

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).

THIS CONTRACT IS DATED

Parties

- 1) **The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown (“the Department”); and**

- 2) **Mott MacDonald Ltd whose registered office is at Mott MacDonald House, 8-10 Sydenham House Croydon CR0 2EE(“the Contractor”)**

Recitals

The Contractor has agreed to provide delivery support to local areas in embedding the reforms to services for children and young people who have SEND on the terms and conditions set out in this Contract.

The Department's reference number for this Contract is CSES(Send) 17-18/01

1 Interpretation

1.1 In this Contract the following words shall mean:-

- | | |
|---------------------------|--|
| “the Services” | the services to be performed by the Contractor as described in Schedule 1; |
| "Affiliate" | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time; |
| “Central Government Body” | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

(a) Government Department;

(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); |

(c) Non-Ministerial Department; or

(d) Executive Agency;

Mia Spreadbury, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT

“the Contract Manager”

"Contractor Personnel"

all employees, agents, Contractors and contractors of the Contractor and/or of any Sub-contractor;

“the Contractor’s Contract Manager

Scott Boyd

“Confidential Information”

the Department's Confidential Information and/or the Contractor's Confidential Information;

"Contracting Department"

any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department;

"Contractor Personnel"

all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor;

"Control"

means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "**Controls**" and "**Controlled**" shall be interpreted accordingly;

“Crown”

means Queen Elizabeth II and any successor

"Crown Body"

any department, office or agency of the Crown;

"Department’s Confidential Information"

all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Department, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

"Environmental Information Regulations"

the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;

"FOIA"

the Freedom of Information Act 2000 and any subordinate legislation made under this Act from

	time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
"Her Majesty's Government"	means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Property"	means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Department and " Regulatory Body " shall be construed accordingly.
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"SME"	means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions.
"Sub-contractor"	the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

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

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

2 Commencement and Continuation

The Contractor shall commence the Services on 1 April 2017 and, subject to Clause 10.1 shall complete the Services on or before 31 March 2018

3 Contractor's Obligations

- 3.1 The Contractor shall promptly and efficiently complete the Services in accordance with the provisions set out in Schedule 1.
- 3.2 The Contractor shall comply with the accounting and information provisions of Schedule 2.
- 3.3 The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.

4 Departments Obligations

The Department will comply with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Contractor for work completed to the satisfaction of the Department.

5 Changes to the Department's Requirements

- 5.1 The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.
- 5.2 The Contractor shall use reasonable endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.

6 Management

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

7 Contractor's Employees and Sub-Contractors

- 7.1 Where the Contractor enters into a contract with a supplier or contractor for the purpose of performing its obligations under the Contract (the "**Sub-contractor**") it shall ensure prompt payment in accordance with this clause 7.1. Unless otherwise agreed by the Department in writing, the Contractor shall ensure that any contract requiring payment to a Sub-contractor shall provide for undisputed sums due to the Sub-contractor to be made within a specified period from the receipt of a valid invoice not exceeding:
 - 7.1.1 10 days, where the Sub-contractor is an SME; or
 - 7.1.2 30 days either, where the sub-contractor is not an SME, or both the Contractor and the Sub-contractor are SMEs,

The Contractor shall comply with such terms and shall provide, at the Department's request, sufficient evidence to demonstrate compliance.

- 7.2** The Department shall be entitled to withhold payment due under clause 7.1 for so long as the Contractor, in the Department's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with clause 7.1. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment. .
- 7.3** The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.
- 7.4** The Contractor shall immediately notify the Department if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.
- 7.5** The Contractor, its employees and sub-contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- 7.6** The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Department's reasonable security requirements as required from time to time.

8 Copyright

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

9 Warranty and Indemnity

- 9.1** The Contractor warrants to the Department that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.
- 9.2** Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract then the Department shall be entitled, where appropriate to:
- 9.2.1** require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or
- 9.2.2** assess the cost of remedying the failure ("the assessed cost") and to deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continues.

9.3 The Consultant shall only be liable to pay compensation to the Client under or in connection with the Consultancy Agreement if a failure to perform with reasonable skill, care and diligence is established against the Consultant

9.3.1 Notwithstanding any other term to the contrary in this Consultancy Agreement or any related document and whether the cause of action for any claim arises under or in connection with the Consultancy Agreement in contract or in tort, in negligence or for breach of statutory duty or otherwise, in relation to any and all causes of action as aforesaid the total liability of the Consultant in the aggregate for all claims shall be limited to the lesser of

a) a sum equivalent to four (4) times the fee payable under this Consultancy agreement ; or

b) £1,000,000 (One million Pounds).

