

## **Contract for the provision of Statistical Advice Services**

**Contract Reference CQC PSO 202**

**July 2019**

# Contents

1	Interpretation .....	2
2	Priority of documents.....	6
3	Supply of Services.....	6
4	Term.....	7
5	Charges, Payment and Recovery of Sums Due.....	7
6	Premises and equipment.....	8
7	Staff and Key Personnel.....	9
8	Assignment and sub-contracting .....	11
9	Intellectual Property Rights .....	11
10	Governance and Records .....	12
11	Confidentiality, Transparency and Publicity .....	13
12	Freedom of Information.....	14
13	Protection of Personal Data .....	15
13A	Security.....	15
14	Liability and Insurance .....	16
15	Force Majeure.....	17
16	Termination .....	17
17	Compliance .....	18
18	Prevention of Fraud, Corruption and Bribery.....	19
19	Dispute Resolution.....	20
20	General .....	20
21	Notices .....	22
22	Governing Law and Jurisdiction .....	23
23	TUPE .....	23
	<b>SCHEDULE 1 – INVITATION TO TENDER AND SPECIFICATION .....</b>	<b>25</b>

<b>SCHEDULE 2 – CHARGES</b> .....	27
<b>SCHEDULE 3 – TENDER RESPONSE</b> .....	28
<b>SCHEDULE 4 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS</b> .....	32
<b>SCHEDULE 5 – SECURITY REQUIREMENTS AND PLAN</b> .....	33
<b>SCHEDULE 6 – CHANGE CONTROL</b> .....	41
<b>SCHEDULE 7 – THIRD PARTY SOFTWARE</b> .....	43
<b>SCHEDULE 8 – EXIT MANAGEMENT STRATEGY</b> .....	45

**THIS CONTRACT is dated 15<sup>th</sup> of July 2019**

## **PARTIES**

- (1) **CARE QUALITY COMMISSION** of 151 Buckingham Palace Road, London, SW1W 9SZ ("**Authority**")  
and
- (2) **University of Newcastle upon Tyne of King's Gate, Newcastle Upon Tyne, NE1 7RU** ("**Contractor**")  
(Together the "**Parties**")

## **Background**

1. The Authority is the independent health and social care regulator in England that monitors, inspects and regulates health and social care services to ensure they meet fundamental standards of quality and safety. It ensures health and social care services provide people with safe, effective, compassionate, high-quality care and we encourage care services to improve.
2. In order to deliver Statistical Advice Services
3. The Contractor has been appointed by the Authority to provide the Services.
4. Therefore the Parties have agreed to enter into this Contract for the provision of the services defined in the Specifications.

# 1 Interpretation

## 1.1 In these terms and conditions:

- “Approval”** means the written consent of the Authority;
- “Authority”** means the Care Quality Commission;
- “Authority Data”** means:
- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or
  - (b) any Personal Data for which the Authority is the Data Controller;
- “Anti-Slavery and Human Trafficking Laws”** means all applicable anti-slavery and human trafficking laws, statutes, regulations, policies and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
- “Breach of Security”** means any incident that result in unauthorised access of data, applications, services, networks and/or devices by bypassing their underlying security mechanisms;
- “Central Government Body”** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- (a) Government Department;
  - (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
  - (c) Non-Ministerial Department; or
  - (d) Executive Agency;
- “Charges”** means the charges for the Services as specified in the Schedule 2;
- “Change Control Notice (“CCN”)** means a change control notice in the form set out in Schedule 6;

“Contract”	means the contract consisting of these terms and conditions, any attached Schedules, the invitation to tender including Specification, the Tender Response and Award Letter between the Authority the Contractor;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Contractor”	means the person named as Contractor who was awarded this contract;
“Data Controller, Data Processor, Data Subject, Personal Data, Personal Data Breach and Data Protection Officer”	shall each have the same meaning given in the GDPR;
“Data Protection Legislation”	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to the processing of Personal Data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor 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;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“DPA”	means the Data Protection Act 2018 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
“Expiry Date”	means the date for expiry of the Contract as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“GDPR”	means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> ;

“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Specification or Contract otherwise notified as such by the Authority to the Contractor in writing;
“Law”	means any law, statute, 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 of any Regulatory Body with which the Contractor is bound to comply;
“Loss”	means any losses, costs, charges, expenses, interest, fees (including legal fees), payments, demands, liabilities, claims, proceedings, actions, penalties, charges, fines, damages, destruction, adverse judgments, orders or other sanctions and the term “Losses” shall be construed accordingly;
“LED”	means Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> )
“Party”	means the Contractor or the Authority (as appropriate) and “Parties” shall mean both of them;
“Premises”	means the location where the Services are to be supplied, as set out in the Specification;
“Processing”	has the meaning given to it in the Data Protection Legislation but, for the purposes of the Contract, it shall include both manual and automatic processing and “Process” and “Processed” shall be interpreted accordingly;
“Processor Personnel”	means all directors, officers, 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”	means appropriate technical and organisational measures which 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 outlined in Schedule 5 (Security Requirements and Plan);
“Purchase Order Number”	means the Authority’s unique number relating to the supply of the Services by the Contractor to the Authority in accordance with the terms of the Contract;
“Request for	has the meaning set out in the FOIA or the Environmental Information

<b>Information"</b>	Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
<b>"Schedule"</b>	means a schedule attached to, and forming part of, the Contract;
<b>"Services"</b>	means the services to be supplied by the Contractor to the Authority under the Contract;
<b>"Specification"</b>	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter and appended hereto in Schedule 1;
<b>"Staff"</b>	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor's obligations under the Contract;
<b>"Staff Vetting Procedures"</b>	means vetting procedures that accord with good industry practice or, where requested by the Authority;
<b>"Sub-processor"</b>	means any third Party appointed to process Personal Data on behalf of the Processor related to this Contract;
<b>"Contractor Code of Conduct"</b>	means the HM Government Contractor Code of Conduct dated September 2017;
<b>"Term"</b>	means the period from the start date of the Contract set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Contract;
<b>"Third Party Software"</b>	means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 7;
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
<b>"Variation"</b>	means a variation to the Specification, the Charges or any of the terms and conditions of the Contract;
<b>"Working Day"</b>	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Contract;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

