - 8.8.7 Service Credits (if applicable); and
 - 8.8.8 VAT if applicable.
- 8.9 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.10 The DFE intends to pay Valid Invoices within 5 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 8.10 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.11 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.12 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE. The final invoice shall be submitted not later than 30 days after the end of the Term.
- 8.13 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service unless where an activity is cancelled due to unforeseen circumstances with less than 2 working days' notice, the contractor may claim any unrecoverable costs from DfE. The contractor must notify DfE each time a cancellation of this nature occurs. The Dfe will review these terms on a bi-annual basis and may make any changes thereto as it deems necessary or appropriate.
- 8.14 The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.

8.15 If the DFE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Contractor of the reasons for disputing the invoice. The DFE may withhold the disputed amount pending resolution of the dispute.

8.16 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 36.

9. TAX and VAT

9.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under the 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.

9.2 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.

9.3 If the Contractor is liable to NICs in respect of consideration received under the Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

9.4 The DFE may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it.

9.5 A request under clause 9.4 may specify the information which the Contractor must provide and the period within which that information must be provided.

9.6 The DFE may terminate this Contract if:

9.6.1 in the case of a request mentioned in clause 9.4 the Contractor:

- (i) fails to provide information in response to the request within a reasonable time; or
- (ii) provides information which does not demonstrate either how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it;

9.6.2 it receives information which demonstrates that, if clauses 9.1 to 9.3 apply, the Contractor is not complying with those clauses.

9.7 The DFE may supply any information which it receives under clause 9.4 to HMRC.

9.8 The Contractor bears sole responsibility for the payment of tax and national insurance contributions due from it in relation to any payments or arrangements made under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract.

9.9 The Contractor will account to the appropriate authorities for any applicable income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract. The Contractor shall indemnify DFE against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the Contractor of its obligations under the Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by DFE in connection with any such assessment or claim.

- 9.10 The Contractor authorises the DFE to provide HMRC 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 the Contract whether or not DFE is obliged as a matter of law to comply with such request.
- 9.11 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- 9.11.1 notify the DFE in writing of such fact within 5 Business Days of its occurrence; and
 - 9.11.2 promptly give the DFE:
 - (i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the DFE may reasonably require.

10. PREVENTION OF CORRUPTION

- 10.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Effective Date:
- 10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
 - 10.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 10.2 The Contractor shall not:
- 10.2.1 commit a Prohibited Act; or
 - 10.2.2 do or suffer anything to be done which would cause the DFE or any of its employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 10.3 The Contractor shall:
- 10.3.1 and procure that its Sub-Contractors shall, establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 10.3.2 keep appropriate records of its compliance with its obligations under clause 10.3.2 and make such records available to the DFE on request.
- 10.4 The Contractor shall immediately notify the DFE in writing if it becomes aware of any breach of clauses 10.1 and/or 10.2, or has reason to believe that it has or any of the Personnel have:
- 10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 10.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or

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- 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 10.5 If the Contractor notifies the DFE pursuant to clause 10.4, the Contractor shall respond promptly to the DFE's enquiries, co-operate with any investigation, and allow the DFE to audit any books, records and any other relevant documentation.
- 10.6 If the Contractor is in Default under clauses 10.1 and/or 10.2, the DFE may by notice:
 - 10.6.1 require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
 - 10.6.2 immediately terminate the Contract.
- 10.7 Any notice served by the DFE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who the DFE believes has committed the Prohibited Act and the action that the DFE has taken (including, where relevant, the date on which the Contract shall terminate).

11. DISCRIMINATION

- 11.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable equality law.
- 11.2 The Contractor shall comply with DFE's equality and diversity policy as given to the Contractor from time to time and any other requirements and instructions which the DFE reasonably imposes in connection with any equality obligations imposed on the DFE at any time under equality law.
- 11.3 The Contractor indemnifies the DFE in full from and against all Employment Liabilities that may arise as a result of any claims brought against the DFE by any of its employees, agents, consultants and contractors ("**DFE Personnel**") and/or any of the Personnel where such claim arises from any act or omission of the Personnel in respect of anti-discrimination legislation. The Contractor will also provide all reasonable cooperation, assistance and information as the DFE may request in connection with any investigation by the DFE into any complaint or other grievance received by it from any of the DFE Personnel or Personnel in respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Contractor or any Personnel.

12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property Rights in materials:
 - 12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the "**DFE IP Materials**") shall remain the property of the DFE (save for Copyright and Database Rights which shall remain the property of the Crown); and
 - 12.1.2 prepared by or for the Contractor on behalf of the DFE in connection with the Contract (the "**Service Specific IP Materials**") shall vest in the DFE (save for Copyright and Database Rights which shall vest in the Crown)
 (together the "**IP Materials**").
- 12.2 The Contractor shall not, and shall ensure that Personnel shall not, use or disclose IP Materials without the DFE's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.

- 12.3 The Contractor hereby assigns to the DFE or undertakes to procure the assignment to the DFE of all Intellectual Property Rights which may subsist in the Service Specific IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials and shall include, without limitation, an assignment to the DFE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by the DFE and necessary to execute and perfect these assignments and to otherwise evidence the DFE's or the Crown's ownership of such rights.
- 12.4 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Contract or the performance of the Contract.
- 12.5 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the DFE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the DFE an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the DFE to sub-licence, transfer, novate or assign to a Replacement Contractor. The Contractor shall notify the DFE of any third party Intellectual Property Rights to be used in connection with the Contract prior to their use in connection with the Contract or the creation or development of the Service Specific IP Materials.
- 12.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 14, except to the extent that any such claim arises from:
- 12.6.1 items or materials supplied by the DFE; or
- 12.6.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract.
- 12.7 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor.
- 12.8 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in materials supplied and/or licensed by the Contractor to the DFE, provided always that the Contractor shall:
- 12.8.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
- 12.8.2 take due and proper account of the interests and concerns of the DFE; and
- 12.8.3 not settle or compromise any claim without the DFE's prior written consent (not to be unreasonably withheld or delayed).
- 12.9 Notwithstanding clause 12.8. the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE

takes action the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.