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

a) all other parties appointed or to be appointed by the Client to perform related services in connection with the Project shall be deemed to have provided undertakings on terms no less onerous than those in this Consultancy Agreement and shall be deemed to have paid to the Client such contributions as it would be just and equitable for them to pay having regard to their responsibility for the loss or damage; and

b) it shall be deemed that all such other parties have not limited or excluded their liability to the Client for the loss or damage in any way which may be prejudicial to the Consultant's liability under this clause.

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

a) £250,000 (Two Hundred and Fifty Thousand Pounds), or

b) The direct cost incurred by the Client in removing the contamination or pollution.

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

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

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

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

- 9.4** All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.
- 9.5** The Contractor shall be liable for and shall indemnify the Department against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Contract or otherwise through the default of the Contractor
- 9.6** The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Contractor shall upon request produce to the Department, its certificate of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

10 Termination

- 10.1** This Contract may be terminated by either party giving to the other party at least 3 months' notice in writing.
- 10.2** In the event of any breach of this Contract by either party, the other party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate this Contract with immediate effect by notice in writing.
- 10.3** In the event of a material breach of this Contract by either party, the other party may terminate this Contract with immediate effect by notice in writing.
- 10.4** This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:-
- 10.4.1** the Contractor passes a resolution that it be wound-up or that an application be made for an administration order or the Contractor applies to enter into a voluntary arrangement with its creditors; or
- 10.4.2** a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor's property, assets or any part thereof; or
- 10.4.3** the court orders that the Contractor be wound-up or a receiver of all or any part of the Contractor's assets be appointed; or
- 10.4.4** the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986.
- 10.4.5** there is a change in the legal or beneficial ownership of 50% or more of the Contractor's share capital issued at the date of this Contract or there is a change in the control of the Contractor, unless the Contractor has previously notified the Department in writing. For the purpose of this Sub-Clause 10.4.5 "control" means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power.

- 10.4.6 the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct
 - 10.4.7 the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;
 - 10.4.8 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/their obligations relating to the payment of Social Security contributions;
 - 10.4.9 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/their obligations relating to payment of taxes;
 - 10.4.10 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract.
- 10.5 Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

11 **Status of Contractor**

- 11.1 In carrying out its obligations under this Contract the Contractor agrees that it will be acting as principal and not as the agent of the Department.
- 11.2 The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Department.

12 **Confidentiality**

- 12.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
 - 12.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - 12.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 12.2 Clause 12 shall not apply to the extent that:
 - 12.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 13 (Freedom of Information);
 - 12.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 12.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 12.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

- 12.2.5** it is independently developed without access to the other party's Confidential Information.
- 12.3** The Contractor may only disclose the Department's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Project and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 12.4** The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Department's Confidential Information received otherwise than for the purposes of this Contract.
- 12.5** The Contractor shall ensure that their employees, servants or such professional advisors or consultants are aware of the Contractor's obligations under this Contract.]
- 12.6** Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:
- 12.6.1** on a confidential basis to any Central Government Body for any proper purpose of the Department or of the relevant Central Government Body;
- 12.6.2** to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 12.6.3** to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 12.6.4** on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 12.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 12.6.5** on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or
- 12.6.6** on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
- 12.7** The Department shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 12 is made aware of the Department's obligations of confidentiality.
- 12.8** Nothing in this clause 12 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 12.9** The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

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

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

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

13 **Freedom of Information**

13.1 The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its information disclosure obligations.

13.2 The Contractor shall and shall procure that its Sub-contractors shall:

13.2.1 transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

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

13.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

13.3 The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

13.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.

13.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:

13.5.1 in certain circumstances without consulting the Contractor; or

13.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 13.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

13.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

14 **Access and Information**

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

15 **Transfer of Responsibility on Expiry or Termination**

15.1 The Contractor shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.

15.2 Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the Schedule.

15.3 The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.

16 **Tax Indemnity**

16.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

16.2 Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

16.3 The Department may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.

16.4 A request under Clause 16.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.

16.5 The Department may terminate this contract if-

(a) in the case of a request mentioned in Clause 16.3 above if the Contractor:

(i) fails to provide information in response to the request within a reasonable time, or

(ii) provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;

- (b) in the case of a request mentioned in Clause 16.4 above, the Contractor fails to provide the specified information within the specified period, or
 - (c) it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Contractor is not complying with those Clauses.
- 16.6** The Department may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 16.7** The Contractor warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.
- 16.8** The Contractor will account to the appropriate authorities for any income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.
- 16.9** The Contractor shall indemnify Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim.
- 16.10** The Contractor authorises the Department to provide the HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not Department is obliged as a matter of law to comply with such request.

