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Contract for the provision of Advertising Services

Contract Reference CQC PER 039

April 2018

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THIS CONTRACT is dated 1 April 2018

PARTIES

(1) **CARE QUALITY COMMISSION** of 151 Buckingham Palace Road, London, SW1W 9SZ ("**Authority**")

and

(2) **TMP LTD** of 265 Tottenham Court Road registered at Company House 05648039 ("**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 provide Recruitment Advertising 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:

- “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 (“Authority”) and (ii) TMP Ltd (“Contractor”);
- “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;
- “Award Letter” means the letter from the Authority to the Contractor containing these terms and conditions;
- “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;
"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/Staff"	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;
"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 Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, 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 Agreement 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 Agreement 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;
“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 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;
“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"	Order	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 Agreement;
"Request Information"	for	has the meaning set out in the FOIA or the Environmental 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;
"Security Policy"		means the Authority's Information Security and Governance Policy;
"Services"		means the services to be supplied by the Contractor to the Authority under the Agreement;
"Specification"		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;
"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"	Vetting	means vetting procedures that accord with good industry practice or, where requested by the Authority, the Authority'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;
"Supplier Code of Conduct"	of	means HM Government Supplier Code of Conduct dated September 2017
"Term"		means the period from the start date of the Agreement 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 Agreement;
"Third Party Software"		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;
"VAT"		means value added tax in accordance with the provisions of the Value

Added Tax Act 1994; and

- “Variation” means a variation to the Specification, the Price or any of the terms and conditions of the Contract;
- “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 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 Agreement.
- 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 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 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 of Control Notice as attached hereto in Schedule 6 and approved in writing by the Authority.
- 3.5 In the event that this Agreement or any Purchase Order terminates or expires, the Contractor shall, if requested to do so by the Authority, continue to provide the Services commenced prior to the date of such termination or expiry at no extra cost to the Authority other than the continued payment of the Charges for such Services. The Contractor shall comply with its obligations in accordance with the Exit Management Strategy in Schedule 8.

4 Term

- 4.1 The Agreement shall take effect on 1 April 2018 and shall expire on the Expiry Date of 31 March 2019, 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 up to 6 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 Agreement 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 Agreement. 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 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 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 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 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 Agreement (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority 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 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 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 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 Agreement.

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 Agreement (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 Agreement 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 Agreement. Such equipment shall be returned promptly to the Authority on expiry or termination of the Agreement.
- 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 Agreement, 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; and if requested, comply with the Authority's Staff Vetting Procedures as supplied from time to time;
 - 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 Agreement;
 - 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 Supplier Code of Conduct (<https://www.gov.uk/government/publications/supplier-code-of-conduct>).
- 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 Agreement or any part of the Agreement. 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 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 Authority has consented to the placing of sub-contracts, the Contractor shall, at the request of the Authority, send copies of each sub-contract, to the Authority as soon as is reasonably practicable.
- 8.4 The Authority 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 Authority to the Contractor for the purposes of this Agreement 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 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 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 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 Authority 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 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 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 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 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 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 Agreement is not Confidential Information and the Contractor hereby gives its consent for the Authority 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 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 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 Authority.

12 Freedom of Information

- 12.1 The Contractor acknowledges that the Authority 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 Authority to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 12.1.2 transfer to the Authority 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 Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within

5 Working Days (or such other period as the Authority may reasonably specify) of the Authority'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 Authority.

12.2 The Contractor acknowledges that the Authority 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 Authority 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 Authority 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 Authority, 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 Authority 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 Authority, the Contractor shall:

- (a) Prior to the processing of any Personal Data under this Contract and where requested by the Authority provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment ("DPIA"). Such assistance may, at the discretion of the Authority 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 Authority (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Authority unless the Contractor is required to do so otherwise by Law. If it is so required, the Contractor shall promptly notify the Authority 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 Authority, containing:
 - i) the categories of processing carried out on behalf of the Authority;
 - 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 Authority 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 (and in particular Schedule 4);
 - 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 Authority 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 Authority has been obtained and the following conditions are fulfilled:

- (i) the Authority 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 Authority;
 - (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 Authority in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (j) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data;
- (k) notify the Authority 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 Authority's instructions from the Authority infringe the Data Protection Legislation;
 - c. receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other regulatory Authority 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 Authority 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 Authority, the parties acknowledge that the Authority is the Data Controller and the Contractor is the Data Processor. The Authority 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 Authority with full co-operation and assistance (within the timescales reasonably required by the Authority) 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 Authority with full details and copies of the complaint, communication or request;

- b. where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
 - c. the Authority, on its request, with any Personal Data it holds in relation to a Data Subject;
 - d. assistance as requested by the Authority following any Data Loss Event; and
 - e. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office (ICO), or any consultation by the Authority with the Information Commissioner's Office;
- 13.6 The Contractor shall, if requested by the Authority, 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 Authority copies of all documentation relevant to such compliance including, processing records, procedures, guidance, training and manuals.
- 13.7 The Contractor shall allow the Authority (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 Authority to enable the Authority 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 Authority'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 Authority'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 Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority;
- vi) Where appropriate, provide all assistance necessary to enable the Authority to fulfil its obligations to notify the Information Commissioner within 72 hours after becoming aware of the Data Loss Event; and
- vii) notify the Authority immediately if it considers that any of the Authority'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 Authority determines that the processing is not occasional;
- (b) the Authority 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 Authority 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 Authority in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Authority;
- (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 Authority with such information regarding the Sub-processor as the Authority may reasonably require.

