

CONTRACT: SPECIAL EDUCATIONAL NEEDS AND DISABILITY (SEND)
STRATEGIC PARTICIPATION PROGRAMME

This contract is made on day of 20

1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and

2 Contact, registered charity number 284912, of 209-211 City Road, London, EC1V 1JN, registered in England and Wales under company number 1633333 whose registered office is 209-211 City Road, London, EC1V 1JN (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.

Authorised to sign for and on behalf of

Contact

Signature:

Name:

Occupation: Director of Resources

Address: 209-211 City Road, London, EC1V 1JN

Date:

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

Signature:

Name:

Position:

Address Sanctuary Buildings, 20 Great Smith Street,
London, SW1P 3BT

Date:

Table of Contents

Contract Schedules

Schedule 1	Specification
Schedule 2	Terms and Conditions
Schedule 3	Financials
Schedule 4	KPIs, Service Levels, Service Credits and Performance Measures.
Schedule 5	Implementation Plan
Schedule 6	Change Control Procedure
Schedule 7	Key Personnel and Key Sub-Contractors
Schedule 8	Processing Data (Data Protection Act)
Schedule 9	Commercially Sensitive Information
Schedule 10	Contractor's Solution
Schedule 11	Data Handling and Systems Assurance (Security)

Schedule 1

The Specification

Contact, in partnership with the Council for Disabled Children, KIDS and The National Network of Parent Carer Forums, is pleased to present our proposal to support the strategic participation of children and young people with special educational needs and or disabilities (SEND), and parent carers.

All four organisations worked closely with the Government on the development and implementation of the SEND reforms. The Council for Disabled Children (CDC) has been the Department for Education's (DfE) Strategic Reform Partner for SEND; CDC, Contact and the NNPCF worked in co-production with the DfE on the drafting of the SEND Code of Practice 2014. KIDS has also worked extensively with the Government in support of the reforms, in particular regarding children and young people's participation.

Contact is a charity that was set up by parent carers, for parent carers and prides itself on being a parent carer led organisation. It has acted as the delivery partner of the DfE supporting the development of parent carer forums since 2008, as well as providing helpline and online services since 2002. Over this period, Contact has successfully managed a grant programme to 151 local parent carer forums, delivered a core offer of support to all parent carer forums, and provided targeted support to forums and local authority partners experiencing challenge or difficulty.

The National Network of Parent Carer Forums is the national conduit and combined strategic voice of parent carer forums working in co-production with Government, NHS England and the Department of Health and Social Care. All DfE funded parent carer forums are, by default, members of the NNPCF.

CDC has extensive experience of working with children and young people in a strategic context, including:

- Recruiting and supporting a group of young people to advise Government on the SEND reforms
- Developing a young people's version of the draft Code of Practice to enable wider engagement in the consultation process
- Co-producing with young people materials to explain the reforms to their peers and to support local authorities in engaging children and young people
- Recruiting the FLARE national young advisers.

KIDS worked with the SE7 Pathfinder to consult with young people and develop a Young People's Participation Framework and has since, under contract from the DfE, delivered support to local areas on the development and delivery of children and young people's participation.

We consider, therefore, that together Contact, CDC, KIDS and the NNPCF have a unique experience and track record in terms of understanding, and developing the strategic participation of children, young people, and parent carers. We are ideally placed to build on the progress made under existing contracts and further develop participation at national,

regional, and local levels, including applying lessons learned from supporting parent carer participation to the participation of children and young people. Delivering support to both parent carers and children and young people with SEND during a global pandemic has provided us with a valuable opportunity to adapt our approaches to ensure the voices of parent carers and young people continue to remain at the heart of decision-making when it has mattered most.

Contract requirements

The primary objective of this contract is to support the continued improvement of coproduction at national, local, and individual level, including in the context of the continuing pandemic and the national recovery. This will ensure the effective involvement of parents, carers and young people in the design and delivery of SEND services and provision, including the continued embedding of the voices of SEND stakeholders in national policy development, to support system-wide improvements.

We would require the Strategic Participation programme to respond to the long-term impact of Covid-19 (coronavirus) in the delivery of its business objectives and adapt its delivery in light of emerging priorities and recommendations identified through the SEND Review.

1. Provide support to Parent Carer Forums in all local areas to enable them to provide effective strategic input into local and national SEND policy and delivery.

This includes defining policy, implementing, and reviewing arrangements through: ensuring Parent Carer Forums can extend their reach into their local communities and enhance their membership, working in co-production with the NNPCF, provide support to the NNPCF to enable it to offer leadership to local Forums and so that it can, independently, influence Government policy.

Contact's core and enhanced support offers have evolved as we have supported the development of PCFs, including through the last year where we have worked even more closely than before with forums to understand their unique challenges in respect of the Covid-19 pandemic. In late 2020, we surveyed and met with PCFs regarding future support requirements. To enable them to continue to input at the highest levels locally and nationally, PCFs most value their Parent Carer Participation Advisors who provide ongoing support and guidance including assisting forums to work more effectively with their local strategic partners.

We provide resources, tools and learning to enable forums to reach out further into their communities including the proactive engagement of seldom found groups to increase their representation, develop their capacity, and ensure their overall sustainability.

The needs of PCFs changed drastically during 2020, and Contact accounted for that by offering virtual and online meetings, learning and support. We expect that in time, forums will revert to the more traditional ways of 'face to face' engagement, but some virtual contact will be maintained to provide a blended offer that meets forums' needs. Throughout Covid-19, forums, and particularly the NNPCF, have seen a huge spike in online/virtual strategic work with Ministers, Government representatives, DfE, DHSC, NHSE and other departments. The NNPCF acts as an effective conduit for local PCFs and regional networks to feed in their experiences and voice at the highest levels to influence legislation and national policy.

Their work has been increasingly recognised by national partners and their input has resulted in changes to Covid-19 response and policies over the year, for example ensuring that the

impact on families of children and young people with SEND was considered when temporary legislation was put in place. Contact and the NNPCF will continue to work closely together to ensure that structures, knowledge, and expertise are modelled that so local parent carer forums can harness to influence decision-making at the highest levels of Government.

We will continue with existing methods of feedback such as regional meetings, to ensure that intelligence is shared and that forums can tell us what they need to be sustained. We will also use regular digital feedback options and, hopefully in time, facilitate face to face opportunities too. We have built a strong partnership with the NNPCF, backed up with an agreed MOU. We are committed to continuing our partnership in which Contact will provide operational support whilst the NNPCF Steering Group will lead local and regional participation practice and continue to provide the independent voice of parent carers that can influence and help shape national policy and strategy.

Contact's core and enhanced offers of support and the resources we provide, are aimed at equipping forums with the tools to empower them to maintain, grow, and sustain the forum, continue to increase their wider and core memberships, and to develop positive local partnerships that enable them to improve services in their local area and influence national policy and legislation.

Our core offer includes support on governance issues via Community Matters Yorkshire, an Assistance Programme to all forums to support with mental health, resilience and to offer legal, financial, and family helplines, whistleblowing support, as well as formal counselling for their core members. Mental health has become even more paramount as Covid has put so many additional strains onto parent carers with already complex lives. We will continue our programme of webinars/virtual workshops and virtual learning to assist forums with their 'day to day' operation, in reaching out to increase their membership, and to enhance the skills of those joining their forum. In 2021-22, we have several options of courses to draw on depending on forums' priorities, including Leading your Forum, our newly developed Parent Representative training, and our DARE resilience workshop – all of which have been oversubscribed this year. Our comprehensive resource bank on the dedicated forum pages our website continues to be added to, to supplement our offer.

Our enhanced offer is used where the amount of support required by one area would reduce the capacity of our PCPAs from offering the core support to all forums. Typically, this will involve allocating dedicated resource from our pool of experienced freelance Associates to work directly with all stakeholders in the area to resolve issues or strengthen participation.

Recent work on the diversity of forums has demonstrated that forums require further support to understand and use demographic data on their local population to enable them to increase their current reach and membership, and to develop proactive approaches to make sure their PCF is representative of the area. We will use the learning from the seldom heard toolkit we have developed to enhance its effectiveness and rollout to forums; and assess what further resources forums would need to utilise this.

Contact's core offer to all forums:

- Supporting the work of the National Network of Parent Carer Forums and working in partnership with the NNPCF on national projects.
- A named parent carer participation adviser (PCPA) for each forum able to offer telephone and email advice and support, and face to face support if necessary.

