

Contract (Short Form – Services)

Contract for the provision of **Advanced Influencing and Negotiation Skills Training Course**

Contract Reference CQC LD 159

March 2018

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.....	10
9	Intellectual Property Rights	11
10	Governance and Records.....	12
11	Confidentiality, Transparency and Publicity.....	12
12	Freedom of Information	14
13	Protection of Personal Data and Security of Data	14
13A	Security	19
14	Liability and Insurance.....	21
15	Force Majeure	22
16	Termination	22
17	Compliance	23
18	Prevention of Fraud, Corruption and Bribery	24
19	Dispute Resolution	25
20	General.....	25
21	Notices	27
22	Governing Law and Jurisdiction	28
23	TUPE.....	28
24	Signatures	29

SCHEDULE 1 – SPECIFICATION	30
SCHEDULE 2 – CHARGES	36
SCHEDULE 3 – Not Used	37
SCHEDULE 4 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS.....	38
SCHEDULE 5 – SECURITY POLICY.....	39

THIS CONTRACT is dated 16 March 2018.

PARTIES

(1) **CARE QUALITY COMMISSION** of 151 Buckingham Palace Road, London, SW1W 9SZ 2HQ (“**Customer**”).

and

(2) **SCOTWORK UK LIMITED** of 7 Fortrose Street, Glasgow, G11 5NU, Company number SC535142 (“**Contractor**”)

(Together the “**Parties**”)

Background

1. The Customer 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 Training Course in Advanced Influencing and Negotiation Skills to internal CQC senior managers.
3. The Contractor has been appointed by the Customer 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:

“Agreement”	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 (i) the Care Quality Commission (“Customer”) and (ii) Scotwork UK Limited (“Contractor”);
“Approval”	means the written consent of the Customer;
“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;
“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;
“Contractor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;
“Customer”	means the Care Quality Commission;

“Customer Data”	<p>means:</p> <ul style="list-style-type: none"> (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 Customer is the Data Controller;
“Data Controller, Data Processor, Data Subject, Personal Data, Personal Data Breach and Data Protection Officer”	<p>shall each have the same meaning given in the GDPR;</p>
“Data Protection Legislation	<p>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;</p>
“Data Loss Event”	<p>means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;</p>
“Data Protection Impact Assessment”	<p>means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;</p>
“DPA”	<p>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;</p>
“Expiry Date”	<p>means the date for expiry of the Agreement as set out in clause 4.1;</p>

“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 Agreement otherwise notified as such by the Customer 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;
“LED”	means Law Enforcement Directive (<i>Directive (EU) 2016/680</i>)
“Malicious Software”	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
“Party”	means the Contractor or the Customer (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;
“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;
“Purchase Order Number”	means the Customer’s unique number relating to the supply of the Services by the Contractor to the Customer in accordance with the terms of the Agreement;
“Security Policy”	means the Customer’s Information Security and Governance Policy appended to Schedule 5
“Request for	has the meaning set out in the FOIA or the Environmental Information

Information”	Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Schedule”	means a schedule attached to, and forming part of, the Agreement;
“Services”	means the services to be supplied by the Contractor to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in Schedule 1;
“Staff”	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 Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Contractor from time to time;
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement;
“Term”	means the period from the Start Date of the Agreement 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 Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	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 Agreement;
- 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 Agreement, 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 Customer's agreement to pay the Charges, the Contractor shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.

3.2 In supplying the Services, the Contractor shall:

- 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer'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 Agreement;
- 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 Customer 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 Customer and the Contractor.

4 Term

- 4.1 The Agreement shall take effect on the date of the 26 March 2018 and shall expire on the 30 April 2018, 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 Agreement for a period of 4 weeks by giving not less than 5 Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and condition of the agreement shall apply thought 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 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 Customer, 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 Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer 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 Customer 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 Customer may, without prejudice to any other rights and remedies under the Agreement, 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 Customer 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 Customer shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement 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 Customer by the due date, then the Customer 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 Agreement (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be entitled to assert any credit, set-off or counterclaim

against the Customer 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 Agreement 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 Agreement

5.8.3 In this clause 5.8 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Customer 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 Agreement.