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

13.13 The Authority 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 Authority 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 Authority's request, the Contractor shall delete or return all Personal Data to the Authority 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 Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 13.17 The Contractor shall use its reasonable endeavours to assist the Authority 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 Authority to breach any of the Authority'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 Authority on a continuing basis against any and all Losses incurred by the Authority 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.

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 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 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 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 clauses 9.4, 13.18, 13A.9 and 18.3 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 5 million pounds (£5,000,000);
 - c) Professional indemnity with the minimum cover per claim of £2 million pounds (£2,000,000);

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 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 Authority 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 Authority 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 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 Agreement 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 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, 13A, 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 Authority and any incoming Contractor of the Services to the extent necessary to effect 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 Agreement. 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 Agreement.
- 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 Agreement 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 Agreement 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 Agreement or any other contract with the Crown (including the Authority) the Authority may:
 - 18.4.1 terminate the Agreement 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 Agreement; 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 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 Subject to Clause 3.4, 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 Authority 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 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 Agreement. 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 Agreement 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.
- 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 Authority: Care Quality Commission

Address: 151 Buckingham Palace Road, London SW1W 9SZ



21.3.2 For the Contractor: TMP Ltd

Address: 265 Tottenham Court Road



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 Not applicable.

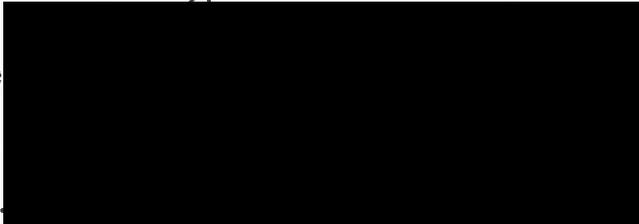
IN WITNESS of which this Agreement has been duly executed by the parties on the date first above written.

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

Signature

Name

Position ..



SIGNED for and on behalf of **[CONTRACTOR]**

Signature

Name

Position ..



SCHEDULE 1 – SPECIFICATION

Recruitment Advertising Services

Given the size of our resourcing challenge and our experience to date, CQC needs to use a range of attraction strategies to capture potential candidates. CQC aims to create a good early impression for all candidates by communicating a strong and compelling message about why they should join CQC, supported by cost effective web based recruitment technology to drive the process. Our recruitment partner will work with us to deliver this.

Standard recruitment advertising requirements:

- Provide an accurate, timely, cost effective recruitment advertising service including drafting copy, advising on media, booking space, designing and placing advertisements
- Provide advice on both on line and off line media, based on knowledge of recruitment advertising markets and sound research
- Provide labour market statistics and salary benchmarking information where appropriate
- Proactively support us where there is a need to deliver more diverse candidates
- Proactively support us in reviewing the way that we recruit for diversity including tests for disproportionate pass rates and adverse impact testing where necessary

In particular for Inspector roles, we will run rolling recruitment campaigns and will drive potential candidates to the Inspector and Analyst campaign sites from a variety of sources including social media campaigns. We will look to our recruitment advertising partner to:

- Advise on innovative approaches to recruitment, to enable us to continually modernise our approaches to candidate attraction
- Support research into strategies to understand the market and to attract in hard to recruit areas such as certain geographies for inspection and Analyst family roles

SCHEDULE 2 – CHARGES

Estimated Charges for period

TMP - Recruitment Advertising Services	£80,663 ex VAT	£96,795 inc VAT
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SCHEDULE 3 – TENDER RESPONSE

Response:

A growing economy as well as negative publicity around austerity measures will mean CQC will need to work hard to attract the best recruits, as well as carefully defining their offer in the light of increased competition.

Additionally, it's important to reflect the growing diversity needs to increase representation of minority groups and senior women across the sector.

TMP are perfectly placed as a partner to meet your objectives. As the largest and best resourced agency in the business with a track record of delivering quality, cost-effective solutions, every element of our campaign planning is based on knowledge, understanding and taking a bespoke, strategic approach to each project.

The Care Quality Commission has a significant challenge to recruit significant numbers of Inspectors (as well as other professionals) within an increasingly competitive recruitment landscape.

Whilst there have been previous campaigns and a dedicated careers microsite is already in place(which is being disbanded and new pages created on the main CQC website), we believe that there are opportunities to enhance the attraction approach and candidate experience.

Before setting out the TMP delivery approach, we thought it best to start with an assessment of the current CQC brand assets and activity.

User Journey – Search engine marketing

CQC performs well for those looking specifically for CQC jobs, appearing at the top of search results, but disappears from listings when more general search terms are entered – such as “inspector careers” and “social care management careers”.