Version: 10.4

Last Update: 15/12/20

- Support and advice to forums in relation to the grant process and completion of forms.
- Management of the grant process including grant application approval and grant monitoring approval.
- Management of the supplementary grant processes (subject to money being available).
- An annual event hosted by Contact and the NNPCF which is open to all parent carer forums (– this may be blended next year, and dependent upon Covid-19).
- At least eight webinars over the course of the year on the topics that forums tell us that they need most.
- Assistance Programme for all forums to access telephone and face to face counselling, financial and legal helplines, family care advice and signposting, wellbeing portal, support for managers (for forums with staff), guidance on HR issues, policies, and procedures, 'everyday matters' information sourcing, whistle-blowing support.
- Subscription for all forums to Community Matters, who provide technical advice, information, and support to help with governance and legal issues.
- Website and online resources. Resources, example policies and good practice examples for parent carer forums.
- Support and attendance at regional network or cluster meetings – these will continue to be virtual until the Covid-19 restrictions are relaxed.
- Regular news and updates to forums including good practice examples, consultations, follow-up information, changes to legislation, training, events etc.
- Information and resources to support forums' engagement with health partners locally, and routes to provide feedback on their experiences to NHS England and other national health bodies, via our Strategic Health Lead.
- Training - online workshops on forum leadership, parent rep course, or DARE resilience.
- Seldom Heard toolkit - the fine-tuning and rollout of a peer reviewed self-evaluation toolkit for parent carer forums to help forums to reach out further into their communities.
- Annual report on strengthening the parent carer participation movement.

2. Ensure that parent participation activity is promoted and developed in areas where Forums cease operating or are struggling to operate effectively.

This includes: ensuring that parental participation is maintained, or recovered, in the event that a Forum ceases to exist, or where Forums are struggling to maintain effective participation arrangements, with a clear and transparent process for doing so. Maintaining an effective 'early warning' system that allows Forums to reach out to them before issues become critical. Contact has an established and highly skilled pool of freelance Associates who can provide intensive, targeted support to either: get forums back on track with capacity,

governance, relationships etc. or, in situations where the forum has ceased operating, or it is inappropriate for the existing forum to continue, to wind up the forum and work in co-production with parent carers, local statutory partners and voluntary organisations to develop a model of participation that works for the local area and plan how to put this into action. If there is no organisation that can immediately apply for the grant, Contact (with agreement from the DfE) has devised a process for holding grant funding when there is no forum or third sector organisation able to receive it. This enables the continued and swifter development of participation in areas where otherwise, progress would stall, or be lost altogether.

Contact's current support for forums and our administration of the DfE Grant facilitates key touch points where we can identify early warning signs of forums' "ill-health" and what their emerging support needs are. These are:

- Regional meetings and virtual catch ups – forums struggling to attend or engage in virtual Regional activity is an early indicator of lack of capacity or understanding of the wider network and support.
- Failing to return direct phone or email contact from their named advisor; declining to meet with their PCPA.
- Intelligence passed to PCPA from SEND delivery partners such as DfE advisors or PfA and SEND Regional Coordinators.
- Intelligence from existing relationships with NNPCF SG members and other peer forums.
- Late application or monitoring submissions and or the content and quality of application and monitoring.
- Forum health check questions in second tranche application form which enable us to offer support sooner, before issues/challenges become entrenched.
- Declining numbers in core forum group (from monitoring form).
- Direct contact from local authority partners, or LA reluctance or refusal to sign the grant MOU.

PCPAs have trusting relationships with forum steering group members so that if any of the early indicators are flagged, they are in a good position to make contact, explore issues and offer an appropriately supportive approach.

Contact's enhanced offer of support to forums experiencing challenges:

- Intensive support through our associate pool or mediators when significant issues arise. Associates can support with a wide range of issues.
- Support to forums' strategic partners including the local authority and health agencies; and raising the profile of participation and co-production amongst these partners.

3. Maintain a national Young People's group, FLARE, and regional young people's engagement groups to provide input into national policy and make recommendations for future policy direction.

This includes: developing and supporting the group to further improve their impact.

By combining KIDS and CDC's knowledge of supporting meaningful participation with children and young people, we are confident of our learning and understanding, including of the challenges that lockdown has created in connecting meaningfully with young people in a virtual world. We will continue to develop and deliver the best approaches for participation and co-production, navigating around these challenges.

Our experience of delivering participation at a strategic level has provided us with a wealth of evidence that the participation of children and young people is effective. We know that participation opportunities are invaluable in supporting children and young people to develop skills, confidence and self-esteem, things that have not been easy to achieve through more traditional activities during the Covid-19 pandemic. CDC and KIDS continue to use their participation skills and experience to support FLARE and the Young People's Participation Teams (YPPT) groups to share their learning of online engagement, working with the wider sector to ensure a range of participation delivery is available to children and young people as we recover from the pandemic.

The FLARE young people's group will be supported by CDC to continue its development and we aim to use a mix of virtual and face to face activities (Covid-19 permitting) to enable the young people to feed into key Government decision making, influence the Covid recovery agenda, as well as identifying and raising their own views and areas of concern. The group will be supported to build on the strengths of existing members and incorporate new members to ensure its longevity and sustainability.

To strengthen the voice of CYP at the national strategic level, CDC and KIDS will collaborate to establish mechanisms for sharing the views of young people between the regional and national levels. FLARE/YPPT's regional development will support national policy goals identified by FLARE as priorities for the Department. Where there are existing YPPT groups in the regions, FLARE members will collaborate with them in their work plan which we will be the basis for developing sustainable regional links through this process.

KIDS will take their learning from this year's online approach to engaging local and regional participation groups and build on it to maintain existing groups and identify opportunities to develop new ones to ensure there are networks of young people for peer support and links to national influence.

4. Building on existing materials, deliver support to local areas to enable them to put in place effective arrangements for coproduction with, and gathering views from, children and young people.

This includes: raising awareness, among professionals and young people, about the importance of strategic participation by children and young people with SEND, through innovative and cost effective approaches delivering solutions and packages to support local areas to improve participation, and ensure that these are attractive, affordable, and effective.

KIDS will continue to raise awareness among professionals and young people at a local and subregional level. The development of additional young people's participation groups combined with new innovative approaches to ensure digital inclusion wherever possible will include:

- Liaising with regional leads to identify local authorities and others who would benefit from engagement.

- Through the DfE SEND Advisers pro-active contact with local authorities issued with CQC/Ofsted Written Statements of Action (WSoAs) – suggesting engagement opportunities.

Promoting engagement opportunities to organisations involved in developing co-production through relevant events (such as regional and national conferences).

KIDS will continue to provide solutions and packages of work to improve local participation through meaningful co-production. The offer will be needs led responding to specific needs identified within the local area, and may include a focus on:

- Developing co-production opportunities with the target cohort in the area: for example, young inspector processes.
- Working directly with young people and facilitators in the local area to develop coproduction and participation skills.
- Training front line staff in the local area to improve co-production with young people engaged with services.
- Continue to develop existing YPPT, on-boarding new members as required.
- Ensure representation and participation of these local groups at the National FLARE group exploring the use of communication technology.
- Further develop training and development resources for these groups in a way that will make them useful for others planning to create local young people's participation teams.
- The maintenance or development of up to 6 YPPT groups to provide regional strategic participation insight and the offer to local areas can be further developed through the engagement of ongoing support to local young people by established YPPT.

CDC will offer support to practitioners wanting to improve practice in strategic children and young people's participation to enable them to meet up for peer support and learning using blended approaches (depending on what is possible at the time), through supra-regional events, support workshops and targeted local support. Priority will be given to areas with WSoAs.

CDC will continue to co-develop with FLARE their highly valued information resources to support practitioners to respond to the challenges of developing strategic CYP's participation. Resources will include case studies and reflect learning from virtual engagement activity.

To date, CDC and KIDS have used social media effectively to raise awareness of young people's feelings and opinions and stimulate discussion around issues of importance to them. Social media enables young people to have a direct voice to a wide audience and supports both practitioners and children and young people themselves to better understand strategic participation. We will, therefore, co-produce social media content with children and young people which will:

- Amplify children and young people's voices on identified issues.
- Stimulate thought and discussion on these issues amongst professionals.

- Showcase best practice as perceived by children and young people.
- Encourage professionals to take positive action in their own work.
- Intersect with ongoing dialogue in the broader context.