## **2 Priority of documents**

- 2.1 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
  - a) these terms and conditions
  - b) the Schedules
  - c) any other document referred to in these terms and conditions

## **3 Supply of Services**

- 3.1 In consideration of the Authority's agreement to pay the Charges, the Contractor shall supply the Services to the Authority for the Term subject to and in accordance with the terms and conditions of the Contract.
- 3.2 In supplying the Services, the Contractor shall:
  - 3.2.1 co-operate with the Authority in all matters relating to the Services and comply with all the Authority's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled, experienced and possess the required qualifications to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and

- 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Authority may by written notice to the Contractor at any time request a Variation to the scope of the Services. If the Contractor agrees to any Variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Authority and the Contractor.
- 3.4 Any Variation will not take effect unless recorded in a Change Control Notice in the form set out in Schedule 6 and approved in writing by the Authority.

## **4 Term**

- 4.1 The Contract shall take effect on **01 July 2019** and shall expire on the Expiry Date of **30 June 2021** unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Authority may extend the Contract for a period of up to 24 months by giving not less than 10 Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.

## **5 Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Award Letter appended hereto in Schedule 2 and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Authority, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 5.2 The Contractor shall invoice the Authority as specified in the Contract. Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3 In consideration of the supply of the Services by the Contractor, the Authority shall pay the Contractor the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number. The Authority may, without prejudice to any other rights and remedies under the Contract, withhold or reduce payments in the event of unsatisfactory performance.
- 5.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Authority shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract for a failure to

pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.

- 5.6 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 If any sum of money is recoverable from or payable by the Contractor under the Contract (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Contractor under the Contract or under any other agreement or contract with the Authority. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.
- 5.8 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- 5.8.1 Provisions having the same effect as clauses 5.2 to 5.6 of the Contract and
- 5.8.2 Provisions requiring the counterparty to that subcontract to include in any sub-contract which it awards provisions having the same effect as clauses 5.2 to 5.6 of this Contract.
- 5.8.3 In this clause 5.8 'sub-contract' means a contract between two or more Contractors, at any stage of remoteness from the Authority 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 this Contract.

## **6 Premises and equipment**

- 6.1 If necessary, the Authority shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Authority's premises by the Contractor or the Staff shall be at the Contractor's risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Authority's premises, on completion of the Services or termination or expiry of the Contract (whichever is the earlier) the Contractor shall vacate the Authority's premises, remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Authority's premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Authority's premises or any objects contained on the Authority's premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Authority may, during normal business hours and on

reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.

- 6.4 The Authority shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Authority's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Authority's security requirements.
- 6.5 Where all or any of the Services are supplied from the Contractor's premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Authority in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Authority for the purposes of the Contract shall remain the property of the Authority and shall be used by the Contractor and the Staff only for the purpose of carrying out the Contract. Such equipment shall be returned promptly to the Authority on expiry or termination of the Contract.
- 6.7 The Contractor shall reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Authority shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Authority is notified otherwise in writing within 5 Working Days.
- 6.8 Any Premises/land made available from time to time to the Contractor by the Authority 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 Premises/land as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 6.9 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- 6.10 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- 6.11 All the Contractor's equipment shall remain at the sole risk and responsibility of the Contractor, except that the Authority shall be liable for loss of or damage to any of the Contractor's property located on Authority's Premises which is due to the negligent act or omission of the Authority.

## **7 Staff and Key Personnel**

- 7.1 If the Authority reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Contract, it may, by giving written notice to the Contractor:

- 7.1.1 refuse admission to the relevant person(s) to the Authority's premises;
- 7.1.2 direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
- 7.1.3 require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Authority to the person removed is surrendered,

and the Contractor shall comply with any such notice.

7.2 The Contractor shall:

- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - 7.2.2 if requested, provide the Authority with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Authority's premises in connection with the Contract;
  - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Authority; and
  - 7.2.4 shall at all times comply with the Contractor Code of Conduct (<https://www.gov.uk/government/publications/Contractor-code-of-conduct>).
  - 7.2.5 ensure that it does not engage in any act or omission that would contravene Anti-Slavery and Human Trafficking Laws.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Authority (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 7.5 At the Authority's written request, the Contractor shall provide a list of names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 7.6 The Contractor's Staff, engaged within the boundaries of the Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 7.7 The Authority may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Criminal Records Bureau check as per the Staff Vetting Procedures.

## **8 Assignment and sub-contracting**

- 8.1 The Contractor shall not without the written consent of the Authority assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Contract or any part of the Contract. The Authority may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 If the Contractor enters into a Sub-Contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 8.3 If the Authority has consented to the placing of Sub-Contracts, the Contractor shall:
- (a) impose obligations on its Sub-Contractor on the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms; and
  - (b) provide a copy at no charge to the Authority, of any Sub-Contract, on receipt of a request for such by the Authority.
- 8.4 The Authority may assign, novate, or otherwise dispose of its rights and obligations under the Contract without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Contract.