- 12.10 The DFE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the DFE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 12.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the DFE and, at its own expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:
- 12.11.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or
- 12.11.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the DFE.
- 12.12 If the Contractor is unable to comply with clauses 12.11.1 and 12.11.2 within 20 Business Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.
- 12.13 The Contractor grants to the DFE and, if requested by DFE, to a Replacement Contractor, a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights the Contractor owned or developed prior to the Effective Date or otherwise not in connection with the Contract ("**Contractor IP**") and which the DFE (or a Replacement Contractor) reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided and the use and further development of the IP Materials.
- 12.14 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.
- 12.15 If the Contractor is not able to grant to the DFE a licence to use any Contractor IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall use its reasonable endeavours to:
- 12.15.1 procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Contract grants to the DFE a licence on the terms set out in clause 12.13; or
- 12.15.2 if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to the DFE a sub-licence on the terms set out in clause 12.13.
- 12.16 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be the DFE IP Materials any act or thing which:

12.16.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or

12.16.2 would or might prejudice the right or title of the DFE to any of the DFE IP Materials.

12.17 The Contractor shall comply with the DFE's branding guidelines and shall not use any other branding, including its own, other than as set out in the DFE's branding guidelines or as otherwise agreed with the DFE.

12.18 When using DFE Trade Marks the Contractor shall observe all reasonable directions given by the DFE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:

12.18.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DFE Trade Mark, or unfairly competes with any DFE Trade Mark; or

12.18.2 apply anywhere in the world to register any trade marks identical to or so nearly resembling any DFE Trade Mark as to be likely to deceive or cause confusion.

13. PROCESSING DATA (DATA PROTECTION ACT)

13.1 The Parties shall comply with the provisions of schedule 8.

14. DATA HANDLING AND SYSTEMS ASSURANCE (SECURITY)

14.1 The Parties shall comply with the provisions of schedule 11.

15. PUBLICITY AND PROMOTION

15.1 Subject to clause 16.2, without prejudice to the DFE's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

15.2 The Contractor shall use reasonable endeavours to ensure its Personnel comply with clause 15.1

15.3 Without prejudice to the generality of clauses 12.18 and 15.1, the Contractor shall not itself, and shall procure that Consortium Members shall not, use the DFE's name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.

15.4 Subject to clauses 12 and 16 DFE may disclose, copy and otherwise distribute to the public, including but not limited to, by way of the Open Government Licence, any information arising out of the Services or comprised in any work relating to the Services.

16. CONFIDENTIALITY

16.1 Except to the extent set out in this clause 16 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's written consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

- 16.2 The Contractor hereby gives its consent for the DFE to publish the whole Contract including from time to time agreed changes to the Contract.
- 16.3 The Contractor may only disclose the DFE's Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Personnel are aware of and shall comply with these obligations as to confidentiality.
- 16.4 The Contractor shall not, and shall procure that Personnel do not, use any of the DFE's Confidential Information received otherwise than for the purposes of the Contract.
- 16.5 Clause 16.1 shall not apply to the extent that:
- 16.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - 16.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 16.5.3 such information was obtained from a third party without obligation of confidentiality;
 - 16.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 16.5.5 it is independently developed without access to the other Party's Confidential Information.
- 16.6 Nothing in clause 16 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:
- 16.6.1 for the purpose of the examination and certification of the DFE's accounts;
 - 16.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DFE has used its resources;
 - 16.6.3 to any other crown body and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
 - 16.6.4 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clauses 16.6.3 and 16.6.4 the DFE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 16.7 Nothing in clauses 16.1 to 16.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 16.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 16.6 is made aware of the DFE's obligations of confidentiality.

- 16.9 If the Contractor does not comply with clauses 16.1 to 16.5 the DFE may terminate the Contract immediately on notice to the Contractor.
- 16.10 The obligations of this clause 16 shall expire 6 years after termination of this Contract or completion of the Services.

17. FREEDOM OF INFORMATION

- 17.1 The Contractor acknowledges that the DFE is subject to the requirements of the FOIA and the EIR.
- 17.2 The Contractor shall transfer to the DFE all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receipt:
- 17.2.1 give the DFE a copy of all Information in its possession or control in the form that the DFE requires within 5 Business Days (or such other period as the DFE may specify) of the DFE's request;
 - 17.2.2 provide all necessary assistance as reasonably requested by the DFE to enable the DFE to comply with its obligations under the FOIA and EIR; and
 - 17.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the DFE.
- 17.3 The DFE shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

18. OFFICIAL SECRETS ACTS AND FINANCE ACT

- 18.1 The Contractor shall comply with the provisions of:
- 18.1.1 the Official Secrets Acts 1911 to 1989; and
 - 18.1.2 section 182 of the Finance Act 1989.

19. LIABILITY

- 19.1 Neither Party excludes or limits its liability (if any) to the other:
- 19.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
 - 19.1.2 for personal injury or death resulting from the its negligence;
 - 19.1.3 under section 2(3) Consumer Protection Act 1987;
 - 19.1.4 any breach of clause 16 (Confidentiality), schedule 8 or Schedule 11;
 - 19.1.5 for its own fraud; or
 - 19.1.6 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
- 19.2 Subject to clauses 19.1 and 19.3, the Contractor shall indemnify the DFE and keep the DFE indemnified fully against all direct costs, which may arise out of the supply, or the late or purported supply, of the Services due to negligence of the Contractor or the negligent performance or non-performance by the Contractor or any Personnel on the Premises, including in respect of death or personal injury, loss of or damage to

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property, financial loss arising from any advice given or omitted to be given by the Contractor due to negligence, or any other loss which is caused directly by any negligent act or omission of the Contractor.

- 19.3 The Contractor is limited in each calendar year in aggregate to [REDACTED] for its liability (if any) pursuant to any indemnities given by it in clauses 12 (Intellectual Property) and 9 (Tax).
- 19.4 Subject to clauses 19.1, 19.3 and 19.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:
- 19.4.1 for any losses of an indirect or consequential nature;
- 19.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
- 19.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.
- 19.5 Subject to clauses 19.1 the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:
- 19.5.1 in the aggregate of all claims is limited in each calendar year in aggregate to [REDACTED] of the sum of the Charges payable in that year.
- 19.6 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:
- 19.6.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;
- 19.6.2 any wasted expenditure or charges;
- 19.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
- 19.6.4 any compensation or interest paid to a third party by the DFE; and
- 19.6.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 19.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 19.8 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.
- 19.9 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than [REDACTED] for any one claim, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than [REDACTED] for any one claim and insurance to cover

the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.

- 19.10 The Contractor shall supply to the DFE on demand copies of the insurance certificates maintained under clause 19.9.
- 19.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 19.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.