Despite lockdown, there is still a clear appetite from young people to understand how participation works at a strategic level and now more than ever they want to be listened to as Covid recovery begins. They want to be part of the conversations and share their views on how the services and structures which impact on their lives need to change; they will also need to develop their participation and decision-making skills to give them the confidence to do this. We will therefore plan and deliver a fourth young people's conference, utilising blended digital and face to face methods, if required.

5. Improve synergy between parent participation and children and young people's participation.

This includes: Systematically gathering learning and identifying common themes and differences.

This is an area that we have identified can be enhanced over the next year. In the previous contract, data has been shared to help mapping of CYP's participation in local areas from parent carer forums' monitoring forms. A learning resource has been developed by KIDS in co-production with young people and parent carers that is still to be rolled out (Covid delayed during 2020-21).

Further co-production opportunities will be explored. We aim to collaborate in areas with difficulties or good practice to ensure a coordinated offer to test out how a combined approach to participation can have benefits.

In 2021-22 we plan to develop a consortium task group to investigate national opportunities and target setting for greater synergy between parent carers and CYP locally, regionally, and nationally.

We will also continue to attend and contribute at consortium partners' events to promote and advocate for both parent carer and children and young people's participation and the impact they each have.

6. Payment and administration of Forum grants for each local authority in England

To reflect the increased responsibilities of Forums, we are proposing to make up to £■■■■ of grant funding available to them for the period of this contract. This equates to up to £■■■■ per Forum to pay for their operational costs, including members' travel expenses, training, venue costs and administration. This will be paid to the contractor through a Section 14 grant for distribution. Forums will then submit grant claims in two tranches annually. The contractor must:

- develop and implement a plan for how they will administer this process using criteria developed with the DfE;
- support Forums in making grant claims minimising the administrative burden on these voluntary organisations, ensuring they understand the process;
- undertake due diligence of grant claims, including quality assurance, anti-fraud measures, monitoring and auditing;

- pay grant claims, where monitoring requirements are met; and return any underpayments back to the DfE as per an underpayments process agreed with the DfE.

Contact has administered forums' annual DfE grants successfully for 13 years. The processes developed over this time including grant forms, guidance, resources to help forums to manage their grants and spending effectively, a reliable online grant platform, fraud process and policy, risk matrices, levels of approval, and quality assurance to ensure consistency of approach means that we have the experience to develop a seamless and effective method of becoming the grant giver, paying the grant direct to parent carer forums. This will minimise any payment delays to forums receiving their grant payments and ensure an efficient and robust process.

For forums, the process will remain largely the same – the grant will be claimed in two tranches, the second, to be released only upon approval of the previous year's monitoring. There will be an opportunity to apply for a ring-fenced regional, and individual forum supplementary grant to enable regions, and forums with essential projects to access additional funding to enhance their work and impact, if there is funding available. Any remaining underspend following this process would be returned to the DfE.

As grant giver, Contact has devised robust processes to enable the swift and effective distribution of grants to forums to include due diligence, application and monitoring risk matrices, thresholds for level of approval and scrutiny to safeguard public funds, taking into account advisor intelligence and forums' overall progress. We will continue to provide access to the grant to enable participation in areas where the forum has folded or is not able to hold the grant themselves, and we intend to implement a quarterly oversight panel consisting of representatives from our consortium partners and the DfE to alleviate any conflicts of interest. The conditions of grant contract between Contact and forums will be enhanced to include greater safeguards and a clawback clause.

Contact provides resources to help forums to manage their grants as well as providing support to forums not used to completing the application and monitoring forms. We run an annual grants webinar to talk forums through how to complete each form and explaining any changes to the forms or process. This year we will also run a grants workshop and the grants team plans to offer 1:1 or small group support to forums struggling with the process to enhance their knowledge and give them the confidence to manage their grant spend, recording of spend, and form filling more effectively. All resources and events take full consideration of accessibility requirements.

We will continue to hold regular quality assurance meetings throughout the grant year to ensure consistency of approach in approvals across the team. Our finance team will monitor cashflow, forecasting, auditing, carry out spot checks, and provide monthly management accounts. We will provide the DfE with monthly stats on grant take up.

To do this in a timely manner which ensures that there are no payment delays that put forums and individuals at risk of contract breaches, or purchasing goods or services themselves, Contact will require grant funds in two tranches to match the forum application timelines, in April and July.

Contract requirements

Security of data and data protection

All four organisations have clear, effective existing arrangements for ensuring the security of personal and Departmental data and comply with data protection principles and general data protection regulations. All organisations have given consideration to 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.

All personal and departmental data will be collected, processed, stored and, where relevant, deleted in accordance with the organisations data protection; ICT acceptable use; and Confidentiality Policies, which will be compliant with the requirements of the contract.

Overall delivery and programme management arrangements

On signing a new contract agreement with the DfE, existing partnership arrangements and subcontracts between the members of the consortium will be renewed. Contact, NNPCF, CDC and KIDS have longstanding working relationships and experience of working together through contracts and grants. The organisational leads will meet monthly to monitor progress across the programme and co-ordinate reporting to DfE. We have agreed change control procedures, along with dispute resolution and escalation processes in the event of any disagreements within the partnership.

Where appropriate, weekly contract KIT update meetings can be scheduled between DfE and Contact to retain oversight of KPI delivery and to determine any necessary adjustments as the Covid-19 recovery requirements emerge, and when the outcomes of the SEND Review are known.

A monthly data dashboard report will be produced to track all KPI deliverables and to provide narrative progress updates. A KPI Budget tracker will be updated and submitted each month to evidence activity against planned funding. A full quarterly report will be collated and sent to the DfE within one month of the end of each quarter and quarterly contract review meetings including leads from all consortium partners will be scheduled and attended. A risk register will be maintained and reviewed in line with the quarterly reporting timetable, and any significant changes to potential risks will be raised quickly as part of our regular contract KIT meetings. The quarter 4 report will serve as final review of the overall annual programme delivery and an annual report on the achievements and outcomes for parent carer forums will be produced separately once all grant monitoring has been received and reviewed.

In accordance with the additional grant management aspect of this contract undertaken by Contact, monthly financial reporting relating to grant spend will be included in the monthly data dashboard and reviewed with DfE Contract leads at least monthly.

Schedule 2
Terms and Conditions

CONTENTS

CLAUSE	
1	DEFINITIONS AND INTERPRETATION
2	TERM
3	THE SERVICES
4	CONSORTIA
5	TRANSFER AND SUB-CONTRACTING
6	PERSONNEL
7	TUPE
8	CHARGES
9	TAX AND VAT
10	PREVENTION OF CORRUPTION
11	DISCRIMINATION
12	INTELLECTUAL PROPERTY
13	PROCESSING DATA, (DATA PROTECTION ACT)
14	DATA HANDLING AND SYSTEMS ASSURANCE (SECURITY)
15	PUBLICITY AND PROMOTION
16	CONFIDENTIALITY
17	FREEDOM OF INFORMATION
18	OFFICIAL SECRETS ACT AND FINANCE ACT
19	LIABILITY
20	WARRANTIES AND REPRESENTATIONS
21	FORCE MAJEURE
22	MONITORING AND REMEDIATION
23	STEP IN RIGHTS
24	TERMINATION
25	RETENDERING AND HANDOVER
26	EXIT MANAGEMENT
27	AUDIT
28	ENTIRE AGREEMENT
29	PARTNERSHIP
30	WAIVER
31	CHANGE CONTROL
32	COUNTERPARTS
33	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
34	CONFLICTS OF INTEREST
35	FURTHER ASSURANCE
36	NOTICES
37	DISPUTE RESOLUTION
38	GOVERNING LAW AND JURISDICTION

Version: 10.4

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 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 **1st 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.

“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 **31st 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 1st 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;
 - 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 comply with the Implementation Plan;
 - 3.3.8 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;
 - 3.3.9 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
 - 3.3.10 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
 - 3.3.11 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.

Include the following clauses 5.9 to 5.10 for any contract with a value over £5m per annum.

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 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;
 - 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;

Version: 10.4

Last Update: 15/12/20

- 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.
- 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 [REDACTED] 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.

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

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.

Version: 10.4

Last Update: 15/12/20

- 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.