## **9 Intellectual Property Rights**

- 9.1 All intellectual property rights in any materials provided by the Authority to the Contractor for the purposes of this Contract shall remain the property of the Authority but the Authority hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Contractor to perform its obligations under the Contract.
- 9.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Authority. If, and to the extent, that any intellectual property rights in such materials vest in the Contractor by operation of law, the Contractor hereby assigns to the Authority by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Contractor hereby grants the Authority:

- 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Contract and any intellectual property rights arising as a result of the provision of the Services; and
- 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
- a) any intellectual property rights vested in or licensed to the Contractor on the date of the Contract; and
  - b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Services,
- including any modifications to or derivative versions of any such intellectual property rights, which the Authority reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided.
- 9.4 The Contractor shall indemnify, and keep indemnified, the Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor its Staff, agents or sub-contractors.
- 9.5 The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Services and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

## **10 Governance and Records**

- 10.1 The Contractor shall:
- 10.1.1 attend progress meetings with the Authority at the frequency and times specified by the Authority and shall ensure that its representatives are suitably qualified to attend such meetings; and
  - 10.1.2 submit progress reports to the Authority at the times and in the format specified by the Authority.
- 10.2 The Contractor shall keep and maintain until 6 years after the end of the Contract, 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 payments made by the

Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be reasonably requested by the Authority in connection with the Contract.

## **11 Confidentiality, Transparency and Publicity**

**11.1** Subject to clause 11.2, each Party shall:

**11.1.1** treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

**11.1.2** not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract.

**11.2** Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

**11.2.1** where disclosure is required by applicable law or by a court of competent jurisdiction;

**11.2.2** to its auditors or for the purposes of regulatory requirements;

**11.2.3** on a confidential basis, to its professional advisers;

**11.2.4** to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

**11.2.5** where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Contract provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Contractor's confidentiality obligations under the Contract; and

**11.2.6** where the receiving Party is the Authority:

a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;

b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Authority transfers or proposes to transfer all or any part of its business;

c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 11.

- 11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information and the Contractor hereby gives its consent for the Authority to publish this Contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Contract agreed from time to time. The Authority may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.4 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Contract or any part of the Contract in any way, except with the prior written consent of the Authority.

## **12 Freedom of Information**

- 12.1 Each Party acknowledges that the other Party are subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and each Party shall where reasonable assist and co-operate with the other Party (at their own expense) to enable the other Party to comply with these information disclosure obligations.
- 12.2 Where a Party receives a request for information in relation to information which it is holding on behalf of the other Party in relation to this Agreement, it shall (and shall procure that its sub-contractors shall):
- 12.2.1 transfer the request for information to the relevant Party as soon as practicable after receipt and in any event within 2 Working Days of receiving a request for information;
  - 12.2.2 provide the relevant Party with a copy of all information in its possession or power in the form that the Party requires within 5 Working Days (or such longer period as the Party may specify) of the Party requesting that information; and
  - 12.2.3 provide all the necessary assistance as reasonably requested by the relevant Party to enable the Party to respond to a request for information within the time for compliance as set in the FOIA;
- 12.3 Where an Party receives a request for information which relates to the Agreement, it shall inform the other Party of the request for information as soon as practicable after receipt and in any event at least 2 Working Days before disclosure and shall use all reasonable endeavours to consult with the other Party prior to disclosure and shall consider all representations made by the other Party in relation to the decision whether or not to disclose the information requested.

12.4 The Parties shall be responsible for determining in their absolute discretion whether any information:

12.4.1 is exempt from disclosure under the FOIA and/ or the Environmental Information Regulations 2004;

12.4.2 is to be disclosed in response to a request for information.

12.5 Each Party acknowledges that the other Party may be obliged under the FOIA to disclose information:

12.5.1 without consulting with the other Authority where it has not been practicable to achieve such consultation; or

12.5.2 following consultation with the other Authority and having taken their views into account.

### **13 Protection of Personal Data**

13.1 Both Parties will comply with all applicable requirements of the Data Protection Laws. The Parties acknowledge that, in accordance with Schedule 4, no Personal Data will be processed in connection with this Contract.

### **13A Security**

13A.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.

13A.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with Schedule 5 (Security Requirements and Plan).

13A.3 The Contractor shall comply, and shall procure compliance of its Staff, with Schedule 5 (Security Requirements and Plan).

13A.4 The Authority shall notify the Contractor of any changes or proposed changes to Schedule 5 (Security Requirements and Plan). Any changes shall be agreed in accordance with the procedure in clause 20.3.

13A.5 Until and/or unless a change to the Charges is agreed by the Authority, the Contractor shall continue to perform the Services in accordance with its existing obligations.

13A.6 The Contractor shall be liable for, and shall indemnify the Authority against all Losses suffered or incurred by the Authority and/or any third party arising from and/or in connection with any Breach of Security or attempted Breach of Security (to the extent that such Losses were not caused by any act or omission by the Authority).

## **14 Liability and Insurance**

14.1 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

14.2 Subject always to clauses 14.3, 14.4 and 14.5:

14.2.1 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Contract, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.4, in no event shall the Contractor be liable to the Authority for any:

- a) loss of profits;
- b) loss of business;
- c) loss of revenue;
- d) loss of or damage to goodwill;
- e) loss of savings (whether anticipated or otherwise); and/or
- f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Contractor's liability under the indemnity in clauses 9.4 and 18.3 shall in no event exceed £1,000,000..

14.5 The Contractor's liability for all Losses suffered or incurred by the Authority arising from the Contractor's Default resulting in the destruction, corruption, degradation or damage to Authority Data or any copy of such Authority Data shall in no event exceed £20,000.

14.6 The Contractor shall hold:

- a) Employer's liability insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor;

- b) Public liability with the minimum cover per claim of One million pounds (£1,000,000);
- c) Professional indemnity with the minimum cover per claim of £ One million pounds (£1,000,000);

or any sum as required by Law unless otherwise agreed with the Authority in writing. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

## **15 Force Majeure**

- 15.1 Neither Party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the Contractor. Each Party shall promptly notify the other Party in writing, using the most expeditious method of delivery, when such circumstances cause a delay or failure in performance, an estimate of the length of time delay or failure shall continue and when such circumstances cease to cause delay or failure in performance. If such circumstances continue for a continuous period of more than 30 days, either Party may terminate the Contract by written notice to the other Party.
- 15.2 Any failure by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or Contractor shall be regarded as due to Force Majeure only if that agent, sub-contractor or Contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.