6 Premises and equipment

6.1 If necessary, the Customer 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 Customer'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 Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Customer'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 Customer's premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer'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 Customer 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 Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Customer'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 Customer in writing.

- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Contractor shall reimburse the Customer 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 Customer shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Customer 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 Customer 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 Customer 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 Customer 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 Customer at the Contractor's expense. The Customer shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Customer.
- 6.11 All the Contractor's equipment shall remain at the sole risk and responsibility of the Contractor, except that the Customer shall be liable for loss of or damage to any of the Contractor's property located on Customers Premises which is due to the negligent act or omission of the Customer.

7 Staff and Key Personnel

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
- 7.1.1 refuse admission to the relevant person(s) to the Customer'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 Customer 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; and if requested, comply with the Customer's Staff Vetting Procedures as supplied from time to time;
 - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
 - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, 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 Customer (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 Customer'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 Customer 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 Customer 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 Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer 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 Agreement, 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 Customer has consented to the placing of sub-contracts, the Contractor shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.4 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement 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 Agreement.

9 Intellectual Property Rights

- 9.1 All intellectual property rights in any materials provided by the Customer to the Contractor for the purposes of this Agreement shall remain the property of the Customer but the Customer 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 Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Customer. 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 Customer 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 Customer:
- 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 Agreement 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 Agreement; and
- b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement 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 Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

- 9.4 The Contractor shall indemnify, and keep indemnified, the Customer 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 Customer as a result of or in connection with any claim made against the Customer 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 Customer shall promptly notify the Contractor of any infringement claim made against it relating to any Services and, subject to any statutory obligation requiring the Customer 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 Customer 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 Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
 - 10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.
- 10.2 The Contractor shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

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 Agreement.

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 Agreement 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 Agreement; and

11.2.6 where the receiving Party is the Customer:

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

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 Customer transfers or proposes to transfer all or any part of its business;

c) to the extent that the Customer (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 Customer 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 Agreement is not Confidential Information and the Contractor hereby gives its consent for the Customer to publish this Agreement 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 Agreement agreed from time to time. The Customer 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 Agreement 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 Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12 Freedom of Information

- 12.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall and procure that any sub-contractor shall:

12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

- 12.2 The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13 Protection of Personal Data and Security of Data

- 13.1 The Contractor shall (and shall procure that its entire Staff) comply with any notification requirements under Data Protection Legislation and both Parties will duly observe all their obligations under Data Protection Legislation which arise in connection with the Contract.

- 13.2 The Contractor will, in conjunction with the Customer, in its own right and in respect of the Services, shall ensure it will be compliant with the provisions of the GDPR and Data Protection Legislation.
- 13.3 The Contractor shall designate and will provide the Customer with the contact details of its data protection officer where this position is required by the Data Protection Legislation or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations in this Clause 13.
- 13.4 If the Contractor is Processing Personal Data as a Data Processor for the Customer, the Contractor shall:
- (a) Prior to the processing of any Personal Data under this Contract and where requested by the Customer provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment ("DPIA"). Such assistance may, at the discretion of the Customer include (but not be limited to):
 - i. A systematic description of the envisaged processing operations and the purpose of the processing;
 - ii. An assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
 - (b) implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
 - (c) Process the Personal Data only in accordance with Schedule 4 and/or written instructions from the Customer (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Customer unless the Contractor is required to do so otherwise by Law. If it is so required, the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (d) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under the Contract or as is required by Law or any Regulatory Body;
 - (e) Keep a record of all categories of processing activities carried out on behalf of the Customer, containing:
 - i) the categories of processing carried out on behalf of the Customer;
 - ii) where applicable, any transfers of Personal Data to Restricted Countries or an international organisation.
 - (f) Ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event 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;
- (g) take all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel:
 - a. do not process Personal Data except in accordance with this Agreement;
 - b. are aware of and comply with the Contractor's duties under this Clause 13 and 11 (Confidentiality, Publicity and Transparency);
 - c. are subject to appropriate confidentiality undertakings with the Contractor or any relevant Sub-contractor;
 - d. 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 Customer or as otherwise permitted by this Contract; and
 - e. have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Data Protection Legislation);
- (h) not disclose or transfer the Personal Data to, or allow the processing of Personal Data by any Sub-Contractor and/or Affiliates for the provision of the Services without Approval;
- (i) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor 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 Customer in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (j) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data;
- (k) notify the Customer within 48 hours if it:
 - a. receives from a Data Subject (or third party on their behalf):
 - i. a Data Subject Access Request (or purported Data Subject Access Request);
 - ii. a request to rectify, block or erase any Personal Data; or
 - iii. any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - b. considers that any of the Customer's instructions from the Customer infringe the Data Protection Legislation;
 - c. receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other regulatory Customer in connection with Personal Data processed under this Contract; or