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 claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the 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 property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.
- 19.3 The Contractor does not exclude or limit 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 and 19.3, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:
- 19.5.1 in respect of damage to property is limited to [REDACTED] in respect of any one incident or series of connected incidents; and
- 19.5.2 in respect of any claim not covered by clause 19.5.1, 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 policies 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

Version: 10.4

Last Update: 15/12/20

- 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;

Version: 10.4

Last Update: 15/12/20

- 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;

Version: 10.4

Last Update: 15/12/20

- 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 unavailability 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.

Version: 10.4

Last Update: 15/12/20

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**").

The Exit Plan shall set out, as a minimum:

Version: 10.4

Last Update: 15/12/20

- (a) how the Exit Information is obtained;
- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
- (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
- (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (e) the management structure to be employed during the Termination Assistance Period;
- (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (g) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- (h) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
- (i) a timetable and critical issues for providing the Termination Services;
- (j) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
- (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- (l) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9 (Staff Transfer); and
- (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

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:

Version: 10.4

Last Update: 15/12/20

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 table below).
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.

Table 1: Payment Schedule

Consortium Partner	Ref	April	May	June	July	Aug	Sept
Contact/NNPCF	KPI 1						
	KPI 2						
	KPI 3						
	KPI 4						
	KPI 5						
	KPI 6a						
	KPI 6b						
	KPI 6c						
	KPI 6d						
	KPI 7						
	KPI 8						
	KPI 9						
	KPI 10						
	KPI 11a						
	Sub Total						
	VAT						
Total							

Consortiu m Partner	Ref	Oct	Nov	Dec	Jan	Feb	Mar
Contact/NNPCF	KPI 1						
	KPI 2						
	KPI 3						
	KPI 4						
	KPI 5						
	KPI 6a						
	KPI 6b						
	KPI 6c						
	KPI 6d						
	KPI 7						
	KPI 8						
	KPI 9						
	KPI 10						
	KPI 11a						
	Sub Total						
VAT							
Total							

Total (ex. VAT)	VAT *	Grand Total

Contact			
Sub Total	VAT	Total	

Consortium Partner	Ref	April	May	June	July	Aug	Sept
NNPCF	KPI 11b						
	KPI 11c						
	Sub Total						
	VAT						
	Total						

Consortium Partner	Ref	Oct	Nov	Dec	Jan	Feb	Mar
NNPCF	KPI 11b						
	KPI 11c						
	Sub Total						
	VAT						
	Total						

Total (ex. VAT)	VAT *	Grand Total

NNPCF	Sub Total	VAT	Total

Consortium Partner	Ref	April	May	June	July	Aug	Sept
CDC	KPI 12						
	KPI 13						
	KPI 14						
	KPI 15						
	KPI 16						
	KPI 17						
	KPI 18						
	KPI 19						
	KPI 20						
	KPI 21						
	Sub Total						
	VAT						
	Total						

Consortium Partner	Ref	Oct	Nov	Dec	Jan	Feb	Mar
CDC	KPI 12						
	KPI 13						
	KPI 14						
	KPI 15						
	KPI 16						

	Sub Total	
	VAT	
	Total	

Total (ex. VAT)	VAT *	Grand Total

KIDS			
Sub Total	VAT	Total	

Consortium Total		April	May	June	July	Aug	Sept
	Sub Total						
	VAT						
	Total						

Oct	Nov	Dec	Jan	Feb	Mar	Total

Consortium Total		Sub Total	VAT	Total
				£1,924,916.17

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)
 - 4.1 Service period is defined as a calendar month
- 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 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:
 - 9.1 5% for one KPI failed
 - 9.2 10% for two KPIs failed
 - 9.3 to a maximum of 15% for three or more KPIs failed

Version: 10.4

Last Update: 15/12/20

10 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.

11 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.

The table below sets out the Key Performance Indicators (KPIs) to be achieved by the Supplier.

Should the Supplier fail to achieve any of the KPIs set out in Table 1 consistently over a 3 month period, and an Action Plan to address the issues will be produced by the Supplier for approval by the Department.

Should the Supplier continue to fail to achieve the KPIs, the Department reserves the right to issue a default notice

Table 1 KPIs

The table below sets out the Key Performance Indicators (KPIs) to be achieved by the Supplier.

Should the Supplier fail to achieve any of the KPIs set out in Table 1 consistently over a 3 month period, and an Action Plan to address the issues will be produced by the Supplier for approval by the Department.

Should the Supplier continue to fail to achieve the KPIs, the Department reserves the right to issue a default notice

Objective	Ref	Key Performance Indicator (inc targets /evidence of success)	Activities
<p>Parent Carer Forums able to engage with core support offer at both one-to-one level and at group levels. PCFs are supported to be credible organisations (backed up with robust governance arrangements), with access to grant funding, support to strengthen structures and teams and extend reach and capacity. All PCFs have access to regional networking meetings and face to face access to Contact Parent Carer Participation Advisors (PCPA) and NNPCF representatives. Support for PCFs in areas with a WSoA.</p>	<p>KPI 1</p>	<p>A minimum of 4,300 hours support (collectively) across the year. Support monitored as the number of hours of support recorded against individual PCFs and regions by issue. Parent membership remains above at least 80,000 nationally. Number of PCFs that register with and contact Community Matters and qualitative feedback from PCFs on their support. Termly regional network or cluster meetings take place and are supported by PCPA and NNPCF Steering Group. Offer all areas in receipt of a WSoA that identifies parent carer participation as a concern support and challenge.</p>	<ul style="list-style-type: none"> - All PCFs able to access core offer of support, delivered through team of PCPAs and experienced Associates. Focus staff input on proactive capacity-building activities and increasing reach to support PCFs' sustainability and troubleshooting. - National rollout and continued development of 'seldom heard' toolkit. - Support from PCPAs to access resources, training and good practice. - Access to expert advice for governance queries from Community Matters; maintain level of PCFs registered. - PCPA support with termly Regional Network/Cluster meeting for networking, updates, information, good practice, challenges, feedback on key developments, regional responses to consultations etc.

<p>PCFs have access to news, information, training and resources to support their knowledge and development.</p> <p>Dedicated area on Contact's website.</p> <p>Contact, KIDS, CDC and NNPCF work in partnership to ensure information, news and learning for PCFs and children and young people are shared and publicised both internally and externally to wider audiences. PCFs have access to examples of PCF achievements and good practice to help support and develop their practice and share publicly to enhance the external image of PCFs. PCFs are able to learn from one another.</p>	<p>KPI 2</p>	<p>All Ofsted/CQC inspection webinars (when resumed) are promoted to PCFs and wider parent networks via e-mail and social media; news for PCFs pages are kept up-to-date; key web pages are reviewed quarterly; webinars and presentations are uploaded within 2 weeks of broadcast.</p> <p>Ongoing feedback is sought on resources for PCFs and website to ensure that they reflect PCFs' needs. Promotion of news, activity and events that relate to parent carer participation, NNPCF and children and young people's participation to PCFs and wider Contact parent network.</p> <p>Good practice examples shared via social media, Contact and NNPCF websites and in termly newsletters.</p>	<p>Dedicated suite of digital resources for PCFs designed to support their function, development and sustainability, co-produced with PCFs and NNPCF wherever possible.</p> <p>Contact's wider reach used to promote SEND news and involvement opportunities.</p> <p>Joint work with NNPCF Communications Lead to raise profile of parent carer and children and young people's participation.</p> <p>Identification, collation and production of good practice examples written up and shared at least termly.</p>
--	--------------	--	---