## **16 Termination**

- 16.1 The Authority may terminate the Contract at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Contract is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 16.2 Without prejudice to any other right or remedy it might have, the Authority may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor:
  - 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Contract which is not capable of remedy;
  - 16.2.2 repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
  - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;

- 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
  - 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17; or
  - 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction.
- 16.3 The Contractor shall notify the Authority as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Contractor may terminate the Contract by written notice to the Authority if the Authority has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Contract shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 13A, 14, 16.6, 17.4, 18.4, 19 and 20.8 or any other provision of the Contract that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Contract, the Contractor shall:
- 16.6.1 give all reasonable assistance to the Authority and any incoming Contractor of the Services to the extent necessary to affect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in Schedule 8 – Exit Management Strategy; and
  - 16.6.2 return all requested documents, information and data to the Authority as soon as reasonably practicable.

## **17 Compliance**

- 17.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 17.2 The Contractor shall:
- 17.2.1 comply with all the Authority's health and safety measures while on the Authority's premises; and
  - 17.2.2 notify the Authority immediately of any incident occurring in the performance of its obligations under the Contract on the Authority's

premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

**17.3 The Contractor shall:**

**17.3.1** perform its obligations under the Contract in accordance with all applicable equality Law and the Authority's equality and diversity policy as provided to the Contractor from time to time; and

**17.3.2** take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.

**17.4** The Contractor shall supply the Services in accordance with the Authority's environmental policy as provided to the Contractor from time to time.

**17.5** The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

**17.5.1** the Official Secrets Acts 1911 to 1989; and

**17.5.2** section 182 of the Finance Act 1989.

## **18 Prevention of Fraud, Corruption and Bribery**

**18.1** The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

**18.1.1** Committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act and/or

**18.1.2** 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.

**18.2** The Contractor shall not during the Term:

**18.2.1** commit a Prohibited Act; and/or

**18.2.2** do or suffer anything to be done which would cause the Authority 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.

**18.3** The Contractor shall, during the Term establish, maintain and enforce, and require that its Sub-Contractors 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 shall notify the Authority immediately if it has reason to suspect that any breach of clauses 18.1 and/or 18.2 has occurred or is occurring or is likely to occur.

18.4 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Authority) the Authority may:

18.4.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract; or

18.4.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

## **19 Dispute Resolution**

19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

19.3 If the Parties fail to appoint a Mediator within one month 20 Working Days of the agreement to refer to a Mediator, either Party shall apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

19.4 If the Parties fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, or such longer period as may be agreed by the Parties, either Party may refer the dispute to Court.

19.5 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the dispute.

## **20 General**

20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Contract, and that the Contract is executed by its duly authorised representative.

20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

- 20.3 Subject to Clause 3.4, the Contract cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may:
- 20.4.1 allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification;
  - 20.4.2 terminate the Contract with immediate effect, except where the Contractor has already provided all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirement of the Specification, and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at clause 19.
- 20.5 The Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.6 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 20.7 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.8 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract (whether under the Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.9 If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.
- 20.10 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority,

there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

- 20.11 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or potential conflict between the pecuniary or personal interest of the Contractor and the duties owed to the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

The Contract constitutes the entire contract between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

## 21 Notices

- 21.1 Except as otherwise expressly provided in the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 21.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter), Such letters shall be addressed to the other Party in the manner referred to in clause 21.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 21.3 For the purposes of clause 21.2, the address of each Party shall be:

21.3.1 For the Customer: Care Quality Commission

[Address:] 151 Buckingham Palace Road,

London

SW1W 9SZ

For the attention of: [REDACTED]

[Tel:] [REDACTED]

[Email:] [REDACTED]

**21.3.2 For the Contractor: University of Newcastle**

[Address:] Level 5 King's Gate,

Newcastle upon Tyne

NE1 7RU

For the attention of [REDACTED]

[Email:] [REDACTED]

21.4 Either Party may change its address for service by serving a notice in accordance with this clause.

21.5 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22 Governing Law and Jurisdiction**

22.1 The validity, construction and performance of the Contract, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## **23 TUPE -NOT USED**

**IN WITNESS** of which this Contract has been duly executed by the parties on the date first above written.

**SIGNED** for and on behalf of **CARE QUALITY COMMISSION**

Signature ..

Name .....

Position .....

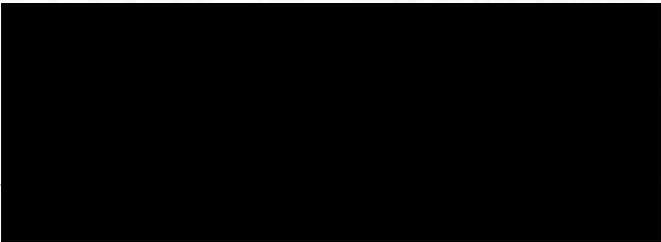


**SIGNED** for and on behalf of **UNIVERSITY OF NEWCASTLE**

Signature

Name .....

Position .....



# SCHEDULE 1 – SPECIFICATION

## THE REQUIREMENT

Our requirement is for an expert statistician with an understanding of our role as a regulator able to offer ad hoc statistical advice as required. We require the ability to have an ongoing dialogue with an advisor although the timing of advice is not known a priori. There are likely to be few instances when advice is required quickly, but when this occurs, we require an advisor to be able to respond within a couple of days.

The supplier should have considerable experience providing statistical advice and an excellent knowledge of academic research in statistics. This level of expertise is required for two reasons:

1. The requirement is specifically to advise on the most complex areas of statistical methodology, where the in-house statistics team need guidance and/or an independent review of their work.
2. The credibility of CQC's statistical outputs requires that we have access to an external reviewer with an established reputation in the field of statistics.

Expertise is required to advise on methodology across a wide range of statistical techniques. The provider needs to have extensive experience in practical dissemination of statistical analysis, together with experience across a range of methods, and knowledge of the role of CQC. They should understand the regulatory use of statistical methods and the framework in which we operate.