- d. 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
 - e. is required by Law to commit an act or omission to that would, but for Clause 13.10, constitute a breach of this Clause 13;
 - f. becomes aware of a Data Loss Event
 - (l) The Contractor's obligation to notify under Clause 13.4(k) shall include the provision of further information to the Customer in phases, as details become available.
- 13.4A Notwithstanding the provisions of clauses 13.1 and 13.4, where the Contractor is Processing Personal Data for the Customer, the parties acknowledge that the Customer is the Data Controller and the Contractor is the Data Processor. The Contractor shall set out the scope, nature and purpose of the Processing by the Contractor, the duration of the Processing and the types of Personal Data and the categories of Data Subject in the form appended hereto in Schedule 4 – Processing, Personal Data and Data Subject.
- 13.5 Taking into account the nature of the processing, the Contractor shall provide the Customer with full co-operation and assistance (within the timescales reasonably required by the Customer) in relation to either Party's obligations under Data Protection Legislation or any complaint, communication or request made as referred to in Clause 13.4(k), including by promptly providing:
- a. the Customer with full details and copies of the complaint, communication or request;
 - b. where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
 - c. the Customer, on its request, with any Personal Data it holds in relation to a Data Subject;
 - d. assistance as requested by the Customer following any Data Loss Event; and
 - e. assistance as requested by the Customer with respect to any request from the Information Commissioner's Office (ICO), or any consultation by the Customer with the Information Commissioner's Office;
- 13.6 The Contractor shall, if requested by the Customer, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 13 and provide to the Customer copies of all documentation relevant to such compliance including, processing records, procedures, guidance, training and manuals.
- 13.7 The Contractor shall allow the Customer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 10 (Governance and Records), the Contractor's Data Processing activities (and/or those of Staff) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- 13.8. The Contractor shall not Process or otherwise transfer any Personal Data in or to any Restricted Country without the Customer's prior written consent. If, after the Effective Date, the Contractor or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the Contractor shall, in seeking consent, submit such information as the Customer's shall require in order to enable it to consider the request and acknowledges that such consent may be given subject to conditions which will, if appropriate, be incorporated into this Contract at the Contractor's cost and expense using the Change Control Procedure.