20. WARRANTIES AND REPRESENTATIONS

20.1 The Contractor warrants and represents that:

- 20.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- 20.1.2 in entering the Contract it has not committed any fraud;
- 20.1.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;
- 20.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;
- 20.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 20.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 20.1.6 shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
- 20.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;
- 20.1.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material

adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

20.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and

20.1.10 it has notified the DFE in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

21. FORCE MAJEURE

21.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 21.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

21.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

21.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

22. MONITORING AND REMEDIATION

22.1 The DFE or its authorised representatives may visit on reasonable notice to the Contractor any premises of the Contractor, any Consortium Member or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is conforming in all respects with its obligations arising under the Contract and otherwise to monitor and quality assure the provision of the Services.

22.2 During such visits, the DFE may inspect and take copies of such of the records of the Contractor and any Consortium Member as relate to the performance of their obligations under the Contract.

22.3 If the DFE reasonably considers that any provision of the Contract is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under the Contract or otherwise:

22.3.1 require the Contractor to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of the DFE (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and

22.3.2 monitor, supervise, direct and/or guide the Contractor's provision of the Services until the DFE reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the DFE in this regard.

22.4 If the Contractor fails to comply with any provision of the Contract or fails to supply any

of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the DFE may instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 21 days or such other period of time as the DFE may direct.

- 22.5 The DFE may review from time to time the progress of the Contractor against the Implementation Plan. The Contractor shall cooperate with the DFE in this regard and provide any information and evidence reasonably required by the DFE.
- 22.6 The DFE may instruct the Contractor to take appropriate remedial action where the DFE reasonably considers that the Implementation Plan is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.

23. STEP IN RIGHTS

- 23.1 Without prejudice to DFE's rights of termination under clause 23 the DFE may exercise one or more of the rights set out in this clause 23 ("**Step In Rights**") if:

- 23.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;

- 23.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;

- 23.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 23 is necessary;

- 23.1.4 a serious risk exists to the health and safety of persons, property or the environment;

- 23.1.5 it is necessary to discharge a statutory duty; or

- 23.1.6 the Contractor becomes insolvent.

- 23.2 If the DFE has a Step In Right it may serve notice on the Supplier (a "**Step-In Notice**") that it will take action under this clause 23 either itself or with the assistance of a third party.

- 23.3 The Step-In Notice shall set out:

- 23.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the "**Required Action**");

- 23.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;

- 23.3.3 the date on which it wishes to commence the Required Action;

- 23.3.4 the time period which it believes will be necessary for the Required Action;

- 23.3.5 whether the DFE will require access to the Contractor's premises; and

- 23.3.6 to the extent practicable, the effect the DFE anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.

- 23.4 Following service of a Step-In Notice, the DFE shall:

- 23.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the

Required Action;

- 23.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
 - 23.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not assuming control; and
 - 23.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 23.5 For as long as and to the extent that the Required Action continues:
- 23.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
 - 23.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.
- 23.6 If the Contractor demonstrates to the DFE's reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the DFE not taken the Required Action, the DFE may adjust the Charges.
- 23.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a **"Step-Out Notice"**), specifying:
- 23.7.1 the Required Action it has taken; and
 - 23.7.2 the date on which the DFE plans to end the Required Action subject to the DFE being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 23.8.
- 23.8 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the date specified in clause 23.7.2, develop for the DFE's approval a draft plan relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
- 23.9 If the DFE does not approve the draft plan, it shall inform the Contractor of its reasons for not approving it and the Contractor shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the DFE for approval. The DFE shall not withhold or delay its approval of the draft plan unreasonably.
- 23.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 23, provided that the DFE shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the DFE under clauses 23.1.2 to 23.1.5 (insofar as the primary cause of the DFE serving the Step In Notice is identified as not being the result of a Contractor's Default).

24. TERMINATION

- 24.1 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
 - 24.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

- 24.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 24.1.3 a petition is presented for its winding up (which is not dismissed within 14 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;
 - 24.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 24.1.5 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;
 - 24.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 24.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 24.1.8 any event similar to those listed in clauses 24.1.1 to 24.1.7 occurs under the law of any other jurisdiction.
- 24.2 The DFE may terminate the Contract with immediate effect by notice and without paying compensation to the Contractor where the Contractor is an individual and:
- 24.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
 - 24.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
 - 24.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
 - 24.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
 - 24.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
 - 24.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
 - 24.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
 - 24.2.8 any event similar to those listed in clauses 24.2.1 to 24.2.7 occurs under the law of any other jurisdiction.
- 24.3 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change

of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:

24.3.1 being notified that a Change of Control has occurred; or

24.3.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control

but shall not be permitted to terminate where approval was granted prior to the Change of Control.

24.4 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a partnership and:

24.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

24.4.2 it is for any reason dissolved;

24.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;

24.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;

24.4.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

24.4.6 any of the following occurs in relation to any of its partners:

24.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;

24.4.6.2 a petition is presented for his bankruptcy;

24.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or

24.4.6.4. any event similar to those listed in clauses 24.4.1 to 24.4.6 occurs under the law of any other jurisdiction.

24.5 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a limited liability partnership and:

24.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

24.5.2 it is for any reason dissolved;

24.5.3 an application 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 within Part II of the Insolvency Act 1986;

24.5.4 any step is taken with a view to it being determined that it be wound up (other

than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;

- 24.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
 - 24.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets;
or
 - 24.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 24.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 24.5.9 any event similar to those listed in clauses 24.5.1 to 24.5.8 occurs under the law of any other jurisdiction.
- 24.6 References to the Insolvency Act 1986 in clause 24.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 24.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 24.7.1 the Contractor has not remedied the Default to the satisfaction of the DFE within 21 Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied
 - 24.7.2 the Default is not, in the opinion of the DFE, capable of remedy; or
 - 24.7.3 the Default is a Material Breach.
- 24.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 24.8.1 the Contractor's warranty in clause 20.1.10 is materially untrue;
 - 24.8.2 the Contractor commits a material breach of its obligation to notify the DfE of any Occasion of Non-Tax Compliance;
 - 24.8.3 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 24.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 24.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
 - 24.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract;
or
 - 24.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a

procedure under Article 258 of the TFEU.

24.10 If the DFE terminates the Contract under clauses 24.7, 24.8 or 24.9:

24.10.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and

24.10.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 24.

24.11 Either Party may terminate the Contract (or any part of it) at any time by giving at least [3] months' prior written notice to the other Party.

24.12 If the DFE terminates the Contract under clause 24.11 the DFE shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE.

24.13 If any funding from governmental or other sources for the provision of the Services, or for a programme or a project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that the Contract cannot reasonably continue the DFE may terminate the Contract (or any part of it) by serving [3] months' written notice on the Contractor.

24.14 If the DFE terminates the Contract under clause 24.13 the DFE shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavoidability of such costs.