<p>PCFs and NNPCF have appropriate strategic support to facilitate engagement in health and social care agendas locally and nationally.</p> <p>Key strategic health practitioners/professionals understand the role of PCFs and importance of parent carer participation in local areas.</p> <p>Regular updates on health-related matters for PCFs via meetings and newsletters.</p> <p>Clinical Commissioning Groups have access to information, advice and support to further their engagement with parent carer PCFs locally.</p>	<p>KPI 3</p>	<p>Contact's Strategic Health Lead (SHL) to attend at least three Regional Network/Cluster meetings across the year and provide targeted support for PCFs on an 'as required' basis to help navigate their local health arrangements.</p> <p>PCFs provide positive feedback after targeted support from SHL.</p> <p>Representation by Contact staff at key SEND-related NHS England events and meetings to promote participation agenda.</p>	<p>SHL to work with PCPAs to support PCFs to engage with local health partners. Support individual PCFs to engage with local health partners effectively.</p> <p>Represent Contact and work with the NNPCF and wider partners to champion parent carer participation in a range of fora, networks and in national health and social care agendas (including national-level programme boards convened by NHS England for SEND activities, as appropriate and a range of other professional networks).</p> <p>Disseminate PCF friendly policy information and analysis for PCFs, identifying strategic engagement opportunities.</p> <p>Identify regional and local priorities for health engagement across England.</p> <p>Essential health updates in quarterly PCF joint newsletters.</p> <p>Formulation of health interest group to send targeted information to.</p>
<p>PCF members and leaders can access training and resources that have been developed specifically to meet their needs.</p>	<p>KPI 4</p>	<p>A minimum of eight webinars/online workshops and supporting resources for PCFs delivered live and made available online for later viewing – to include grants webinar in Q1.</p> <p>Monthly and quarterly reporting on the number of unique views per webinar/workshop attendees.</p>	<p>Webinars produced and co-delivered with PCFs and other stakeholders, ensuring they are timely and relevant to PCF development.</p> <p>Face-to-face or virtual training and support will be delivered across the year according to PCF availability, and priority requirements.</p>

		<p>Training during Q3 on relevant topics i.e. mental health/resilience/parent rep training, Leading your PCF, or updated PCF handbook.</p> <p>Feedback evidences that PCF members/leaders have benefited from individual learning and peer network building to support them in their roles as PCF members, strengthening their skills and confidence to develop their PCF. At least 80% of attendees at training sessions and webinars report finding them useful.</p>	
<p>One virtual or face to face national conference, providing all PCFs with the opportunity to learn about key subjects, network, share best practice, engage in national agendas, be updated about key developments; engaging external stakeholders to ensure positive outcomes from working in strategic participation, including children and young people's participation.</p>	<p>KPI5</p>	<p>PCFs notified of date and venue Q2 (if face-to-face is possible).</p> <p>National conference co-produced with NNPCF, DfE and NHSE delivered in Q3 if restrictions allow (or in Q4 or virtual if not).</p> <p>At least half of PCFs attend and/or are engaged in the national conference.</p> <p>At least 80% of PCF members who attend the national conference report that it was useful.</p>	<p>Conference planning group formed in Q1. Venue identified and date set (if possible).</p> <p>CPG meets regularly to shape and organise conference and agenda. Potential sponsors and exhibitors approached (if face-to-face).</p> <p>Conference takes place in Q3 (if possible).</p>

<p>Overall responsibility for administering, paying, and quality assuring DfE grants programme to PCFs (up to 152 local areas across England); process applications in two tranches and scrutinise monitoring in line with grant criteria. Apply appropriate due diligence, fraud, and risk checks at the application stage. Implement robust and efficient arrangements for grant conditions, payments and tracking, and sufficient cash flow, forecasting, management accounts, auditing and spot checks.</p> <p>PCFs from all local areas have sufficient information, access and opportunity to apply and have access to appropriate levels of support in managing the grant.</p>	<p>KPI6</p>	<p>Revised application and monitoring forms are shared with PCFs by 1st April 2021.</p> <p>PCFs have access to resources and support from PCPAs and grants team to complete and submit their application and monitoring forms.</p> <p>All approvable first tranche application forms are processed for payment by end of September 2021.</p> <p>All approvable second tranche application forms are processed for payment by end of December 2021.</p> <p>All local areas have the potential to benefit from the grant, regardless of local circumstances.</p> <p>All approvable monitoring forms are signed off, and PCFs notified by the end of December 2021.</p> <p>PCFs are supported to utilise as much grant funding as possible to develop parent carer participation locally, which may include a ringfenced regional grant.</p>	<p>Learning and feedback from PCFs, DfE and auditors from 2020/21 is used to improve the 2021/22 grant forms including processes to ensure completeness of information and improved fraud process and documentation. Online grant forms, supporting documentation and guidance uploaded to Contact's website for easy access. Clear DfE agreed processes are in place for payment of approvable grants by Contact, up to 450 transactions per year including in-year transfers. PCPAs and Grants team work to support PCFs to submit approvable applications. Ensure a fair and transparent process to ensure the maximum use of the grant funding available for PCF development. In exceptional circumstances, Contact may draw upon grant monies not applied for to enable struggling areas to access grant funding to develop participation, and to provide enhanced support to develop areas' capacity to hold the grant in the future. (Contact will alert DfE and provide context/rationale). Ensure proportionate levels of scrutiny, spot checks and sign off as agreed with the DfE and taking into account DfE fraud policy and risk matrix.</p> <p>Provide support and guidance to PCFs via the grants team and PCPAs.</p> <p>Resources on financial management made available to PCFs.</p> <p>Annual grants webinar held explaining the full grants process and any changes to PCFs.</p> <p>Virtual grant monitoring workshop made available to PCFs.</p>
---	-------------	--	---

<p>Parent carer participation is sustainable and effective in all local areas. A proactive system is in place to identify challenges and support requirements of PCFs and provide intensive support when required.</p> <p>Contact, key delivery partners and national partners to develop and promote national standards for co-production.</p> <p>Collaboration between Contact, consortium partners, DfE and delivery partners to support and challenge areas where co-production is not happening.</p> <p>Support, counselling and supervision is available to core PCF members from up to 152 PCFs via Employee (PCF) Assistance Programme provision.</p>	<p>KPI 7</p>	<p>Struggling PCFs are supported to overcome challenges and resume participation activity. New PCFs are set up where PCFs have folded.</p> <p>Strategic partners collaborate to embed participation, with particular focus on areas with a WSoA where necessary.</p> <p>Attendance at strategic SEND and health events and meetings by Contact.</p> <p>Steady number of PCF members continue to register and utilise CiC's Assistance Programme. PCFs are supported emotionally, report being more resilient, and have access to telephone advice and support, counselling and specialist legal and financial/employment advice.</p>	<p>Manage expectations of PCFs' partners around what is expected of PCFs and what they can achieve, i.e. NDTi leadership programme; Area SEND inspections, SEND Regional Co-ordinators and Targeted Delivery Support. Enhanced support, or Associates offer targeted, intensive intervention where challenges require input beyond Contact's core support offer.</p> <p>Where PCFs have folded, Contact will work with parents and local partners to establish a new model of participation.</p> <p>Quarterly report appendix data on PCFs requiring enhanced support shared with DfE Adviser team.</p> <p>Contribute to the DfE's intelligence about local authority performance as required. In exceptional cases, hold or utilise an area's grant as an interim measure and use to enable participation to re-start, continue; momentum not to be lost; and issues to be resolved.</p> <p>Mid-year PCF health check on second tranche grant application.</p> <p>Regular contact with named PCPA; intelligence gathered at meetings, events and Regional Network meetings.</p> <p>Collaborative approach with key partners i.e. DfE SEND Advisers, LA leads, SEND Regional Leads, health, third sector agencies, grant hosts, delivery partners – to support local areas, including those with a WSoA.</p> <p>Strategic Health Lead identifies and offer support and resources to PCFs struggling to engage with health.</p> <p>PCFs' core groups able to access Employee Assistance Programme support – telephone and counselling support, specialist legal, HR, financial and whistleblowing support to support their resilience and mental health.</p>
---	--------------	--	---

Overall programme management, operational support and reporting is collected, collated and presented.	KPI 8	Quarterly contract meetings, monthly dashboard data and consortium meetings, and KPI trackers of Strategic Participation consortium.	Monthly, quarterly and annual reporting is presented to DfE.
Increased growth and understanding of parent carer and children and young people's participation through shared learning, expertise and opportunities.	KPI 9	<p>Synergy of parent carer and children and young people's participation. Sharing opportunities that parent carers and children and young people can benefit from, sharing data, and advocating for both parent carer and children and young people's involvement in service developments in local areas, regionally and nationally.</p> <p>Task group to investigate national opportunities and target setting for greater synergy between parent carers and children and young people locally, regionally and nationally.</p> <p>Continued attendance and contributions at consortium partners' national events (either virtual or in person) to promote both parent carer and children and young people's participation and the impact they each have.</p>	<p>Monthly consortium dashboard meetings.</p> <p>Quarterly consortium/contract meetings.</p> <p>Monthly, quarterly and annual reporting presented to DfE.</p> <p>Sharing of children and young people's data from grant monitoring forms to aid KIDS and CDC's mapping of children and young people's participation activity and leaders.</p> <p>Creation of a synergies action plan to inform future contract re-tender.</p> <p>Event evaluations.</p>
Contact management support	KPI 10	All invoicing and financial governance is carried out. Data protection (GDPR) measures and HR and IT management is in place.	Invoices raised and paid monthly. IT Data and software protection kept up to date. HR policies and procedures maintained and implemented. Staff accommodation and equipment in place. Insurance cover in place.