13.9 The Contractor will notify the Customer immediately, and in any event no later than 12 hours, after becoming aware of a Data Loss Event, in particular the notification will be made regardless as to whether or not the Contractor has established any unauthorised access or other harm has actually arisen from the event. Notification must not be delayed for the purpose of establishing the effects of an identified Data Loss Event. In particular the Contractor will;

- i) when notifying the Customer of a Data Loss Event will describe the nature of the event including the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
- ii) cooperate fully with any Customer investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);
- iii) [provide immediate access to the Contractor's premises and systems for the purposes of any Customer investigation under [Clause 13.4 ii] above]
- iv) take all necessary actions to remedy the causes or adverse effects of the Data Loss Event and to ensure the protection of Personal Data from any further loss. Where the contractor reasonably considers that immediate action is required to ensure the protection of personal data, or to prevent or mitigate a serious risk of harm, damage or loss to data subjects arising from a Data Loss Event, they may take such action without requiring prior authorisation from the Customer circumstances where it is not reasonably possible to seek or obtain such authorisation in a timely manner;
- v) Not make any public statement of any kind without the prior Approval of the Customer;
- vi) Where appropriate, provide all assistance necessary to enable the Customer to fulfil its obligations to notify the Information Commissioner within 72 hours after becoming aware of the Data Loss Event; and
- vii) notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

13.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 13. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
(a) the Customer determines that the processing is not occasional;
(b) the Customer 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 Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- 13.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 13 such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 13.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 13.13 The Customer 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 Agreement).
- 13.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 13.15 At the end of the Term or earlier termination of this Contract, at the Customer's request, the Contractor shall delete or return all Personal Data to the Customer and delete any copies of such Personal Data except where required to retain any copies by Law.
- 13.16 The Contractor shall comply at all times with Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- 13.17 The Contractor shall use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of the Customer's obligations under the Data Protection Legislation to the extent the Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 13.18 The Contractor shall indemnify the Customer on a continuing basis against any and all Losses incurred by the Customer arising from the Contractor's Default under this Clause 13 and/or any failure by the Contractor or any Sub-Contractor to comply with their respective obligations under Data Protection Legislation.
- 13.19 Nothing in this Clause 13 shall be construed as requiring the Contractor or any relevant Sub-contractor to be in breach of any Data Protection Legislation.
- 13.20 The provision of this clause 13 applies during the Contract Period and indefinitely after its expiry.

13A Security

- 13A.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Customer while on the Customer'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 the Security Policy.
- 13A.3 The Contractor shall comply, and shall procure compliance of its Staff, with the Security Plan and Security Policy.
- 13A.4 The Customer shall notify the Contractor of any changes or proposed changes to the Security Policy.
- 13A.5 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 13A.6 Notwithstanding clause 13A.5, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Customer Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency and the Contractor shall immediately take all reasonable steps necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (c) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
 - (d) as soon as reasonably practicable provide the Customer with full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.
- 13A.7 Any cost arising out of the actions of the Parties taken in compliance with clause 13A.6 shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Customer Data (whilst the Customer Data was under the control of the Contractor); and
 - (b) by the Customer if the Malicious Software originates from the Customer's Software or Customer Data (whilst the Customer Data was under the control of the Customer).
- 13A.8 The Contractor controlled architecture and environment used to process or store Customer Data will be certified to the NCSC Cyber Essentials Plus certification scheme.
- 13A.9 The Contractor shall be liable for, and shall indemnify the Customer against all Losses suffered or incurred by the Customer 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 Customer).

14 Liability and Insurance

- 14.1 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2 Subject always to clauses 14.3 and 14.4:
- 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 Agreement, 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 Customer 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 Agreement 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 clause 9.4 and 18.4 shall be unlimited.
- 14.5 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 five (5) million pounds (£5,000,000);

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

or any sum as required by Law unless otherwise agreed with the Customer 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 Agreement.