24.15 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

24.16 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 30 Business Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the DFE exercising its rights under clause 8.7 or to Force Majeure.

24.17 Save as otherwise expressly provided in the Contract:

24.17.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

24.17.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Payment), 9 (Tax and VAT), 10 (Prevention of Fraud), 12 (Intellectual Property Rights), 13 (Processing Data), 16 (Confidentiality), 17 (Freedom of Information), 18 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 180

(Warranties and Representations), 19 (Liability), 24 (Termination) 25 (Retendering and Handover), 26 (Exit Management), 27 (Audit), and 38 (Governing Law and Jurisdiction).

24.18 Termination by DfE if monthly Performance Standards not met

- 24.18.1 If the Contractor fails to meet any of the monthly Performance Standards in any two consecutive months, at either party's request to the other party, both parties must meet to work together in good faith to attempt to understand why the monthly Performance Standards have not been achieved and implement strategies jointly agreed between the parties to attempt to enable the Contractor to achieve the monthly Performance Standards.
- 24.18.2 If the parties agree on a strategy under clause 24.18.1 and, in the month following the implementation of the joint strategy under clause 24.18.1 the Contractor fails to achieve any of the monthly Performance Standards, DfE may terminate this agreement on 30 days' notice to Contract.
- 24.18.3 If Contractor fails to meet any of the monthly Performance Standards in any three consecutive months, DfE may terminate this agreement on 10 Business Days' notice to the Contractor.

25. RETENDERING AND HANDOVER

- 25.1 Within 30 days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the DFE to issue tender documents for the future provision of replacement services.
- 25.2 The DFE shall take reasonable precautions to ensure that the information referred to in clause 25.1 is given only to potential contractors who have qualified to tender for the future provision of the replacement services.
- 25.3 The DFE shall require that all potential Contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the DFE; and that they shall not use it for any other purpose.
- 25.4 The Contractor shall allow access to the Premises in the presence of DFE's authorised representative, to any person representing any potential contractor whom the DFE has selected to tender for the future provision of the Services.
- 25.5 If access is required to the Contractor's Premises for the purposes of clause 27.4, the DFE shall give the Contractor 7 days' notice of a proposed visit together with the names of all persons who will be visiting.
- 25.6 The Contractor shall co-operate fully with the DFE during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 25.7 Within 10 Business Days of being requested by the DFE, the Contractor shall transfer to the DFE, or any person designated by the DFE, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the DFE.

26. EXIT MANAGEMENT

- 26.1 If the DFE requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the DFE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 26.2 The Contractor will, within 3 months of the Effective Date, deliver to the DFE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the DFE and/or its Replacement Contractor at the end of the Term (an "**Exit Plan**").
- 26.3 Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 36.
- 26.4 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the DFE for review. Within 30 days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 37.
- 26.5 If the Contractor:
- 26.5.1 does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or
- 26.5.2 reasonably incurs additional costs
- the Parties shall agree a variation of the Charges.
- 26.6 If the DFE requests, the Contractor shall deliver to the DFE details of all licences for software used in the provision of the Services including the software licence agreements.
- 26.7 Within one month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.
- 26.8 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than 15 Business Days from the date that that request was made.

27. AUDIT

- 27.1 The Contractor shall keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.
- 27.2 The Contractor agrees to make available to the DFE, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services
- 27.3 The Contractor shall permit duly authorised representatives of the DFE and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may

reasonably be required.

- 27.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

28. ENTIRE AGREEMENT

- 28.1 The Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties.
- 28.2 Nothing in this clause 28 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

29. PARTNERSHIP

- 29.1 Nothing in the Contract is intended to or shall operate to create a legal partnership between the Parties or to authorise either Party to act as an agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including making any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

30. WAIVER

- 30.1 No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

31. CHANGE CONTROL

- 31.1 Either Party may at any time request in writing a Variation in accordance with the change control procedure set out in schedule 6 (the “**Change Control Procedure**”). No Variation shall be effective unless made in accordance with the Change Control Procedure.

32. COUNTERPARTS

- 32.1 The Contract may be executed in any number of counterparts, each of which so executed and delivered shall constitute an original, but together shall constitute one and the same instrument.

33. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 33.1 The provisions of clauses 7.5 and 12.6 confer benefits on a Replacement Contractor and are intended to be enforceable by a Replacement Contractor by virtue of the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”).
- 33.2 Subject to clause 33.1, a person who is not a Party has no right under CRTPA to enforce provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 33.3 A Replacement Contractor may not enforce or take steps to enforce the provisions of clauses 7.5 or 12.6 without DFE’s prior written consent.

- 33.4 The Parties may amend the Contract without the consent of any Replacement Contractor.

34. CONFLICTS OF INTEREST

- 34.1 The Contractor shall:

34.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and

34.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 34 as a “**Conflict of Interest**”.

- 34.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 34 the Contractor shall forthwith provide full particulars to the DFE.

- 34.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.

- 34.4 Without prejudice to the foregoing provisions of this clause 34, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:

34.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and

34.4.2 give the DFE a comprehensive and detailed written statement of the action it had taken.

- 34.5 If the DFE is not satisfied with the Contractor's actions, the Contractor shall, on request by the DFE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).

- 34.6 Without prejudice to any other right or remedy it may have, the DFE may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the DFE, there is any continuing breach by the Contractor of the provisions of this clause 34.

35. FURTHER ASSURANCE

- 35.1 The Parties shall do or procure the doing of all such acts and things and will execute or procure the execution of all such documents as may be reasonably required including on or subsequent to the end of the Contract to vest in the relevant all rights granted under the Contract and otherwise to comply with its terms.

36. NOTICES

- 36.1 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, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).

- 36.2 The notice, demand or communication shall be deemed to have been duly served:
- 36.2.1 if delivered by hand, when left at the proper address for service;
 - 36.2.2 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;
 - 36.2.3 if given or made by facsimile or e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
- 36.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

37. DISPUTE RESOLUTION

- 37.1 Any Dispute shall be dealt with in accordance with this clause 37.
- 37.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.
- 37.3 If a Dispute cannot be resolved by negotiation as referred to in clause 37.2 within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

38. GOVERNING LAW AND JURISDICTION

- 38.1 The Contract and any non-contractual obligations arising out of or connection with it will be governed by and construed in accordance with English Law.
- 38.2 The courts of England shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with the Contract.
- 38.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

Schedule 3

Financials

1. The DFE shall pay the Contractor the Charges in accordance with the Contract, subject to successful delivery of the Services against the KPIs or Service Levels set out in schedule 4. The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise between the Contractor and the DFE, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
2. The DFE may review the detailed costs set out in the Implementation Plan to ensure that the Contract is value for money.
3. Indexation shall not apply to the Charges.
4. The Contractor shall be entitled to invoice the Charges following acceptance by the DFE of satisfactory completion of the Services or, where performance of the Services will continue, either monthly in arrears or on satisfactory completion of milestones as set out in the delivery milestones, outputs or outcomes (as set out in the tables below).