<p>Programme support is provided for NNPCF steering group and all their activities. Steering Group members can concentrate on leading strategic representation of PCFs; Contact meets their administrative needs. The NNPCF has effective means of capturing evidence of the activity and impact of their work, which is collated to support contract reporting requirements and specific requests for information.</p>	<p>KPI 11a</p>	<p>Booking any travel, accommodation and meeting rooms. Supporting recording of online activity and budgeting. Collating articles and working with Contact and NNPCF colleagues to keep PCFs informed of news, information and consultations. Regular liaison and support with team members including Head of PCP and Strategic Health Lead. All NNPCF steering group members and national reps are supported to use FAME (NNPCF's database) to capture their activity.</p>	<p>Booking all travel, accommodation and meetings. Supporting the recording of activity and budget. Collating news articles and working with Contact and NNPCF colleagues to keep PCFs informed of news, information and consultations that affect them. Other members of the team will provide regular liaison and support, including Head of Parent Carer Participation and the Strategic Health Lead. All NNPCF Steering Group Members and National representatives are supported to use the NNPCF Database system (FAME) to capture their activity and representation roles.</p>
<p>NNPCF Steering Group are supported to come together regularly and assume responsibility for individual portfolios (e.g. on areas of consultations, participation and communications).</p> <p>Termly Steering Group meetings are held.</p> <p>NNPCF steering group members are able to work in partnership with government partners to ensure that the voice of parent carers influences government policy.</p>	<p>KPI 11b</p>	<p>An annual target of 600 days delivered by NNPCF Steering Group members, Management Team and National Representatives.</p>	<p>Steering group meetings are held at least termly, and strategic partners invited to attend as appropriate. Attendance at Regional SEND lead activity and SEND partner activities and events. Collaboration with national-level programme boards convened by NHS England for SEND activities, as appropriate. Parent Carer representation on national government groups and fora to influence policy. Leadership of the NNPCF as a membership organisation, identifying priorities, providing data and reporting for contract monitoring.</p> <p>National Representatives are offered development and resources to equip them to represent the views of the wider NNPCF membership at national and regional strategic groups and fora. Data on the skill and expertise</p>

<p>A pool of national representatives undertaking representational activities in a range of agendas directed and facilitated by the NNPCF to ensure parents' voices are represented at national events, and meetings. The NNPCF Steering group are able to increase their reach and sustainability and succession plan.</p>			<p>of national reps is captured, maintained and used to ensure appropriately skilled and informed representatives are allocated to requests for strategic representation.</p>
<p>One national conference that gives all PCFs the opportunity to meet to network, share best practice, engage in national agendas, be updated about key developments; external stakeholders engaged to ensure positive outcomes from working in participation, including children and young people's participation.</p>	<p>KPI 11c</p>	<p>PCFs notified of date and venue Q2. National conference co-produced with NNPCF, DfE and NHSE delivered in Q3 if restrictions allow (or in Q4 or virtual if not). At least half of PCFs attend and/or are engaged in the national conference. At least 80% of PCF members who attend the national conference report that it was useful.</p>	<p>Conference planning group formed in Q1. Venue identified and date set. CPG meets regularly to shape and organise conference and agenda. Potential sponsors and exhibitors approached. Conference takes place in Q3 if restrictions allow (or in Q4 or virtual if not).</p>

<p>Using data from the previous national survey, the participation audit toolkit, joint area inspections, and existing CDC and KIDS networks, work with local area teams to understand the range and depth of participation activity in local areas and how the voice of children and young people supports quality SEND provision.</p>	<p>KPI 12</p>	<p>Work with regional co-ordinators and local areas to identify a named SEND children and young people's participation lead in each local authority. This may include same-role counterparts in education, health and social care, or one individual with overall responsibility.</p> <p>Data on the range and depth of participation activity in local areas collected from 80% of local authority areas across the year.</p> <p>Continue to map strategic SEND children and young people's participation activity in local areas. This includes gathering information from consortium partners and other DfE contracts.</p> <p>Continue to update mapping information with statutory information, i.e. WSoA, Local Offer and noted participation information, and analyse and evaluate this information.</p> <p>Develop and host an interactive participation map available to all contributors</p>	<p>Participation leads identified – building a communications network to share learning events, gather information and identify responsibility within a local area</p> <p>Up-to-date SEND children and young people's participation activity that creates a whole picture of successes, challenges, and areas in need of intervention</p> <p>A tool that supports SEND children and young people's participation practitioners to link with each other and develop networks of good practice</p>
--	-------------------	---	--

<p>Provide expert subject capacity through events to support and deepen understanding of how strategic participation is central to implementation of the 2014 reforms and ongoing SEND reforms following the SEND review.</p>	<p>KPI 13</p>	<p>Deliver three supra-regional conferences on a range of topics that support local areas to develop their SEND children and young people’s knowledge and help draw links from across education, health and social care. Events reach a range of strategic decision makers to frontline practitioners.</p> <p>Overall participation satisfaction rating in the upper quartile of a 1-5 scale.</p> <p>Local areas struggling most with SEND children and young people’s participation development and delivery access support to improve. Priority given to those areas with WSoA. Number of draw down days still to be agreed.</p> <p>Support to participation practitioners and managers to discuss structural issues around participation, sharing knowledge, resources and skills.</p>	<p>Design and deliver three supra-regional events over contract period (in person if restrictions allow, otherwise virtually). Provide short summary output to capture and share intelligence. Number of registrations (70) and number of attendees (60) per event.</p> <p>Support areas to identify ways to work jointly with neighbouring areas.</p> <p>Format and design of bespoke drawn down delivery done in partnership with local areas based on local priorities. Maintain record in monthly reporting on which areas receive support. Activity will focus on peer moderated solution building and action planning.</p> <p>A monthly virtual Shared Support coffee morning open to all. Number of attendees to be recorded and a short bullet point summary to be shared.</p>
<p>Develop targeted resources for professionals who support strategic participation to meet identified needs for advice and information, including highlighting good practice.</p>	<p>KPI 14</p>	<p>Materials and resources respond to needs and challenges identified from regional events, previous evaluation, and local training workshops and evidence.</p> <p>Key resources are developed in co-production with the national young people’s group and other children and young people</p>	<p>A series of case studies published that reflect the common discussion points raised by practitioners.</p> <p>Factsheets support and signpost practitioners to up-to-date information.</p> <p>Feedback on the resources is shared and incorporated into developing further materials.</p>

<p>Organise and manage one national young people's conference, to bring together groups of young people from the Making Participation Work project and beyond to empower their understanding of good participation.</p>	<p>KPI 15</p>	<p>Conference will be delivered online.</p> <p>Engage at least 60 young people. Engage at least eight existing local and national young people's groups.</p> <p>Engage young people's groups who can evidence good practice or impact of their work.</p> <p>Key elements co-produced by national group.</p> <p>Build on content delivered at previous national young people's conference to further strategic participation and understanding. Participation satisfaction is rated in the upper quartile of a 1-5 rating scale.</p>	<p>Interactive programme of activities that allows young people to find out about what good participation is and how they can get involved in strategic decision-making.</p> <p>Focus on fun, informal learning and empowering young people.</p> <p>Agenda co-produced with national young people's group and regional groups. Good practice workshops delivered by children and young people within the sector, reflecting the issues raised by participation groups during the previous year.</p> <p>Young people's groups with evidence of good practice to share their learning, including hard to reach groups.</p> <p>Post conference – evaluation forms analysed and feedback shared with programme team and DfE.</p> <p>Feedback and materials, where relevant, shared with participants and links made between participation groups that may benefit from working together. All invoices and expenses settled.</p>
--	-------------------	---	---