15 Force Majeure

- 15.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement 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 Agreement by written notice to the other Party.
- 15.2 Any failure by the Contractor in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

16 Termination

- 16.1 The Customer may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Agreement 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 Customer may terminate the Agreement 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 Agreement which is not capable of remedy;
 - 16.2.2 repeatedly breaches any of the terms and conditions of the Agreement 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 Agreement;
 - 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 Customer 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 Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 45 days of them falling due.
- 16.5 Termination or expiry of the Agreement 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, 14, 16.6, 17.4, 18.4, 19 and 20.8 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Contractor shall:
- 16.6.1 give all reasonable assistance to the Customer and any incoming Contractor of the Services; and
 - 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

17 Compliance

- 17.1 The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement.
- 17.2 The Contractor shall:
- 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
 - 17.2.2 notify the Customer immediately of any incident occurring in the performance of its obligations under the Agreement on the Customer'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 Agreement in accordance with all applicable equality Law and the Customer'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 Customer'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 Customer 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 Customer 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 Agreement or any other contract with the Crown (including the Customer) the Customer may:

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

18.4.2 recover in full from the Contractor any other loss sustained by the Customer 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 Agreement 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 Agreement, and that the Agreement 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 The Agreement 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 Customer may:
- 20.4.1 allow the Contractor to fulfil its obligations under the Agreement 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 Agreement 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 Agreement on the basis of any representation that is not expressly incorporated into the Agreement. 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 Agreement 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 Agreement.
- 20.7 The Agreement 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 Agreement. 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 Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, 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 Agreement 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 Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

- 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 Customer, 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 Customer under the provisions of the Agreement. The Contractor will disclose to the Customer full particulars of any such conflict of interest which may arise.
- 20.11 The Customer reserves the right to terminate the Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, 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 Customer 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 Customer.
- 20.12 The Agreement constitutes the entire contract between the Parties in respect of the matters dealt with therein. The Agreement 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 Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement 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: Scotwork UK Limited

Address: 7 Fortrose Street, Glasgow, United Kingdom, G11 5NU

For the attention of: [REDACTED]

Tel: [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 Agreement, 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.

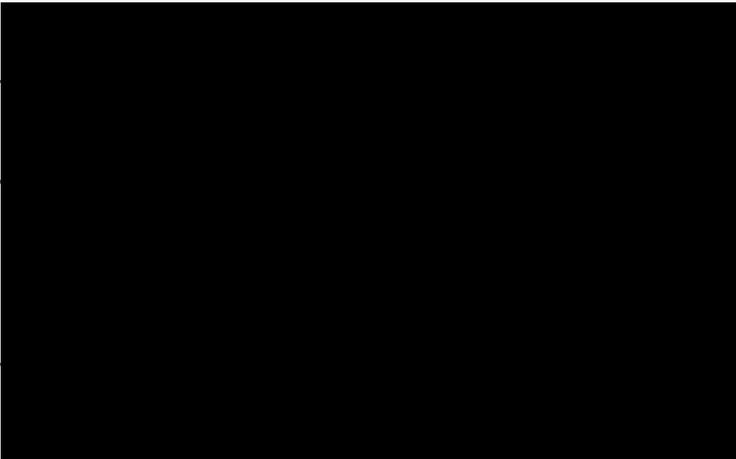
23 TUPE

- 23.1 For the avoidance of doubt TUPE is not applicable to this Agreement.

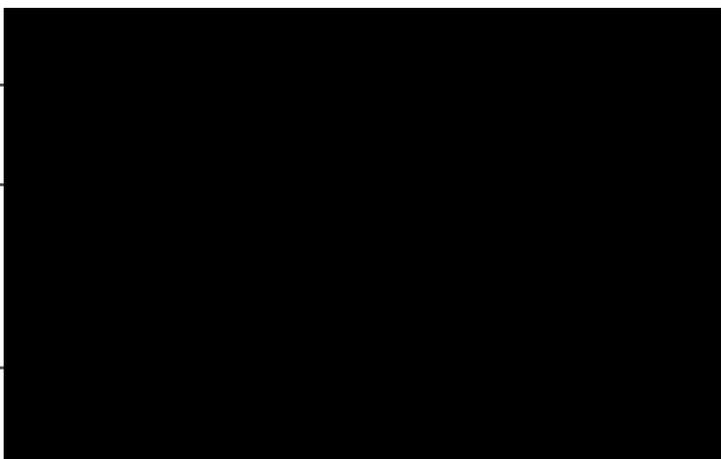
24 Signatures

BY SIGNING AND RETURNING THIS AGREEMENT THE CONTRACTOR AGREES to enter a legally binding contract with the Customer to provide the Services detailed within the Specification. The Parties hereby acknowledge and agree that they have read the Terms and Conditions and by signing below agree to be bound by the terms of this Agreement.