17 Data Protection Act

- 17.1** With respect to the parties' rights and obligations under this Contract, the parties agree that the Department is the Data Controller and that the Contractor is the Data Processor. For the purposes of this Clause 17, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing shall have the meaning prescribed under the DPA.
- 17.2** The Contractor shall:
 - 17.2.1** Process the Personal Data only in accordance with instructions from the Department (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Department to the Contractor during the period of the Contract);
 - 17.2.2** Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any Regulatory Body;
 - 17.2.3** Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or

unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 17.2.4 Take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 17.2.5 Obtain prior written consent from the Department in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
- 17.2.6 Ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 17;
- 17.2.7 Ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Department;
- 17.2.8 Notify the Department within five Working Days if it receives:
 - 17.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 17.2.8.2 a complaint or request relating to the Department's obligations under the Data Protection Legislation;
- 17.2.9 Provide the Department with full cooperation and assistance in relation to any complaint or request made, including by:
 - 17.2.9.1 providing the Department with full details of the complaint or request;
 - 17.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Department's instructions;
 - 17.2.9.3 providing the Department with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Department); and
 - 17.2.9.4 providing the Department with any information requested by the Department;
- 17.2.10 Permit the Department or the Department's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Department to enable the Department to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- 17.2.11 Provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Department); and
- 17.2.12 Not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Contractor (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:

- 17.2.12.1 the Contractor shall submit a request for change to the Department which shall be dealt with in accordance with any Change Control Procedure
- 17.2.12.2 the Contractor shall set out in its request for change details of the following:
- (a) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
 - (b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
 - (c) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (d) how the Contractor will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Department's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
- 17.2.12.3 in providing and evaluating the request for change, the parties shall ensure that they have regard to and comply with then-current Department, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and
- 17.2.12.4 the Contractor shall comply with such other instructions and shall carry out such other actions as the Department may notify in writing, including:
- (a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Contract or a separate data processing agreement between the parties; and
 - (b) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Authority on such terms as may be required by the Department, which the Contractor acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation)."

17.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Department to breach any of its applicable obligations under the Data Protection Legislation.

18 **Amendment and variation**

No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Contractor shall comply with

any formal procedures for amending or varying contracts which the Department may have in place from time to time.

19 Assignment and Sub-contracting

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

20 The Contract (Rights of Third Parties) Act 1999

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

21 Waiver

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

22 Notices

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

23 Dispute resolution

23.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.

23.2 Any dispute not capable of resolution by the parties in accordance with the terms of Clause 23 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

23.3 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

24 Discrimination

24.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.

24.2 The Contractor shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

25 **Law and Jurisdiction**

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

As witness the hands of the parties

Authorised to sign for and on
behalf of the Secretary of
State for Education

Signature

Name in CAPITALS

Position in Organisation

Address in full

Date

Authorised to sign for and on
behalf of Mott MacDonald

Signature

Name in CAPITALS

Position in Organisation

Address in full

Date

Schedule of work

The reporting throughout the contract will in the format below.

Strand Name
1. Provision of support for local Information, Advice and Support Services (IASSN) Strand
1. Legal training to ensure IAS Services are providing accurate information on SEND law to parents, carers, children, and young people
2. Additional training to ensure IAS Services have the knowledge and skills to fulfil their statutory requirements
3. Networking and other support for IAS to encourage collaborative working and information sharing
4. National IASS Data Collection & Monitoring of Standards
5. Support to local authorities on commissioning and re-procuring statutory IASS
Sub- Total (ex VAT)
2. Joint working with transitions Strand
1. Regional Events
2. Regional Flexible days bank
3. Flexible days bank for team around the region liaison, engagement with key health stakeholders on behalf of DfE and resource development not covered by AWGs.
4. Accelerated Working Groups (AWGs) and product development
5. Provide bespoke support to local areas struggling with multiagency delivery of the reforms.
6. Strand management
Sub-Total (ex Vat)
3. Preparing for Adulthood Strand
1. Regional liaison and support