Table 1

	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Partner Total	Strand Total (Excl. VAT)	VAT	Strand Total
1 SEND Adviser																
2 Targeted Delivery Support																
MMI																
CDC - MAW																
CDC - SC																
NDTI																
NDTI - SEND Leadership																
3 Regional Networks																
MMI																
CDC - MAW																
CDC - SC																
NDTI																
4 National Trial																
5 Evaluation Programme																
MMI																
CDC - MAW																
CDC - SC																
NDTI																
6 Programme Management																
Total																£2,853,599.82

5. Funds allocated to a particular expenditure heading in Table 1 are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only.

Schedule 4

KPIs, Service Levels and Service Credits

- 1 The objectives of the Service Levels are to:
 - 1.1 ensure that the Services are of a consistently high quality and meet the requirements of the DFE;
 - 1.2 provide a mechanism whereby the DFE can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Services; and
 - 1.3 incentivise the Contractor to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

KEY PERFORMANCE INDICATORS (KPIs) AND SERVICE LEVELS (SLs)

- 2 This schedule 4 sets out the KPIs and Service Levels against which the Contractor shall measure its performance.
- 3 The Contractor shall monitor its performance against of each of the KPIs and Service Levels in and send the DFE a report detailing the KPIs and Service Levels which were achieved in accordance with the provisions of this schedule 4.

PERFORMANCE STANDARDS/MEASURES

- 4 The Contractor must meet the Performance Measure for each identified KPI as set out in table 1 below within the agreed Service Period (defined Schedule 2 and within table 1)
- 5 If during a Service period the Contractor achieves a KPI/Service Level, no Service Credit ("reduction in total amount of charges payable to the Contractor") will accrue to the Contractor in respect of that KPI/Service Level
- 6 The Contractor confirms that it has taken Performance Measures and Service Credits into account in calculating the Charges. Both Parties agree that the Performance Measures and Service Credits are a reasonable method of adjusting the Charges to reflect poor Contractor performance.
- 7 The Contractor will be expected to meet/comply with all Service Levels as set out within table 2 below.

CONSEQUENCES OF FAILURE TO MEET KPIS

- 8 A failure to meet at least the required performance level will be considered a "Service Failure" in respect of the KPIs set out in Table 1 below
- 9 In the first instance of failure to meet the required performance level, ahead of any Service Credits being applied, the Department and the Contractor will meet to discuss the reasons for the failure to determine if further occurrence can be mitigated.
- 10 If performance level is a Service Failure in one or more of the KPIs listed in Table 2 in any given service period/calendar month, DfE will be entitled at its sole discretion, to reduce the total amount of charges payable to the Contractor ("Service Credit") for that period/month by:
 - 10.1 5% for one KPI failed

10.2 10% for two KPIs failed

10.3 to a maximum of 15% for three or more KPIs failed

11 A failure to meet the required performance level for KPI's in Table 1 will not be considered a Service Failure in the context of paragraph 7, but the DfE expects the contractor to meet the required performance levels and will consider repeated failures as breaches of this contract.

12 In addition to its rights under paragraph 7, if there are one or more Service Failures in 3 (three) consecutive Service Periods/calendar months, the DfE (the department) will be entitled, at its sole discretion, to terminate this contract on 30 days written notice.

Table 1 KPIs

KPI	Measurement Period	Performance Measure	Monitoring method
Make available 1500 adviser days at a rate of £395 per day excluding expenses	End of March 2022.	Days invoiced by end of contract	Add to monthly contract highlight report on days used for previous month and in monthly SEND Adviser report
At least 75% of those responding individuals or areas that respond who have engaged with learning activities report that the learning will enable them to make a positive change	1 st April 2021 to 31 st March 2022	Post evaluation training form – templates and questions to be agreed with partners and DfE – 75% sample from all targeted support, training delivered across strands 2 and 3	Add to monthly contract highlight report on quarterly update on KPI, June 21, September 21, December 21 and March 22 reports.
75% of those responding individuals or areas who have engaged with development activities report progress on their identified actions and or are able to say how they have incorporated their learning into their practice.	1 st April 2021 to 31 st March 2022	In the three month follow up questionnaire - templates and questions to be agreed with partners and DfE – 75% sample from all targeted support, training delivered across strands 2 and 3	Add to monthly contract highlight report on quarterly update on KPI, June 21, September 21, December 21 and March 22 reports.
A clear, co-produced methodology is established to identify, verify and share effective approaches to improvement	Due 31 st July 2021	Methodology produced and agreed with DfE	Methodology produced and agreed with DfE
Detailed delivery plans for Multi-agency, PFA and Social Care regional programmes are developed for each region. These will be shared and agreed with SEND Adviser and DfE policy lead.	Report quarterly, end of June 21, September 21, December 21 and March 22	Detailed delivery plans produced by 30 th June, will be submitted to DfE quarterly	Detailed delivery plans produced by 30 th June, will be submitted to DfE quarterly

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KPI	Measurement Period	Performance Measure	Monitoring method
Reviewed and updated quarterly			
Ensure there is an effective handover of deliverables and close of the National Trial as outlined in the Exit Plan	31 st March 2022	Exit Plan outline key deliverables to be achieved	31 st July – Exit Plan 31 st March 2022 Handover
The contractor and partners allow reasonable access by the external evaluator to required data and information within the days allocation	1 st April 2021 to 31 st March 2022	Evaluator reports ease of access	Via monthly KITs with Evaluator plus DfE/MM Programme Management Monthly KIT meeting
Monthly reporting is delivered as per the agreed timescales as set out in the Contract Management Plan	1 st April – 31 st March 2022 (Monthly)	Timescales are met as set out in the agreed Contract Management Plan	Programme Management Monthly KIT meeting

Schedule 5
Implementation Plan
Not Required.