For and on behalf of the Customer: Care Quality Commission

Name and Title		
Position		
Signature		
Date		

For and on behalf of the Contractor: - Scotwork UK Limited

Name and Title		
Position		
Signature		
Date		

SCHEDULE 1 – SPECIFICATION

1 Background/Preamble

CQC have a number of senior leaders in within Customer and Corporate Services (CCS) Directorate responsible for building impactful relationships with a range of senior stakeholders that require a significant element of high level negotiation and influencing skills.

CCS Directorate has 5 sub-directorates within it, consisting of the following:-

- People Directorate
- Finance, Commercial & Infrastructure
- Governance and Legal Services
- Digital
- National Customer Service Centre

There is a requirement to support up to 12 senior leaders within CCS Directorate to provide Advanced Influencing and Negotiation Skills Training Course.

2 Specification

To deliver to CQC a training course for up to 12 CQC Senior Leaders within Customer & Corporate Services Directorate who are looking to develop Advanced Influencing and Negotiating Skills.

The course will encourage Course Delegates to reflect on their senior management relationships and help them to develop good negotiation skills which will benefit their services.

Delegates learn skills that can be used to resolve problems/conflicts with their team or in a broader leadership setting.

The programme is to be tailored to the needs of CQC, using example materials and situations to enrich the learning experience of Delegates and the course trainer must work with all Delegates to create a practical and personal action plan that can be implemented back in the workplace.

Details of those roles which are looking to attend and their rationale for attendance are attached at **Appendix B**.

Course Delivery Dates and Duration:

The Training Course to commence from Tuesday 24 April 2018 for maximum of 4 working days as a group course activity for up to 12 Delegates and to be supported with examples/case studies which are tailored to CQC activities to allow for familiarity of scenarios faced by Delegates.

Course Delivery Location:

The Training Course to be delivered in Central London at CQC Head Office 151 Buckingham Palace Rd, London SW1W 9SZ or nearby location within Zone 1.

Learning Objectives:

By the end of the course Delegates will be able to:

- Apply appropriate planning and preparation techniques for effective negotiations using all information and intelligence available
- Understand and demonstrate how to open and conclude a negotiation
- Illustrate and demonstrate an understanding of best practice negotiation and influencing tools
- Apply negotiation techniques within the context of complex proceedings; mediations and settlement conversations.
- Construct and present strategic level proposals to senior stakeholders and partners to enable effective influencing and negotiation
- Demonstrate the ability to influence complex decision making, whilst dealing professionally with challenge.
- Course Training to provide opportunity to put elements of course learning into practice through a Negotiation, Influencing and Persuasion simulated exercise.

There will be an expectation that Delegates will have access to learning materials; online resources; diagnostic tools etc. whilst on the programme and post-programme input.

3 Timescales

Description	Target Date	Action to Achieve/Location	Review Date
Mobilisation to commence Delivery	13 April	Location and itinerary agreed; pre-learning documents provided; room bookings made; delegates receive course itinerary and location details; reasonable adjustments	18 April

		confirmed	
Course Delivery for 12 delegates	24 April – 27 April	Room lay-out actioned; learning documentation and aids available	18 April
Contract Exit Review	30 April	Attendance sheets; evaluation sheets; post-learning access to learning materials and online toolkits.	End of contract delivery

4 Cost Envelope

Cost Envelope
£16,000.00 - £24,000.00 inclusive of VAT*

*The maximum budget for this goods/service cannot exceed £24,000.00.