We require recommendations and discussion on a range of statistical methods (via written documentation and programming code), which could include, for example:

- Cusum methods
- Simulation methods
- Multi-level modelling
- Generalised Linear modelling
- Survival analysis
- Change point analysis

The outcomes will include the introduction of new methods for CQC to use where appropriate and the publication of reports and/or methodology that has been reviewed by the advisor.

Because the advice involves small amounts of time we need a supplier who can accumulate the amount of time spent in half hourly or hourly increments rather than bill us for a minimum period of a day each time we have a dialogue. We require a relationship with one individual rather than a series of individuals.

## **AUTHORITY RESPONSIBILITIES**

- The Chief Statistician will manage the contract.
- No IT equipment will be provided.
- Access to data sets will be arranged as and when required/available but the majority of the advice will not require analysis per se, but will involve a discussion on methodology and outputs provided by the statistics team.

## **CONTRACTOR RESPONSIBILITIES**

The supplier should provide us with monthly updates as to the costs incurred. They should attend meetings when requested, but the vast majority of correspondence will be via email/telephone conversation. They should ensure that their advice is appropriate and stands up to public scrutiny should we choose to share it externally.

## **CONTRACT MANAGEMENT AND MONITORING**

We will monitor the contract on a project by project basis. We expect the provider to provide written advice and code where appropriate that is 100% accurate and to be able to respond to queries in a timely manner (agreed on a case by case basis as the work is very ad-hoc). Once a day's work has been accumulated the provider should inform us in order for a PO to be raised so that invoicing can occur on a regular basis. Once the service is confirmed as delivered, invoices can be sent off for payment after they have been signed off by the Stats team.

## SCHEDULE 2 – CHARGES



This contract is based on an ad hoc basis and will be called off when required. The overall cost of the contract is depending on work required and available budget per year.