Schedule 6

Change Control Procedure

- 1 The Parties acknowledge that minor changes to the Contract may be necessary to reflect operational and administrative procedures during the Term and that such minor changes may be agreed in writing between the Parties' respective contract managers.
- 2 The Contractor shall use reasonable endeavours to incorporate minor changes requested by the DFE within the current Charges and shall not serve a Contractor Notice of Change unless the change involves a demonstrable material increase to its costs or requires a material change to the Contract.
- 3 Either Party may request a Variation provided that such Variation does not amount to a material change.
4. The DFE may request a Variation by completing the Change Control Note and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Charges are required in order to implement the Variation within a reasonable time limit specified by the DFE. If the Contractor accepts the Variation it shall confirm it in writing within 21 days of receiving the Change Control Note.
5. If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Charges, the DFE may allow the Contractor to fulfil its obligations under the Contract without Variation or if the Parties cannot agree to the Variation the Dispute will be determined in accordance with clause 36.
6. If the Contractor wishes to introduce a change to the Contract it may request a Variation by serving the Change Control Note on DFE.
7. The DFE shall evaluate the Contractor's proposed Variation in good faith, taking into account all relevant issues.
8. The DFE shall confirm in writing within 21 days of receiving the Change Control Note if it accepts or rejects the Variation.
9. The DFE may at its absolute discretion reject any request for a Variation proposed by the Contractor.

Change Control Note

Contract Number		DFE Contract / Programme Manager
Contractor		Original Contract Value (£)
Contract Start Date		Contract Expiry Date

Variation Requested	
Originator of Variation (tick as appropriate)	DFE <input type="checkbox"/> Contractor <input type="checkbox"/>
Date	
Reason for Variation	
Summary of Variation (e.g. specification, finances, contract period)	
Date of Variation commencement	
Date of Variation expiry (if applicable)	
Total Value of Variation £ (if applicable)	
Payment Profile (if applicable) e.g. milestone payments	

Revised daily rate (if applicable)			
Impact on original contract (if applicable)			
Supporting Information (please attach all supporting documentation for this Change Control)			
Terms and Conditions	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.		
Variation Agreed <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> For the Contractor: Signature..... Full Name..... Title..... Date..... </td> <td style="width: 50%; vertical-align: top;"> For the DFE: Signature..... Full Name..... Title..... Date..... </td> </tr> </table>		For the Contractor: Signature..... Full Name..... Title..... Date.....	For the DFE: Signature..... Full Name..... Title..... Date.....
For the Contractor: Signature..... Full Name..... Title..... Date.....	For the DFE: Signature..... Full Name..... Title..... Date.....		

Please note that no works/services described in this form should be undertaken, and no invoices will be paid until both copies of the CCN are signed, returned and counter-signed.

To be entered by the Commercial department:			
Commercial Contact		Reference Number	
Date received		EC Reference	

Schedule 7

Key Personnel and Key Sub Contractors

[This schedule shall be finalised at contract fine tuning stage]

Key Personnel

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement

Key Sub-Contractors

The Contractor may sub-contract its obligations under the Contract to the Sub-Contractors listed in the table below.

Key Sub-Contractor Name and Address (if not the same as the registered office)	Registered Office and Company Number	Related Product/Service Description	Sub-contract Price expressed as a percentage of total projected Charges over Term	Role in delivery of the Services

Schedule 8

Processing Data (Data Protection Act)

Definitions

"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" are interpreted accordingly;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
"DPA"	The Data Protection Act 2018
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Legislation"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 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;
"Data Subject"	has the meaning given in the DPA;
"Data Subject Request"	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.
"Controller", "Processor," "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer"	shall have the meanings given in the GDPR;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679)

“Law”	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 Processor is bound to comply;
“LED”	Law Enforcement Directive (Directive (EU) 2016/680)
“Processor Personnel”	employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract.
“Protective Measures”	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 the such measures adopted by it including those set out in the Contract.
“Sub-processor”	any third Party appointed to process Personal Data on behalf of the Processor related to this Contract

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 8 Annex 1. The only processing that the Processor is authorised to do is listed in Schedule 8 Annex 1 by the Controller and may not be determined by the Processor

1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

1.3 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.

1.4 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 8 Annex 1 , 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.

1.5 Subject to clause 1.6, 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.

1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.

1.7 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 1.5 (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.

1.8 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.

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

1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

1.11 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 1 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.

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

1.13 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).

1.14 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.

SCHEDULE 8 ANNEX 1

Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

- 1 The contact details of the Controller's Data Protection Officer are: [REDACTED]
- 2 The contact details of the Processor's Data Protection Officer are: [REDACTED]
- 3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Schedule 8 Clause 1.1.</i>
Subject matter of the processing	<i>Individuals participating in activities relating to the contract to provide delivery support to local areas in embedding reforms to services for children and young people who have special educational needs and disabilities (SEND).</i>
Duration of the processing	<i>From Contract to Provide Delivery Support to Local Areas in Embedding Reforms to Services for Children and Young People who have Special Educational Needs and Disabilities from 01/04/2021 to 31/03/2022.</i>
Nature and purposes of the processing	<i>The nature of the processing of the data is the necessary collection and storage of personally identifiable data relating to delivery support to local areas in embedding reforms to services for children and young people who have special educational needs and disabilities (SEND).</i> <i>The purpose of all processing is to support department delivery partners engaged in implementation of the above contract. In particular: to ensure prompt distribution of electronic invitations to meetings; to share practice guides and information published by delivery partners; to manage third parties including payment for services required to meet contractual obligations; to manage national delivery programme in support of</i>

	<i>regional coordinators.</i>
Type of Personal Data	<i>Name, telephone number(s), email address(es), job title, region of employment (e.g. NHS organizational division), financial records (only where requirement for payment under contractual obligations exists).</i>
Categories of Data Subject	<i>Staff (including volunteers, agents, and temporary workers), sub-contractors (delivery partners), other Government departments.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>The data will be kept by the contractor for 6 years after the end of the contract. After this the data can be destroyed. Data may be destroyed by any means that makes the data totally and permanently unreadable, so such data cannot be reconstructed. Such means may include: 1. physical destruction, such as cross-cut shredding or incineration; 2. overwriting, which is covering up old data at least three times with a random and meaningless set of new data; and 3. degaussing, which is erasing the magnetic field of the storage media. Note the ordinary deletion of files to trash or empty trash (or equivalent) is inadequate: the data are likely to remain on the storage medium.</i>

Schedule 9
Commercially Sensitive Information

[This Schedule shall be finalised at contract fine tuning stage]

Schedule 10

The Contractor's Solution

[This Schedule shall be finalised at contract fine tuning stage and will comprise the response to the ITT]

Schedule 11

Data Handling and Systems Assurance (Security)