5 Length of Contract

Start Date	End Date
26 March 2018	30 April 2018

6 Contract Management

The CQC will support the management of the contract through the following activities:

- A CQC Academy representative will act as the CQC Contract Manager and this person will also be the named contact person
- Access will be provided to appropriate CQC offices when required
- Contract management & service delivery meetings will be arranged as appropriate and attended by the CQC Contract Manager and/or a named deputy
- Contract Review Meetings will be arranged between the Contractor and CQC with the contract duration.

7 Contractor Responsibilities

It is expected that the Contractor will support the management of the contract by ensuring the following:

- A Contract Manager or named person would be appointed to oversee the work and liaise with the CQC Contract Manager.
- Learning materials; online resources; diagnostic tools etc; whilst on the programme and post programme input will be made accessible to Delegates.
- Provide the CQC Contract Manager with timely evaluation and quality assurance information relating to the programme
- Course Tutor employed to deliver any learning must be familiar and up to speed with any documentation CQC has provided such as those that support any scenario-based learning activities
- All documentation provided by CQC must be treated as confidential by the Contractor
- Contractor to ensure that individuals delivering work under the contract are suitably qualified to deliver the work, or an equivalently qualified individual(s) in instances where the stated person has left the organisation or due to exceptional circumstances cannot carry out the agreed delivery.

8 Contract Management Arrangements

Delivery of the Contract will be closely monitored and managed by the CQC Contract Manager as the responsible owner for this requirement. The nominated individual will maintain the overall diligence of both the work carried out by the Contractor under the Contract.

It is also envisaged that the monitoring of the contract will be undertaken during the duration of the contract delivery between the Contractor and CQC Contract Manager, to update on progress, provide feedback and review all expenditure arising in the delivery of the service.

Following completion of the contract, the Contractor will attend a post contract review with the CQC Contract Manager to review whether the objectives of the contract were met, to review the benefits achieved and to identify any lessons learnt for future projects

9 Key Performance Indicators

There are a number of key performance indicators (KPI's) that will be required as part of this programme of delivery, these are:

Indicator	Measured by	Reference Point or Target	Review Date
<p>Provision of Learning</p> <p>Should be made on dates agreed between CQC and the Contractor unless otherwise agreed</p>	<p>Learning dates to take place on agreed dates.</p> <p>Pre-meet (by telephone) to be held with contract lead go confirm all requirements actioned</p> <p>Evaluation Sheets to be supplied by provider and completed by candidates</p>	<p>Target = 100%</p>	<p>18 April 2018 to discuss at pre-meet with Contract Lead</p>
<p>Provision of learning materials; online resources and diagnostic tools</p> <p>To be made available to Delegates.</p>	<p>Learning materials to be made available to candidates pre-course where part of the learning activity.</p> <p>Learning materials and tools to be provided as part of the course programme.</p> <p>Online learning and toolkits to be made accessible to candidates post learning</p>	<p>Target = 100%</p>	<p>18 April 2018 to discuss at pre-meet with contract lead</p>
<p>Invoicing</p> <p>Should be timely and accurate.</p>	<p>Invoicing is clear and accurate</p>	<p>Target = 100%</p>	<p>End of contract delivery</p>

<p>Attendance at Pre-Agreed Meetings</p> <p>Attendance at any pre-agreed meetings is required, such as pre-meet and post contract</p>	<p>Meetings are attended (via skype call) with CQC Contract Manager unless otherwise agreed</p>	<p>Target = 100%</p>	<p>18 April 2018 pre-meet</p> <p>Post contract delivery</p>
<p>Post programme Review</p>	<p>Skype call arranged with CQC Contract Manager</p> <p>Attendance sheets returned to CQC Contract Manager</p> <p>Evaluation sheets returned to CQC Contract Manager</p> <p>Confirmation post-learning materials and online toolkits are accessible to candidates</p>	<p>Target = 100%</p>	<p>Post contract delivery</p>

10 Exit Strategy

To provide CQC Academy with evaluation data within a week of learning programme having concluded; and confirmation of Delegates access requirements to online post-learning materials and diagnostic tools where applicable.