<p>Maintain and support a national group (FLARE) of up to 15 disabled young people with representation from each region. We will focus on continuing to strengthen the interface with the national and regional young people's groups to ensure that national and local issues are influenced by both groups.</p>	<p>KPI 16</p>	<p>At least 75% of young people attend each meeting. Skills development progress mapped for each young person·</p> <p>Established mechanism between regional and national young people's groups·</p> <p>Numbers of young people recruited to maintain group quorum.</p> <p>Create wider opportunities for children and young people with SEND who are seldom heard to input into national agenda.</p> <p>Feedback to DfE on findings and decisions after each meeting· Engagement of DfE officials at young people's meetings·</p>	<p>Deliver six FLARE meetings per year.</p> <p>Targeted recruitment refresh, when necessary, to increase number and diversity of young people on the national FLARE group.</p> <p>Using intelligence from channels described above forward plan a schedule of activity that allows young people's voice to proactively influence priority policy and implementation issues, whilst leaving room for FLARE to be reactive to new and emerging themes or areas of work. This should include an opportunity for FLARE to contribute to the SEND Review consultation.</p> <p>Time at each meeting to develop young people's skills, providing each young person with a personalised record of their progress and achievements.</p> <p>Recruit up to three external groups to increase the representative views of children and young people with SEND.</p>
<p>Increase the representative voice of disabled young people on the national group, including those under 14, and less-heard groups.</p>	<p>KPI 17</p>	<p>Evidence base exists from a wider demographic of young people. Deliver up to 3 mini-consultation style offers that support wider engagement.</p> <p>Topics to be agreed with DfE – should focus on current policy issues that DfE are developing and in particular on matters arising from the SEND Review.</p>	<p>Create inclusive session plans that support young people from less heard backgrounds to engage with national policy through facilitated discussion.</p> <p>Develop a clear process for partner groups to contribute to policy and implementation discussions.</p>

			<p>Through promotion of the FLARE schedule, encourage existing groups of young people to share their experiences through blogs and vlogs.</p> <p>Target existing groups of 'less-heard' children and young people to engage.</p>
<p>Develop a national SEND Participation stakeholder group to create a unified voice for SEND children and young people's participation in England. This includes identifying existing priority themes and understanding how to use existing resources to support children and young people's participation</p>	<p>KPI 18</p>	<p>The stakeholder group develops consensus on how local work feeds into regional structures.</p> <p>A directory of regional participation professionals is developed to support the mapping of participation at local levels.</p> <p>Feedback mechanisms are agreed between the stakeholder group and regional networks.</p> <p>The stakeholder group will work with existing DfE contracts, i.e. Targeted Delivery Support, to create consistent messaging and delivery of SEND children and young people's participation across the sector.</p>	<p>Work with Targeted Delivery Support and IASP programmes, SEND Advisors and Co-ordinators to identify key individuals to sit on the stakeholder group.</p> <p>Ensure there is even representation of professionals across education, health and social care who are pushing forward strategic participation at local and regional levels.</p> <p>Work with stakeholder group members to agree communication structures for each of the regions, and that these structures are shared effectively with local areas.</p> <p>Promote successful children and young people's co-production models and principles, evidencing how successful co-production has led to strategic participation development.</p>
<p>Ensure information about young people's participation reaches professionals, projects and statutory organisations supporting children and young people's participation.</p>	<p>KPI 19</p>	<p>Development of content on CDC website to showcase participation resources and findings.</p> <p>Consistent messaging of strategic engagement within joint working arrangements.</p> <p>180 bookings for national events</p>	<p>Build new web content promoting the contract activity, including interactive content referenced in KPI 12. This should include: young people and practitioner blogs and/or vlogs; resources; promotional information for events; and training.</p>

		Increased numbers of new members signed to key CDC networks.	Use the MOH online forum to share good practice and foster conversations that develop strategic participation. Map of participation delivery will support us to link groups within regions and send targeted mailings.
Develop a thematic termly summary on children and young people's experiences of the SEND system and the covid pandemic, drawing on the lived experience of FLARE and KIDS Young People's Participation Teams (YPPT) to highlight evidence, practice and outcomes around children and young people's participation.	KPI 20	DfE, statutory organisations, stakeholders and key partners are informed of Making Participation Work activity. These organisations and individuals receive important information framed by the thoughts, views and lived experiences of children and young people with SEND.	Develop process for gathering the evidence from young people nationally, regionally and locally during Q1. Establish timetable for development and dissemination. Work with DfE partners and young people to jointly agree themes or topics for discussion, in particular linked to the findings of the SEND Review and recovery from the covid-19 pandemic.
Provide reporting and input to support programme report and contract meeting.	KPI 21	Strand reporting provided in the agreed format. Input to contract meetings including attendance where required. Advisory group members at national and regional levels given opportunity to feed into agendas and attending meetings where applicable.	Programme development days Agree strand reporting format with Programme Manager and DfE Deliver monthly report as per agreed schedule. Provide input to contract meetings and attend where required.

Support established young people's participation groups. Support effective arrangements for co-production across England	KPI 22	Continue to support KIDS groups in the South, Midlands and Hull regions and external groups from Rutland and Lincolnshire.	Each YPPT meets at least once every eight weeks. Membership of at least six young people from target cohort. Virtual meeting technology is utilised by each group for each meeting. Should a group become unsustainable, an action plan to rebuild in that area is to be created and actioned over a six-month period. A gathering of representatives from each group to be held, to inform elements of delivery and consider future plans. Support the positive mental health of the engaged young people, through holding additional meetings and delivering an awareness raising programme for staff members.
Grow young people's participation to support effective arrangements for co-production across England.	KPI 23	Re-engage and support groups from East Riding, North Tyneside and North West, as covid restrictions ease. Develop two more YPPT in additional regions, engaging at least one group from outside KIDS. Establish first meeting Membership of at least six young people from target cohort.	Participants engage in development activities to enable their informed participation in the teams. Virtual meeting technology is utilised by each group during every meeting. Identify new YPPT to be hosted and facilitated by an organisation external to Making Participation Work consortium group. Support the positive mental health of the engaged young people, through holding additional meetings and delivering an awareness raising programme for staff members.
Effective evaluation of young people's experiences, skills development and learning to support and influence local approaches to participation.	KPI 24	Baseline measures and review process coproduced and delivered by established YPPT.	Consult on the Participation Standards Checklist – Participation Standards Checklist is reviewed and informed by a range of young people's SEND participation groups

Continue to facilitate groups participation in, and understanding of, participation and engagement opportunities	KPI 25	Co-produce resources for all YPPT in the developing network.	Facilitate consultations on matters relating to SEND (including in response to requests for information from the DfE), ensuring that the engaged young people have sufficient information about the focus of consultations. This should include facilitating participation in the SEND Review. Develop a resource to enable participation in groups that are not currently participation focused.
Raise awareness in local areas about the importance of participation through innovative and cost-effective approaches.	KPI 26	Organise and deliver ten training and coaching deliveries (“Development Deliveries”) each contract year as either LA/CCG workshops or support sessions, co-produced / delivered with young people.	Development Deliveries continue to include return coaching opportunities to follow on from initial workshops: Evaluation of LA experience and impact of project work both post workshop and throughout the year through KIDS evaluation processes: YP to plan and, where possible, co-deliver training; Local areas to be encouraged to enable local young people to work with others in presentation and facilitation at the training / coaching event. Peer support to be made available by YPPT.
Raise awareness of the importance of participation amongst SEND young people’s groups, to ensure that young people in these groups have meaningful opportunities to contribute to the design of SEND policies and services.	KPI 27	Enable co-production of gatherings of young people’s participation groups from different areas, to facilitate shared learning and ongoing partnership	In co-production with participants from engaged participation groups, develop and deliver two gatherings of participation group representatives.

Improve synergy between parent participation and children and young people's participation.	KPI 28	<p>Establish a group of PCFs, YPPT and professionals to facilitate target setting for improving synergies</p> <p>Create four portable versions of the developed resource to circulate amongst PCFs and participation groups to aid collaborative relationships.</p>	<p>Utilise Consortium member groups to establish key themes for potential targets.</p> <p>Work with PCFs and participation groups to coproduce suitable targets and ways of working across networks to improve synergies.</p>
---	--------	---	---

Service Level	Measure	Compliance
Reporting and Meetings	Monthly reporting: submit a monthly programme report by the third Business Day of the month, including any exception events within this report.	100% - DFE monitoring
	Contractor meetings – monthly	
	Development and operations meetings – as required	
Administration/Communication	In delivering the Services offer a responsive and supportive service to participants and their facilitators.	
	Respond to 100% of queries and correspondence within 3 Business Days of receipt.	
Finance	Ensure that invoices are submitted to DFE within 10 Business Days of the end of the relevant charging period/completion of the activity	
Commercial Management	Ensure that Change Control Notes are signed by both Parties prior to any additional work being undertaken (DFE or Contractor to ensure paperwork is issued in a timely fashion when change required).	
Complaints	Ensure that all administrative Personnel are aware of and abide by relevant complaints procedures.	
	Main management contact to report all complaints orally and in writing to DFE within 3 Business Days.	
Records and questionnaires	Ensure that all records are maintained and kept up to date throughout the Term. Records must be updated within 5 Business Days of a request being made or an event taking place (subject to system availability).	
	Support the DFE to ensure appropriate questionnaires are completed throughout the Term.	
Delivery	Supply appropriate equipment to support the delivery of the Services at any face to face events.	100%- Questionnaire records
	Suitability of venue: events take place in venues and facilities which are relevant to the day.	