Definitions

DFE SECURITY STANDARDS

12. Departmental Security Standards for Business Services and ICT Contracts

<p>“BPSS”</p> <p>“Baseline Personnel Security Standard”</p>	<p>means the Government’s HMG Baseline Personal Security Standard . Further information can be found at:</p> <p>https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</p>
<p>“CCSC”</p> <p>“Certified Cyber Security Consultancy”</p>	<p>is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards.</p> <p>See website:</p> <p>https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</p>
<p>“CCP”</p> <p>“Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website:</p> <p>https://www.ncsc.gov.uk/information/about-certified-professional-scheme</p>
<p>“CPA”</p> <p>“Commercial Product Assurance”</p> <p>[formerly called “CESG Product Assurance”]</p>	<p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards.. See website:</p> <p>https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</p>

<p>“Cyber Essentials”</p> <p>“Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p> <p>There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers:</p> <p>https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body</p>
<p>“Data”</p> <p>“Data Controller”</p> <p>“Data Protection Officer”</p> <p>“Data Processor”</p> <p>“Personal Data”</p> <p>“Personal Data requiring Sensitive Processing”</p> <p>“Data Subject”, “Process” and “Processing”</p>	<p>shall have the meanings given to those terms by the Data Protection Act 2018</p>
<p>“Department’s Data”</p> <p>“Department’s Information”</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(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:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<p>“DfE”</p> <p>“Department”</p>	<p>means the Department for Education</p>
<p>“Departmental Security Standards”</p>	<p>means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.</p>

“Digital Marketplace / G-Cloud”	means the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.
End User Devices	means the personal computer or consumer devices that store or process information.
“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.
“Good Industry Standard” “Industry Good Standard”	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“GSC” “GSCP”	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: https://www.gov.uk/government/publications/government-security-classifications
“HMG”	means Her Majesty’s Government
“ICT”	means Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)” “IT Health Check (ITHC)” “Penetration Testing”	means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.
“Need-to-Know”	means the Need-to-Know principle 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.
"NCSC"	The National Cyber Security Centre (NCSC) is the UK government's National Technical Authority for Information Assurance. The NCSC website is https://www.ncsc.gov.uk
"OFFICIAL" "OFFICIAL-SENSITIVE"	the term 'OFFICIAL' is used to describe the baseline level of 'security classification' described within the Government Security Classification Policy (GSCP). the term 'OFFICIAL-SENSITIVE' 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 GSCP.
"RBAC" "Role Based Access Control"	means Role Based Access Control. A method of restricting a person's or process' access to information depending on the role or functions assigned to them.
"Storage Area Network" "SAN"	means an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage.
"Secure Sanitisation"	means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. NCSC Guidance can be found at: https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media The disposal of physical documents and hardcopy materials advice can be found at: https://www.cpni.gov.uk/secure-destruction
"Security and Information Risk Advisor" "CCP SIRA" "SIRA"	means the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: https://www.ncsc.gov.uk/articles/about-certified-

	professional-scheme
“Senior Information Risk Owner” “SIRO”	means the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arms length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.
“SPF” “HMG Security Policy Framework”	means 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. https://www.gov.uk/government/publications/security-policy-framework

12.1. The Contractor shall be aware of and comply the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable DfE Departmental Security Standards for Contractors which include but are not constrained to the following clauses.

- (Guidance: Providers on the HMG Digital Marketplace / GCloud that have demonstrated compliance, as part of their scheme application, to the relevant scheme’s security framework, such as the HMG Cloud Security Principles for the HMG Digital Marketplace / GCloud, may on presentation of suitable evidence of compliance be excused from compliance to similar clauses within the DfE Security Clauses detailed in this section (Section 12).)

12.2. Where the Contractor will provide products or services or otherwise handle information at OFFICIAL for the Department, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification](#) - [Action Note 09/14](#) dated 25 May 2016, or any subsequent updated document, are mandated, namely that contractors supplying products or services to HMG shall have achieved, and will be expected to retain Cyber Essentials certification at the appropriate level for the duration of the contract. The certification scope shall be relevant to the services supplied to, or on behalf of, the Department.

- (Guidance: Details of the acceptable forms of equivalence are stated at Section 9 of Annex A within the link to Cabinet Office document in this clause).

- (Guidance: The Department's expectation is that the certification scope will be relevant to the services supplied to, or on behalf of, the Department. However, where a contractor or (sub) contractor is able to evidence a valid exception or certification to an equivalent recognised scheme or standard, such as ISO 27001, then certification under the Cyber Essentials scheme could be waived. Changes to the Cabinet Office Action Note will be tracked by the DfE)
- (Guidance: The department's expectation is that SMEs or organisations of comparable size shall be expected to attain and maintain Cyber Essentials. Larger organisations or enterprises shall be expected to attain and maintain Cyber Essentials Plus.)

12.3 Where clause 12.2 above has not been met, the Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements).

The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).

- (Guidance: The Department's expectation is that suppliers claiming certification to ISO/IEC 27001 shall provide the Department with copies of their Scope of Certification, Statement of Applicability and a valid ISO/IEC 27001 Certificate issued by an authorised certification body. Where the provider is able to provide a valid Cyber Essentials certification then certification under the ISO/IEC 27001 scheme could be waived and this clause may be removed.)

12.4 The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service and will handle all 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).

- (Guidance: The Department's expectations are that all contractors shall handle the Department's information in a manner compliant with the GSCP. Details of the GSCP can be found on the GOV.UK website at:
<https://www.gov.uk/government/publications/government-security-classifications>.)
- (Guidance: Compliance with the GCSP removes the requirement for the department to issue a Security Aspects Letter (SAL) to the contractor).

- 12.5 Departmental Data being handled in the course of providing an ICT solution or service must be separated 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 line with clause 12.14.
- (Guidance: Advice on HMG secure sanitisation policy and approved methods are described at <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)
- 12.6 The Contractor shall have in place and maintain physical security to premises and sensitive areas in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems, etc.
- (Guidance: Where the contractor's and sub-contractor services are wholly carried out within Departmental premises and all access to buildings or ICT systems is managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause.)
- 12.7 The Contractor shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Departmental Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC). User credentials that give access to Departmental Data or systems shall be considered to be sensitive data and must be protected accordingly.
- (Guidance: Where the contractor's and sub-contractor services are wholly carried out within Departmental premises and all access to buildings or ICT systems is managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause.)