2. Information and advice on PfA and Best Practice
3. Strand Management
Sub- Total (ex VAT)
4. Workforce Support Strand
1. Leadership
2. Workforce Development
3. SEND caseworker
Sub- Total (ex VAT)
5. SEND Adviser Service Strand
1. Recruiting and managing the expert SEND adviser service in consultation with the DfE.
2. Providing direct advice, challenge and support via the specialist SEND adviser team.
3. Linking in the SEND Adviser Service with the work of the SEND Regional Networks and other DBOT specialist support to ensure that good practice is shared and support, where possible, is targeted based on adviser feedback.
4. Developing and managing a case management system.
Sub- Total (ex VAT)
6. Regional Support Strand
1. Providing support and challenge to SEND regional network leads, ensuring a broadly consistent offer across all regions.
2. Providing a forum for cross regional interactions, sharing of approaches and collaborative discussion on national issues.
3. Providing flexible support to the SEND Regional Networks to meet identified needs and the further support the development of sustainable networks
4. Ensuring a seamless offer of regional support between the SEND regional leads and other strands of the contract, providing flexible support to meet gaps in the regions.

5. Join up with expertise in the voluntary, community and non-profit sectors and other DfE/DH delivery and strategic partners/contract holders.
6. Strand management
7. Supporting the development of a sustainable approach
Sub- Total (ex VAT)
7. SEND Disagreement Resolution Strand
1. Recruiting and managing the expert SEND adviser service in consultation with the DfE.
2. Develop a common set of standards and system of accreditation for SEND mediation
3. Develop guidance for disagreement resolution processes
Sub- Total (ex VAT)
8. Programme Management
1. Ensuring coordinated reporting and management information across all DBOT strands and when reporting to DfE
2. Ensuring a coordinated approach to support across all DBOT strands and linking with wider stakeholders.
3. Providing effective contract management for the DBOT consortium
Sub- Total (ex VAT)
Total (ex VAT)

The total contract value for **2017/18** is **£1,999,023.50** excluding VAT.

Schedule 2

1 Table

Task	Cost	Total	Invoice date ¹
Delivery of: <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: [REDACTED] • Joint working with transitions Strand: [REDACTED] • Preparing for Adulthood Strand: [REDACTED] • Workforce Support Strand: [REDACTED] • SEND Adviser Service Strand: [REDACTED] • Regional Support Strand: [REDACTED] • SEND Disagreement Resolution Strand: [REDACTED] • Programme Management: [REDACTED] Total monthly invoice (ex VAT): [REDACTED]	[REDACTED]	[REDACTED]	April 2017
Delivery of: <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: [REDACTED] • Joint working with transitions Strand: [REDACTED] • Preparing for Adulthood Strand: [REDACTED] • Workforce Support Strand: [REDACTED] • SEND Adviser Service Strand: [REDACTED] • Regional Support Strand: [REDACTED] • SEND Disagreement Resolution Strand: [REDACTED] • Programme Management: [REDACTED] Total monthly invoice (ex VAT): [REDACTED]	[REDACTED]	[REDACTED]	May 2017
Delivery of: <ul style="list-style-type: none"> • Provision of support for local 	[REDACTED]	[REDACTED]	June 2017

<p>Information, Advice and Support Services (IASSN) Strand: ██████████</p> <ul style="list-style-type: none"> • Joint working with transitions Strand: ██████████ • Preparing for Adulthood Strand: ██████████ • Workforce Support Strand: ██████████ • SEND Adviser Service Strand: ██████████ • Regional Support Strand: ██████████ • SEND Disagreement Resolution Strand: ██████████ • Programme Management: ██████████ <p>Total monthly invoice (ex VAT): ██████████</p>			
<p>Delivery of:</p> <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: ██████████ • Joint working with transitions Strand: ██████████ • Preparing for Adulthood Strand: ██████████ • Workforce Support Strand: ██████████ • SEND Adviser Service Strand: ██████████ • Regional Support Strand: ██████████ • SEND Disagreement Resolution Strand: ██████████ • Programme Management: ██████████ <p>Total monthly invoice (ex VAT): ██████████</p>	██████████	██████████	July 2017
<p>Delivery of:</p> <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: ██████████ • Joint working with transitions Strand: ██████████ • Preparing for Adulthood Strand: ██████████ • Workforce Support Strand: ██████████ 	██████████	██████████	August 2017