Service Level	Measure	Compliance
	Training shall take place in rooms which are suitable for the size of groups and set up in the style appropriate to the event	100%-Event questionnaires
Workshop Events	ICT should be adequate and meet the minimum specification of the course.	
	Refreshments must be provided and where overnight accommodation is required the facilities must comply with the venue specification.	
Evaluation	Contribute to the evaluation of the effects of its delivery by reviewing Service User satisfaction, learning outcomes, improvements in schools/school systems, and the commissioning of impact studies.	

Schedule 5
Implementation Plan

Not applicable

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	
For the Contractor:	For the DFE:
Signature.....	Signature.....
Full Name.....	Full Name.....
Title.....	Title.....
Date.....	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
[REDACTED]	[REDACTED]	[REDACTED]

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
KIDS	7-9 Elliott's Place London N1 8HX Reg Charity No: 275936	Supporting the Local Strategic participation of Children and Young People	15%	Consortium delivery partner
Council for Disabl Children	23 Mentmore Terrace, London, E8 3PN Registered charity No. 258825	Supporting the National Strategic participation of Children and Young People	15%	Consortium delivery partner
National Network of Parent Carer Forums	c/o 209-211 City Road, LONDON, EC1V 1JN C.I.C Company number 12362344	Strategic input of PCFs at national and government level	10%	Consortium delivery partner

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	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.
Subject matter of the processing	Processing of data relating to the application and monitoring processes of the DfE Parent Carer Forum grant, which Contact distributes on behalf of the DfE. Processing is necessary to ensure effective due diligence, application and monitoring of the grant and sufficient accountability for public funds.
Duration of the processing	The processing will be carried out for the duration of the contract period (1 April 2021 to 31 March 2022). All grant application and monitoring data will be retained securely for a period of 7 years from the expiry of this contract, until 31 st March 2029.

<p>Nature and purposes of the processing</p>	<ul style="list-style-type: none"> • Data is collected lawfully to enable Contact to process grant claims from Parent Carer Forums. This will enable Contact to complete any necessary due diligence checks. • Contact will collect monitoring data from Parent Carer Forums to ensure that this grant is accounted for appropriately and that public money has been spent in line with the intended purpose. • The purpose of this data collection is to enable Contact to process grant claims from Parent Carer Forums, distribute funding when the relevant conditions have been met and ensure that the funding is adequately monitored and that any fraudulent use of the grant is identified. For the purpose of this project, the processing is necessary to exercise a function of a Ministerial department and for the exercise of a function of a public nature that is in the public interest • Data will be collected via online application form (using Formsite). This uses high-grade SHA-256 RSA encryption for secure (https) connections over TL the same level of security used by banks and other financial institutions. The AES-256 encryption algorithm is used to encrypt data at rest. Formsite utilises AWS servers with the appropriate Standard Contractual Clauses (SCCs) in place. AWS meets multiple ISO, SOC, and other standards including compliance certifications and attestations from third-party, independent auditors. Formsite is PCI 3.2 compliant. • Data will be stored on Contact's secure VPN server. Contact's outsourced IT provider is Smartdesc. Smartdesc is listed on the GCloud framework, supplier no. 711622 - Smartdesc – Digital Marketplace. Smartdesc holds Cyber Essentials itself, and Contact are also an IASME approved CE Certification Body, as evidenced by the listing here: Certification Bodies - lasme. Smartdesc will not hold access to Departmental data. • Contact may sometimes need to make personal data available to other organisations. These might include contracted partners (who Contact has employed to process Parent Carer Forum data on its behalf) and/or other organisations (with whom Contact needs to share Parent Carer Forum data for specific purposes) including other government departments. • Contact will seek consent to share anonymous information relating to certain monitoring questions with the National Network of Parent Carer Forums (NNPCF). • Information from relevant questions will be shared with KIDS and Council for Disabled Children as contracted consortium partners, to aid their mapping of children and young people's forums in England; this does not include personal data. • Contact will seek consent to share anonymous data with the
--	--

	<p>NNPCF on relevant sections of the monitoring form; this does not include personal data.</p> <ul style="list-style-type: none"> • Personal data from the grant monitoring return may be shared with fraud prevention agencies (the Police or Action Fraud) if requested, and fraud is suspected. Contact may need to share personal data with other funders of Parent Carer Forums (for example, local authorities) if fraud is investigated. This is for a public interest and to enable the protection of public money. • Contact may share information from grant application or monitoring forms if they assign a Contact associate to provide support to a Parent Carer Forum.
<p>Type of Personal Data</p>	<p>Names of applicants and signatories</p> <p>Business address of applicant</p> <p>Personal address for expense/remuneration claims</p> <p>Telephone number of applicant/personal phone number on claims</p> <p>Business emails address / personal email addresses on claims or for some signatories</p> <p>Forum bank account number (or grant holding organisation's bank account number)</p> <p>Personal bank account details for expense/remuneration claims</p> <p>Name of contact available in summer holidays for grant queries</p> <p>Signature of applicants</p> <p>Signature of grant holders (if applicable)</p>
<p>Categories of Data Subject</p>	<p>Paid staff</p> <p>Self-employed or temporary staff</p> <p>Volunteers, including committee or steering group members and parent representatives.</p> <p>Parents attending events or meetings (expense and remuneration claims)</p> <p>Name, business address, phone number and job titles of local authority MOU provider</p> <p>Supplier details, including business address and bank details.</p>

<p>Plan for return and destruction of the data</p> <p>once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Data will be retained digitally for 7 years after the end of the contract. This is to safeguard against fraud or misappropriation of funds. Contact will retain financial data, including proofs of expenditure and invoices, which may include personal data from expense and remuneration claim forms, and supplier details and bank accounts.</p>
--	---

Schedule 9

Commercially Sensitive Information

Not required

Schedule 10

The Contractor's Solution

Not required

Schedule 11

Data Handling and Systems Assurance (Security)

Definitions

DFE SECURITY STANDARDS

12. Departmental Security Standards for Business Services and ICT Contracts

<p>“BPSS” “Baseline Personnel Security Standard”</p>	<p>means the Government’s HMG Baseline Personal Security Standard . Further information can be found at: https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</p>
<p>“CCSC” “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. See website: https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</p>
<p>“CCP” “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: https://www.ncsc.gov.uk/information/about-certified-professional-scheme</p>
<p>“CPA” “Commercial Product Assurance” [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: https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</p>
<p>“Cyber Essentials” “Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme. There are a number of certification bodies that can be approached for further advice on the scheme; the</p>

	<p>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>
<p>“Digital Marketplace / G-Cloud”</p>	<p>means the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.</p>

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.

<p>“NCSC”</p>	<p>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</p>
<p>“OFFICIAL” “OFFICIAL-SENSITIVE”</p>	<p>the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP).</p> <p>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.</p>
<p>“RBAC” “Role Based Access Control”</p>	<p>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.</p>
<p>“Storage Area Network” “SAN”</p>	<p>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.</p>
<p>“Secure Sanitisation”</p>	<p>means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.</p> <p>NCSC Guidance can be found at: https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</p> <p>The disposal of physical documents and hardcopy materials advice can be found at: https://www.cpni.gov.uk/secure-destruction</p>
<p>“Security and Information Risk Advisor” “CCP SIRA” “SIRA”</p>	<p>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</p>
<p>“Senior Information Risk Owner”</p>	<p>means the Senior Information Risk Owner (SIRO)</p>

<p>“SIRO”</p>	<p>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.</p>
<p>“SPF” “HMG Security Policy Framework”</p>	<p>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</p>

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/caf/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

Version: 10.4

Last Update: 15/12/20