- 12.8 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 processes;
 - malware protection;
 - boundary access controls including firewalls, application gateways, etc;
 - maintenance and use of fully supported software packages in accordance with vendor recommendations;
 - use of secure device configuration and builds;
 - software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
 - user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
 - any services provided to the department must capture audit logs for security events in an electronic format at the application, service and system level to meet the department's logging and auditing requirements, plus logs shall be:
 - retained and protected from tampering for a minimum period of six months;
 - made available to the department on request.
- (Guidance: Where the contractor's and sub-contractor services are wholly carried out using Departmental ICT resources or locations managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause.)
- (Guidance: The [Minimum Cyber Security Standard](#) issued by Cabinet Office and Information Commissioner's Office advice for the protection of sensitive and personal information recommends the use of Multi-Factor Authentication (MFA). The MFA implementation must have two factors as a minimum; with the second factor being facilitated through a separate and discrete channel, such as, a secure web page, voice call, text message or via a purpose built mobile app, such as; Microsoft Authenticator.)
- (Guidance: Further advice on appropriate levels of security audit and log collection to be applied can be found at: <https://www.ncsc.gov.uk/collection/cafc/caf-principles-and-guidance/c-1-security-monitoring>.)

- 12.9 The contractor shall ensure that any departmental data (including email) transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 12.10 The contractor shall ensure that any departmental data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the department except where the department has given its prior written consent to an alternative arrangement.
- (Guidance: The use of an encryption product that utilises the AES256 algorithm would be considered ‘industry good practice’ in this area. Where the use of removable media as described in this clause is either prohibited or not required in order to deliver the service this clause shall be revised as follows: - ‘The use of removable media in any form is not permitted’.)
- 12.11 The contractor shall ensure that any device which is used to process departmental data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>.
- (Guidance: The use of an encryption product that utilises the AES256 algorithm would be considered ‘industry good practice’ in this area. Where the contractor’s and sub-contractor services are wholly carried out using Departmental ICT resources managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause.)
- 12.12 Whilst in the Contractor’s care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- The term ‘lock and key’ is defined as: “securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user’s sole control and to which they hold the keys”.
- (Guidance: Further advice on appropriate destruction and disposal methods for physical and hardcopy documents can be found at: <https://www.cpni.gov.uk/secure-destruction>)

- 12.13 When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has 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.

The term 'under cover' means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.

- 12.14 In the event of termination of contract due to expiry, liquidation or non-performance, all information assets provided, created or resulting from the service shall not be considered as the supplier's assets and must be returned to the department and written assurance obtained from an appropriate officer of the supplying organisation that these assets regardless of location and format have been fully sanitised throughout the organisation in line with clause 12.15.

- (Guidance: It is Departmental policy that suppliers of business services shall provide evidence of an acceptable level of security assurance concerning sanitisation must be in accordance with guidance provided by NCSC and CPNI.

- 12.15 In the event of termination, equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored by the Contractor must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC approved product or method.

Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until such time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.

Evidence of secure destruction will be required in all cases.

- (Guidance: Where there is no acceptable secure sanitisation method available for a piece of equipment, or it is not possible to sanitise the equipment due to an irrecoverable technical defect, the storage media involved shall be destroyed using an HMG approved method described at <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>.)

- (Guidance: Further advice on appropriate destruction and disposal methods for physical and hardcopy documents can be found at: <https://www.cpni.gov.uk/secure-destruction>)
 - (Guidance: The term ‘accounted for’ means that assets and documents retained, disposed of or destroyed should be listed and provided to the department as proof of compliance to this clause.)
- 12.16 Access by Contractor or sub-contractor staff to Departmental Data, including user credentials, 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. Any Contractor or sub-contractor staff who will be in contact with children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact.
- (Guidance: Further details of the requirements for HMG BPSS clearance are available on the website at: <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>)
 - (Guidance: Further details of the requirements for National Security Vetting, if deemed necessary for this contract are available at: <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)
- 12.17 All Contractor or sub-contractor employees who handle Departmental Data shall have annual awareness training in protecting information.
- 12.18 The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- (Guidance: The business continuity and disaster recovery plans should be aligned with industry good practice and it is the Department’s expectation that all vendors providing services or infrastructure to the Department will have plans that are aligned to the ISO 22301 standard in place. Further information on the requirements of ISO 22301 may be found in the standard.)

- 12.19 Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data, including user credentials, used or handled in the course of providing this service shall be recorded as an incident. This includes any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution.
- Incidents shall be reported to the department immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery. If incident reporting has been delayed by more than 24 hours, the contractor should provide an explanation about the delay.
- Incidents shall be reported through the department's nominated system or service owner.
- Incidents shall be investigated by the contractor with outcomes being notified to the Department.
- 12.20 The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- (Guidance: Further information on IT Health Checks and the NCSC CHECK Scheme which enables penetration testing by NCSC approved companies can be found on the NCSC website at: <https://www.ncsc.gov.uk/scheme/penetration-testing>.)

- 12.21 The Contractor or sub-contractors providing the service will provide the Department with full details of any actual or future intent to develop, manage, support, process or store Departmental Data outside of the UK mainland. The Contractor or sub-contractor shall not go ahead with any such proposal without the prior written agreement from the Department.
- (Guidance: The offshoring of HMG information outside of the UK is subject to approval by the Departmental SIRO).
- 12.22 The Department reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any sub-contractors', compliance with the clauses contained in this Section.
- 12.23 The Contractor and sub-contractors shall undergo appropriate security assurance activities and shall provide appropriate evidence including the production of the necessary security documentation as determined by the department. This will include obtaining any necessary professional security resources required to support the Contractor's and sub-contractor's security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional (CCP) schemes.
- (Guidance: It is Departmental policy that suppliers of business services shall provide evidence of an acceptable level of security assurance concerning their organisation. Further advice and guidance on the Department's security assurance processes can be supplied on request. Information about the HMG Supplier Assurance Framework can be found at:
<https://www.gov.uk/government/publications/government-supplier-assurance-framework>
 - (Guidance: Further information on the CCP and CCSC roles described above can be found on the NCSC website at:
<https://www.ncsc.gov.uk/information/about-certified-professional-scheme> and <https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy>)
- 12.24 Where the Contractor is delivering an ICT solution to the Department they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Departmental Policy. The Contractor will provide the Department with evidence of compliance for the solutions and services to be delivered. The Department's expectation is that the Contractor shall provide written evidence of:
- Compliance with HMG Minimum Cyber Security Standard.
 - Any existing security assurance for the services to be delivered, such as: ISO/IEC 27001 / 27002 or an equivalent industry level certification.

- Any existing HMG security accreditations or assurance that are still valid including: details of the awarding body; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement.
- Documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Contractor shall provide details of who the awarding body or organisation will be and date expected.

12.25 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.

End of Department's Security Standards Clause