<ul style="list-style-type: none"> • SEND Adviser Service Strand: ██████████ • Regional Support Strand: ██████████ • SEND Disagreement Resolution Strand: ██████████ • Programme Management: ██████████ <p>Total monthly invoice (ex VAT): ██████████</p>			
<p>Delivery of:</p> <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: ██████████ • Joint working with transitions Strand: ██████████ • Preparing for Adulthood Strand: ██████████ • Workforce Support Strand: ██████████ • SEND Adviser Service Strand: ██████████ • Regional Support Strand: ██████████ • SEND Disagreement Resolution Strand: ██████████ • Programme Management: ██████████ <p>Total monthly invoice (ex VAT): ██████████</p>	██████████	██████████	September 2017
<p>Delivery of:</p> <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: ██████████ • Joint working with transitions Strand: ██████████ • Preparing for Adulthood Strand: ██████████ • Workforce Support Strand: ██████████ • SEND Adviser Service Strand: ██████████ • Regional Support Strand: ██████████ • SEND Disagreement Resolution Strand: ██████████ • Programme Management: ██████████ 	██████████	██████████	October 2017

Total monthly invoice (ex VAT): [REDACTED]			
Delivery of: <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: [REDACTED] • Joint working with transitions Strand: [REDACTED] • Preparing for Adulthood Strand: [REDACTED] • Workforce Support Strand: [REDACTED] • SEND Adviser Service Strand: [REDACTED] • Regional Support Strand: [REDACTED] • SEND Disagreement Resolution Strand: [REDACTED] • Programme Management: [REDACTED] Total monthly invoice (ex VAT): [REDACTED]	[REDACTED]	[REDACTED]	November 2017
Delivery of: <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: [REDACTED] • Joint working with transitions Strand: [REDACTED] • Preparing for Adulthood Strand: [REDACTED] • Workforce Support Strand: [REDACTED] • SEND Adviser Service Strand: [REDACTED] • Regional Support Strand: [REDACTED] • SEND Disagreement Resolution Strand: [REDACTED] • Programme Management: [REDACTED] Total monthly invoice (ex VAT): [REDACTED]	[REDACTED]	[REDACTED]	December 2017
Delivery of: <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: [REDACTED] • Joint working with transitions Strand: [REDACTED] 	[REDACTED]	[REDACTED]	January 2018

<ul style="list-style-type: none"> • Preparing for Adulthood Strand: ██████████ • Workforce Support Strand: ██████████ • SEND Adviser Service Strand: ██████████ • Regional Support Strand: ██████████ • SEND Disagreement Resolution Strand: ██████████ • Programme Management: ██████████ <p>Total monthly invoice (ex VAT): ██████████</p>			
<p>Delivery of:</p> <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: ██████████ • Joint working with transitions Strand: ██████████ • Preparing for Adulthood Strand: ██████████ • Workforce Support Strand: ██████████ • SEND Adviser Service Strand: ██████████ • Regional Support Strand: ██████████ • SEND Disagreement Resolution Strand: ██████████ • Programme Management: ██████████ <p>Total monthly invoice (ex VAT): ██████████</p>	██████████	██████████	February 2018
<p>Delivery of:</p> <ul style="list-style-type: none"> • Provision of support for local Information, Advice and Support Services (IASSN) Strand: ██████████ • Joint working with transitions Strand: ██████████ • Preparing for Adulthood Strand: ██████████ • Workforce Support Strand: ██████████ • SEND Adviser Service Strand: ██████████ • Regional Support Strand: ██████████ • SEND Disagreement Resolution 	██████████	██████████	March 2018

Strand: [REDACTED]			
• Programme Management: [REDACTED]			
Total monthly invoice (ex VAT): [REDACTED]			
Grand Total (excluding VAT)		£1,999,023.50	.

VAT will be payable at the prevailing rate

¹ Invoice to be issued at the end of the third week of each month

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

- 2 Funds allocated to a particular expenditure heading in the table at paragraph 1 ("the Table") are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Table may not be altered except with the prior written consent of the Department.
- 3 The Contractor shall maintain full and accurate accounts for the Service against the expenditure headings in the Table. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Contract. Input and output VAT shall be included as separate items in such accounts.
- 4 The Contractor shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time and shall furnish oral or written explanations of the account if required. The Department reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the Department's resources in the performance of this Contract.
- 5 Invoices shall be prepared by the Contractor monthly on the invoice dates specified in the Table¹ in arrears and shall be detailed against the expenditure headings set out in the Table. The Contractor or his or her nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Contractor on the Service in accordance with the Contract and that the invoice does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.
- 6 Invoices shall be sent, within 30 days of the end of the month to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool FY5 3TA, quoting the Contract reference number. The Department undertakes to pay correctly submitted invoices within 5 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department. Any correctly submitted invoices that are not paid within 30 days will be subject to the provisions of the Late Payment of Commercial Debt (Interest) Act 1998. A correct invoice is one that: is delivered in timing in accordance with the contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, supplier name, contact details and bank details; quotes the relevant purchase order/contract reference and has been