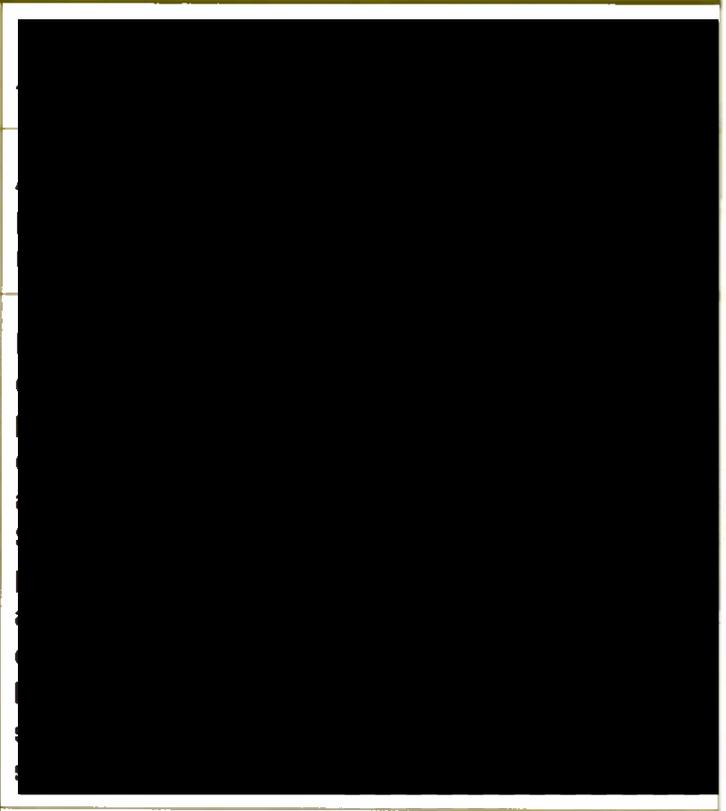
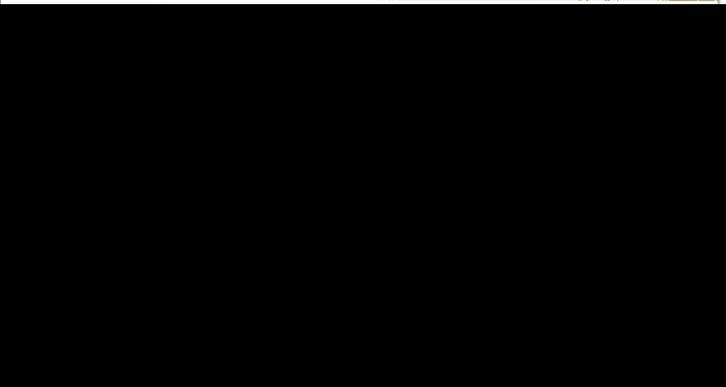
SCHEDULE 2 – CHARGES

2.1 Pricing Schedule			
Details			
2.1.1	<p>The cost stated is for full delivery of the course and includes: planning and delivery of course travel and expenses course handouts, presentations any other appropriate training equipment course register and attendance certificates course evaluation forms and any other costs associated with providing the training The cost is for the final cost - including VAT The cost is or a fixed price for the whole contract period</p>		
Reference	Product Description	Unit of measurement	Total Cost
Course Programme and Delivery	Advanced Influencing and Negotiating Skills Training Course for Senior Managers	Total Cost (inclusive of VAT)	£23,800.00

SCHEDULE 3 – Not Used

SCHEDULE 4 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

- 1. The Contractor shall comply with any further written instructions with respect to processing by the Customer.
- 2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of personal data	
Categories of Data Subject	
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	

SCHEDULE 5 – SECURITY POLICY

CQC Information Security Policy Annex 1 to Schedule 5