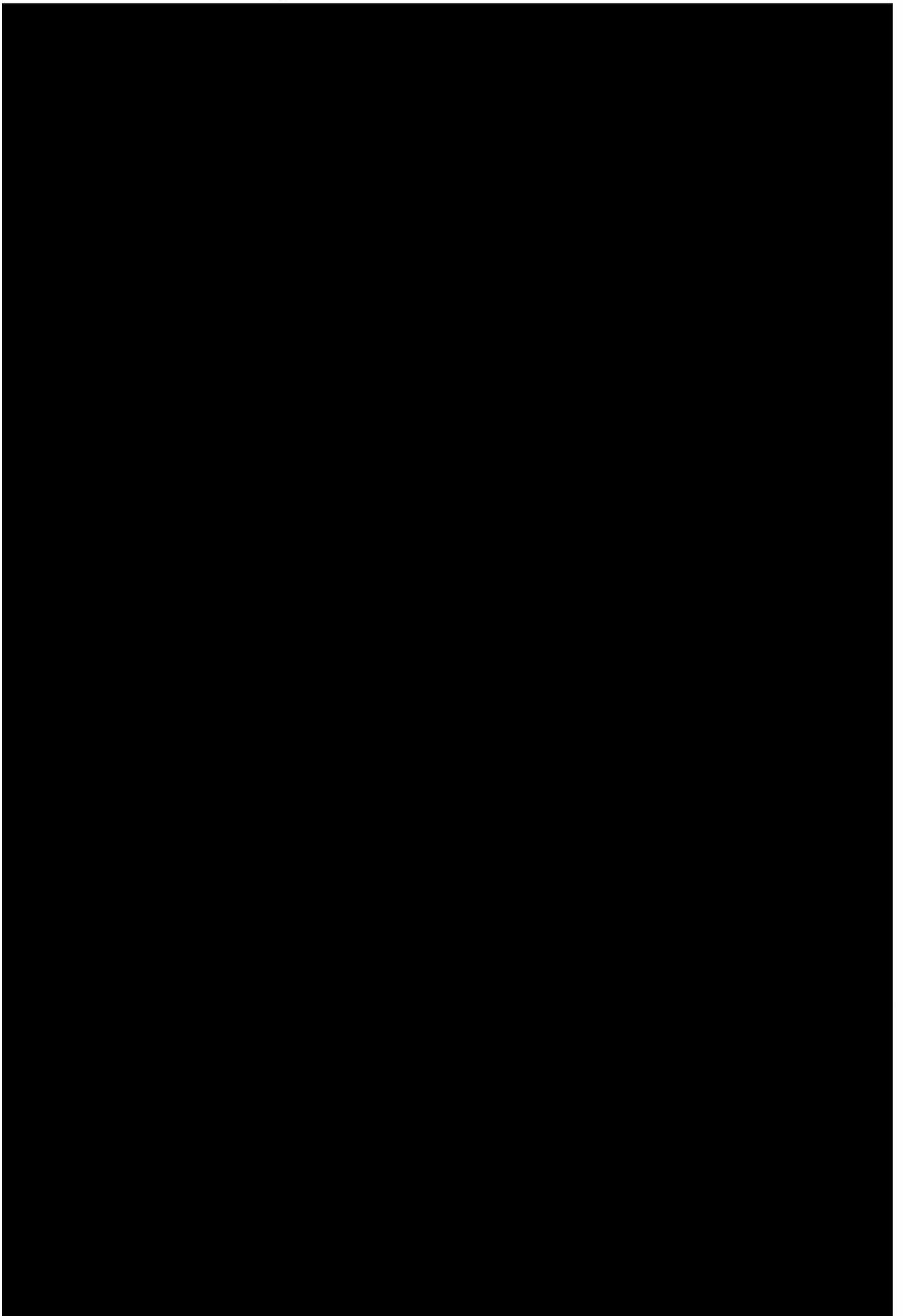
# SCHEDULE 3 – TENDER RESPONSE

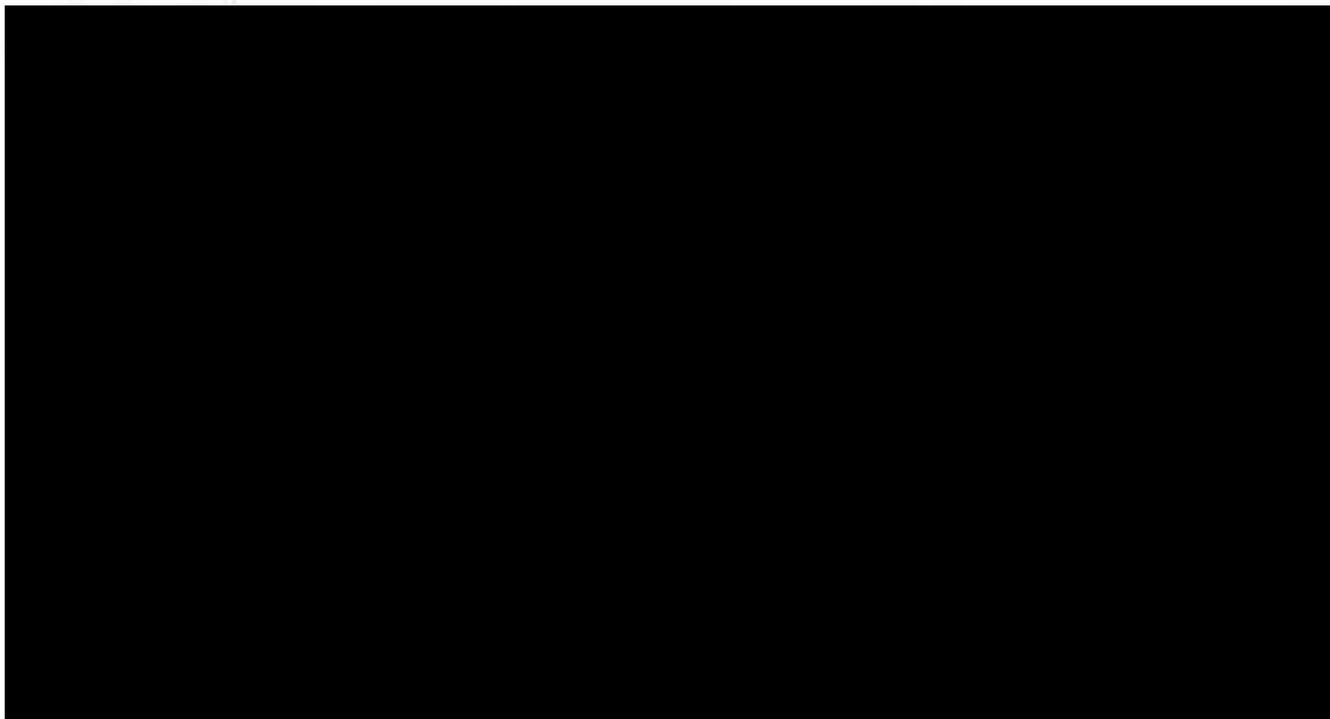
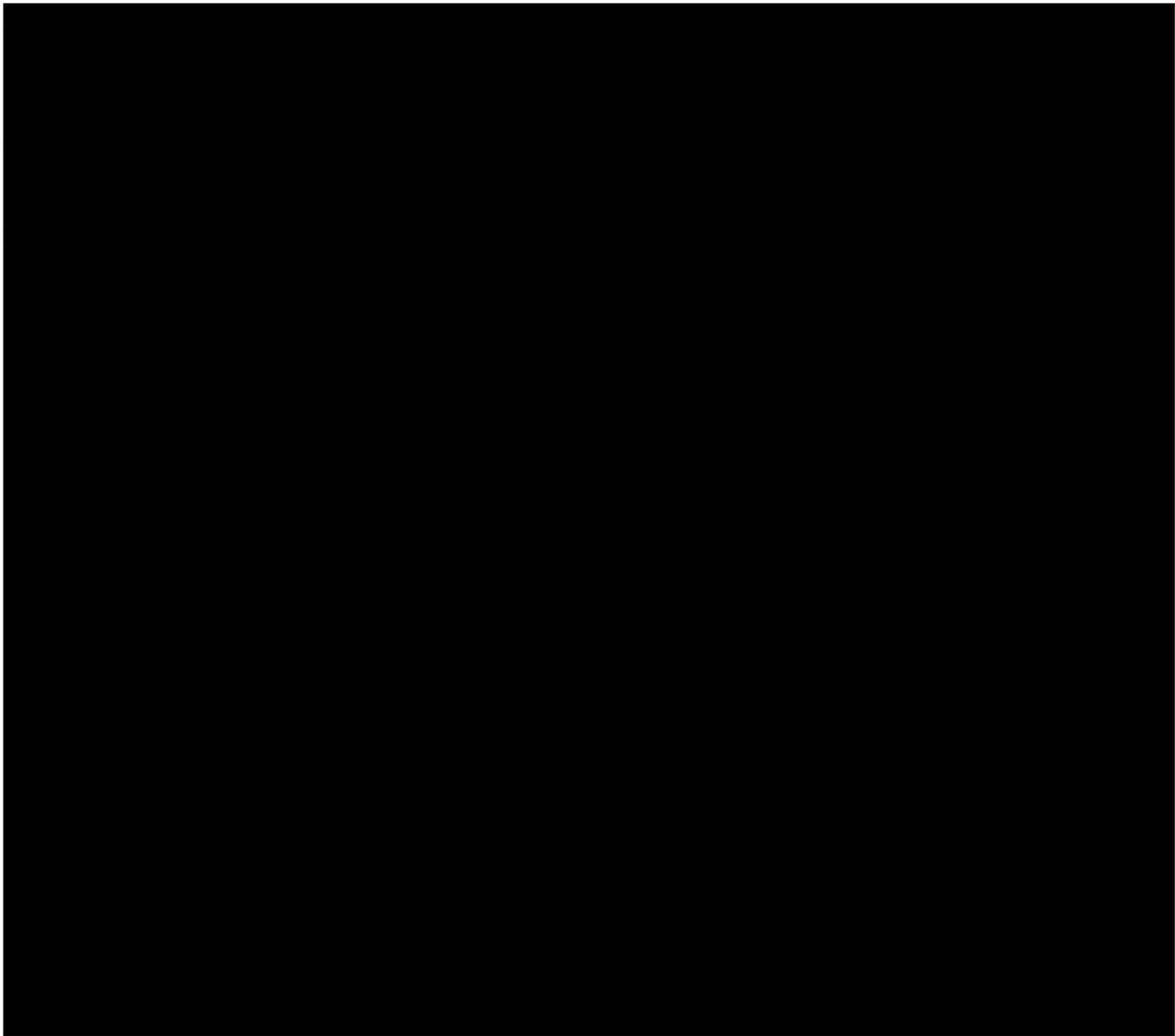
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[REDACTED]	[REDACTED]
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[REDACTED]