delivered to the nominated address.. If any problems arise, contact the Department's Contract Manager. The Department aims to reply to complaints within 10 working days. The Department shall not be responsible for any delay in payment caused by incomplete or illegible invoices.

- 7** The Contractor shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Contractor, would reasonably have been required for that purpose.
- 8** If this Contract is terminated by the Department due to the Contractor's insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Contractor before the date of termination.
- 9** On completion of the Service or on termination of this Contract, the Contractor shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service.
- 10** The Department shall not be obliged to pay the final invoice until the Contractor has carried out all the elements of the Service specified as in Schedule 1.
- 11** It shall be the responsibility of the Contractor to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.

End of Schedule 2

Schedule 3

1 TUPE

- 1.1 The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the award of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of the Contract.
- 1.2 During the period of six months preceding the expiry of the Contract or after the Department has given notice to terminate the Contract or the Contractor stops trading, and within 20 working days of being so requested by the Department, the Contractor shall fully and accurately disclose to the Department for the purposes of TUPE all information relating to its employees engaged in providing Services under the Contract, in particular, but not necessarily restricted to, the following:
 - 1.2.1 the total number of staff whose employment with the Contractor is liable to be terminated at the expiry of this Contract but for any operation of law; and
 - 1.2.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed staff do not have to be given); and
 - 1.2.3 full information about the other terms and conditions on which the affected staff are employed (including but not limited to their working arrangements), or about where that information can be found; and
 - 1.2.4 details of pensions entitlements, if any; and
 - 1.2.5 job titles of the members of staff affected and the qualifications required for each position.
- 1.3 The Contractor shall permit the Department to use the information for the purposes of TUPE and of re-tendering. The Contractor will co-operate with the re-tendering of the Contract by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.
- 1.4 The Contractor agrees to indemnify the Department fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 1.2.

- 1.5 The Contractor agrees to indemnify the Department from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party ("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- 1.6 In the event that the information provided by the Contractor in accordance with Clause 1.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Department of the inaccuracies and provide the amended information.
- 1.7 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

INTELLECTUAL PROPERTY

2. INTELLECTUAL PROPERTY

2.1 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**").

2.2 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.

2.3 Upon full payment of the fees due under the Contract the Contractor shall assign to the DFE or undertake 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. Notwithstanding any other term to the contrary in this Contract, the Contractor shall have no liability for any use of the assigned Intellectual Property Rights other than for the purpose for which it was originally intended. It is agreed that the DFE shall grant to the Contractor a non-exclusive, perpetual, royalty-free, worldwide and irrevocable licence to use, reproduce, modify, develop and maintain any such assigned Intellectual Property Rights.

- 2.4 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.
- 2.5 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.
- 2.6 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 12, 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.
- 2.7 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.
- 2.8 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:

- 2.8.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 2.8.2 take due and proper account of the interests and concerns of the DFE; and
 - 2.8.3 not settle or compromise any claim without the DFE's prior written consent (not to be unreasonably withheld or delayed).
- 2.9 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.
- 2.10 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.
- 2.11 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:
- 2.11.1 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
 - 2.11.2 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.
- 2.12 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. For the avoidance of doubt and notwithstanding any other term to the contrary in this Contract, nothing in this Contract shall affect the ownership of any Contractor IP.

- 2.14 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.
- 2.15 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:
- 2.15.1 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
- 2.15.2 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.
- 2.16 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:
- 2.16.1 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
- 2.16.2 would or might prejudice the right or title of the DFE to any of the DFE IP Materials.
- 2.17 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.
- 2.18 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:
- 2.18.1 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

2.18.2 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.

2.19 Notwithstanding any other term to the contrary in this Contract and whether the cause of action for any claim arises under or in connection with this Clause 12 in contract or in tort, in negligence or for breach of statutory duty, under indemnity or otherwise, in relation to any and all causes of action as aforesaid the total liability of the Contractor in the aggregate for all claims shall be £1,000,000 (one million pounds).