# SCHEDULE 4 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The contact details of the Controller's Data Protection Officer are: Nimali de Silva, Care Quality Commission, 3<sup>rd</sup> Floor, Buckingham Palace Road, London SW1W 9SZ.
2. The contact details of the Processor's Data Protection Officer are: Statistical Advice Services
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 Authority is the Controller and the Contractor is the Processor in accordance with Clause 13.1.
Subject matter of the processing	This is simulated data i.e. made up data generated by the computer or ratings data or other data that are publicly available.
Duration of the processing	01 July until expiration or early termination of the contract.
Nature and purposes of the processing	Any data shared are "modelled" ie statistical software is used to explain patterns in the data.
Type of personal data	No personal data is shared.
Categories of Data Subject	No personal level data is shared.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	All data are publicly available or simulated so it can be deleted after the advice is complete.

# SCHEDULE 5 – SECURITY REQUIREMENTS AND PLAN

## INTERPRETATION AND DEFINITION

For the purposes of this Schedule 5, unless the context otherwise requires the following provisions shall have the meanings given to them below:

**“Breach of Security”** means the occurrence of unauthorised access to or use of the Premises, the Premises, the Services, the Contractor System, or any ICT or data (including Authority Data) used by the Authority or the Contractor in connection with the Contract.

**“Contractor Equipment”** means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-Contractor (but not hired, leased or loaned from the Authority) for the provision of the Services;

**“Contractor Software”** means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in Schedule 5.

**“ICT”** means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

**“Protectively Marked”** shall have the meaning as set out in HMG Security Policy Framework.

**“Security Plan”** means the Contractor’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 5.

**“Software”** means Specially Written Software, Contractor Software and Third Party Software.

**“Specially Written Software”** means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract.

**“Third Party Software”** means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in Schedule 7.

## 1. INTRODUCTION

This Schedule 5 covers:

- 1.1 principles of security for the Contractor System, derived from HMG Security Policy Framework, including without limitation principles of physical and information security;
- 1.2 wider aspects of security relating to the Services;
- 1.3 the creation of the Security Plan;
- 1.4 audit and testing of the Security Plan; and
- 1.5 breaches of security.

## **2. PRINCIPLES OF SECURITY**

- 2.1** The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Authority Data.
- 2.2** The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:
  - 2.2.1** is in accordance with Good Industry Practice and Law;
  - 2.2.2** complies with HMG Security Policy Framework; and
  - 2.2.3** meets any specific security threats to the Contractor System.
- 2.3** Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):
  - 2.3.1** loss of integrity of Authority Data;
  - 2.3.2** loss of confidentiality of Authority Data;
  - 2.3.3** unauthorised access to, use of, or interference with Authority Data by any person or organisation;
  - 2.3.4** unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;
  - 2.3.5** use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
  - 2.3.6** loss of availability of Authority Data due to any failure or compromise of the Services.
  - 2.3.7** processing and storage of authority data within the UK or by exception within the EEA. Any processing outside of the UK must be subject to specific approval by the Authority.

## **3. SECURITY PLAN**

- 3.1** The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 5.
- 3.2** A draft Security Plan provided by the Contractor as part of its bid is set out herein.
- 3.3** Prior to the Commencement Date the Contractor will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.
- 3.4** If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days

(or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 19 (Dispute Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.4 shall be deemed to be reasonable.

3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

3.5.1 the provisions of this Schedule 5;

3.5.2 the provisions of Schedule 1 relating to security;

3.5.3 the Information Assurance Standards;

3.5.4 the data protection compliance guidance produced by the Authority;

3.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;

3.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and

3.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.

3.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.

3.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.

3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.

3.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 5.

#### **4. AMENDMENT AND REVISION**

4.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:

4.1.1 emerging changes in Good Industry Practice;

- 4.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;
- 4.1.3 any new perceived or changed threats to the Contractor System;
- 4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or
- 4.1.5 a reasonable request by the Authority.

4.2 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.

4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a Variation and shall not be implemented until Approved.

**5. AUDIT, TESTING AND PROTECTIVE MONITORING**

5.1 N/A.

**6. BREACH OF SECURITY**

6.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.

6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Contractor shall immediately take all reasonable steps necessary to:

- 6.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and
- 6.2.2 prevent an equivalent breach in the future;
- 6.2.3 collect, preserve and protect all available audit data relating to the incident and make it available on request to the Authority;
- 6.2.4 investigate the incident and produce a detailed report for the Authority within 5 working days of the discovery of the incident.

6.3 Such steps shall include any action or changes reasonably required by the Authority. If such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under the Contract, then the Contractor shall be entitled to refer the matter to the variation procedure set out in the Contract.

6.4 The Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

**7. CONTRACT EXIT – SECURITY REQUIREMENTS**

In accordance with clause 16 of the Contract, on termination of the Contract, either via early termination or completion of the Contract then the Contractor will either return all data to the Authority or provide a certificate of secure destruction using an industry and

Authority approved method. Destruction or return of the data will be specified by the Authority at the time of termination of the Contract.

## **APPENDIX 1- OUTLINE SECURITY PLAN**

Only fully anonymised data will be provided. Data will be held only on Newcastle University secure servers with firewall protection. The data will not be printed, or stored on personal laptops. No data will be transferred to third parties.

All communications between CQC and the contractor will be kept confidential. No reports or analyses will be passed to third parties.

### **ANNEX 1: BASELINE SECURITY REQUIREMENTS**

#### **1. SECURITY CLASSIFICATION OF INFORMATION**

- 1.1 If the provision of the Services requires the Contractor to Process Authority Data which is classified as OFFICIAL, OFFICIAL-SENSITIVE or Personal Data, the Contractor shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable legislative and regulatory obligations.

#### **2. END USER DEVICES**

- 2.1 The Contractor shall ensure that any Authority 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 Authority except where the Authority has given its prior written consent to an alternative arrangement.
- 2.2 The Contractor shall ensure that any device which is used to Process Authority 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>.

#### **2A. TESTING**

N/A.

### **3. DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION**

- 3.1 The Contractor and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Contractor must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority Data will be subject to at all times.
- 3.2 The Contractor shall not, and shall procure that none of its Sub-contractors, process Authority Data outside the EEA without the prior written consent of the Authority and the Contractor shall not change where it or any of its Sub-contractors process Authority Data without the Authority's prior written consent which may be subject to conditions.
- 3.3 The Contractor must be able to demonstrate they can supply a copy of all data on request or at termination of the service, and must be able to securely erase or destroy all data and media that the Authority data has been stored and processed on.

The Contractor shall:

- 3.3.1 provide the Authority with all Authority Data on demand in an agreed open format;
- 3.3.2 have documented processes to guarantee availability of Authority Data in the event of the Contractor ceasing to trade;
- 3.3.3 securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Authority Data held by the Contractor when requested to do so by the Authority.

### **4. NETWORKING**

- 4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted when transmitted.
- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

### **5. SECURITY ARCHITECTURES**

- 5.1 Contractors should design the service in accordance with:
- NCSC " Security Design Principles for Digital Services "
  - NCSC " Bulk Data Principles "
  - NSCS " Cloud Security Principles "

### **6. PERSONNEL SECURITY**

- 6.1 All Contractor Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record. The Contractor maybe required implementing additional security vetting for some roles.

## **7. IDENTITY, AUTHENTICATION AND ACCESS CONTROL**

- 7.1 The Contractor must operate an appropriate access control regime to ensure that users and administrators of the service are uniquely identified. The Contractor must retain records of access to the physical sites and to the service for 6 years after the expiry or termination of the Contract.

## **8. AUDIT AND PROTECTIVE MONITORING**

- 8.1 The Contractor shall collect audit records which relate to security events in delivery of the service or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Contractor audit records should (as a minimum) include:

8.1.1 regular reports and alerts setting out details of access by users of the service, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority Data. The retention periods for audit records and event logs must be agreed with the Authority and documented.

- 8.2 The Contractor and the Authority shall work together to establish any additional audit and monitoring requirements for the ICT Environment.
- 8.3 The Contractor shall retain audit records collected in compliance with this Paragraph 8.3 for a period of at least 6 months.

## **9. VULNERABILITIES AND CORRECTIVE ACTION**

- 9.1 Contractors shall procure and implement security patches to vulnerabilities in accordance with the timescales specified in the NCSC Cloud Security Principle 5.
- 9.2 Contractor must ensure that all COTS Software and Third Party COTS Software be kept up to date such that all Contractor COTS Software and Third Party COTS Software are always in mainstream support.

## **10. RISK ASSESSMENT**

- 10.1 The Contractor should perform a technical information risk assessment on the service supplied and be able to demonstrate what controls are in place to address those risks.

## **ANNEX 2: CONTRACTOR'S SECURITY MANAGEMENT PLAN**

Only fully anonymised data will be provided. Data will be held only on Newcastle University secure servers with firewall protection. The data will not be printed, or stored on personal laptops. No data will be transferred to third parties.

All communications between CQC and the contractor will be kept confidential. No reports or analyses will be passed to third parties.

## SCHEDULE 6 – CHANGE CONTROL

### Contract Change Note

<b>Contract Change Note Number</b>	
<b>Contract Reference Number &amp; Title</b>	
<b>Variation Title</b>	
<b>Number of Pages</b>	

WHEREAS the Contractor and the Authority entered into a Contract for the supply of [project name] dated [dd/mm/yyyy] (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this Change Control Notice:

Change Requestor / Originator		
Summary of Change		
Reason for Change		
Revised Contract Price	Original Contract Value	£
	Previous Contract Changes	£
	DN: Enter all CCN's here so that total value is shown for Audit purposes	
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
DN: Any change to Specification should be added as an Annex to the CCN		
Revised Term/Contract Period		
Change in Contract Manager(s)		
Other Changes		

2. Save as herein amended all other terms of the Original Contract shall remain effective.
3. This Change Control Notice shall take effect on [ INSERT DATE ] or from the date on which both the Authority and the Contractor have communicated acceptance of its terms.

SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE CONTRACTOR:	
Signature:		Signature:	
Name:		Name:	
Position:		Position:	
Date:		Date:	

## **SCHEDULE 7 – THIRD PARTY SOFTWARE**

### **CONTRACTOR SOFTWARE**

For the purposes of this Schedule 7, "**Contractor Software**" means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services. The Contractor Software comprises the following items:

Software	Contractor (if Affiliate of the Contractor)	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

**THIRD PARTY SOFTWARE**

For the purposes of this Schedule 7, "Third Party Software" means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software specified in this Schedule 7. The Third Party Software shall consist of the following items:

Third Party Software	Contractor	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

# **SCHEDULE 8 – EXIT MANAGEMENT STRATEGY**

The Exit Strategy will be agreed by both Parties