Search term	Result
'Social care inspector jobs'	CQC careers page is the top result.
'Social care management careers'	Does not feature in results

'Social care management jobs'	Does not feature in results
'Inspector careers/Inspector jobs'	<p>Does not feature in results.</p> <p>Interestingly, OfSTED features heavily, as do the RSPCA and several health & safety roles. Would suggest this is how people are targeting non-sector recruits with transferrable skills.</p>

We have not provided a critique of your website, as this is out of scope for this project. We would be happy however to work with CQC teams and share our insights and thoughts.

Social Media

- LinkedIn is the main space for CQC's audience. There are more than 50,000 social work professionals on LinkedIn.
- CQC has a profile and around 7,500 followers. No analysis yet of who they are.
- Profile is well managed – regular, varied content which is commented on and regularly shared/"liked" by various followers.
- However – employer brand content is lost among general brand content, as there's no careers tab.

Press

- Media profile is quite strong – of the first two pages of google news results, there is only one negative story
- However it isn't coverage that positions the employer brand – it positions the CQC brand of inspecting and raising standards, but doesn't talk about modernisation

Topline recommendations

General

- Place all jobs in one place – preferably through the main CQC site –to create a single destination for jobseekers and a simpler user journey. We understand that this is your planned approach, moving forward.
- Clarify target audience – if CQC is looking to draw in people from other professions with transferrable skills, then keywords need reviewing

Search

- Target google keywords to pick up those not specifically searching for CQC roles

Social Media

- Set up a careers tab to showcase the employer brand
- Develop a content strategy and add it to other attraction to drive potential recruits to the social space and website
- Analyse followers (audience segmentation)
- Develop targeted LinkedIn PPC ad campaign to support recruitment

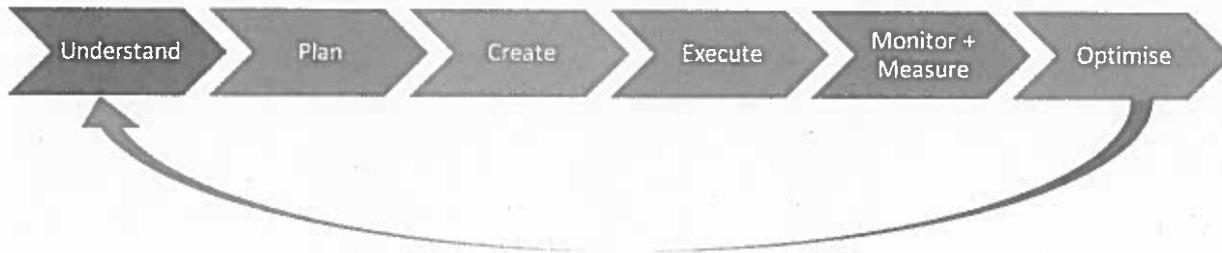
Press

- Set up a media relations plan to raise CQC profile among target audiences and launch campaign into target audience media – at present social workers see them as understaffed and under fire, while other inspectors don't see them at all
- Tie recruitment campaign to a concerted effort to address media criticisms around inspector numbers and sell it as a news story – Guardian, MJ, Times etc – “Care watchdog seeks to flex its muscles with recruitment drive to raise care standards” etc

The TMP delivery proposal

Our methodology follows a structured approach, which starts with audience and sector insights, leading to the creation of brand-led attraction strategies which lead to candidate activation – either to view a website, register, apply or simply be more positively pre-disposed to CQC as an employer. All of this is underpinned by measurement and meeting core contract objectives.

This approach is summarised below:



Listen

At the start of our relationship we would want to develop a full understanding of the roles, and create specific candidate profiles to target – including experience, skills and motivations. This is critical in order to create the right creative messages and platforms for individual campaigns and generic profile raising activity.

We're already advanced in this area, having worked with many Local Authorities, Trusts and CCGs to attract relevant staff for key roles.

This process would involve a more detailed briefing from CQC to understand past activity and successes, key cohorts to target, staff survey feedback and insights from key external influencers.

Plan

This stage will involve a lead strategist (see our team structure) going into the detail to identify skills and traits that make up ideal candidate profiles, known as 'personas'. By segmenting the audience in this way we will be able to review audience habits and relevant media channels in order to select the best opportunities to attract and retain the best candidates.

Whilst this might seem lengthy, we appreciate the need to move quickly and this enhanced briefing and subsequent strategic planning can often take place within a couple of days.

The planning stage would also include agreement of task-level detail. TMP are able to deliver the appropriate resource swiftly to help achieve the proposed timings you have given. To this end, the high-level plan shown below demonstrates how the various deliverables would 'line up' to launch the campaign in January.

ACTIVITY	Day											
	1	2	3	4	5	6	7	8	9	10	11	12
TMP appointed												
CQC briefing												
Audience planning												
Creative development												
Creative channel presentation												
Executive messaging												
Book media / engage with influencers												

Create

Our attraction strategy is underpinned by the Understand phase as outlined above. It reflects our findings about who your target audience are, how they consume media, and who the key influencers are. The messaging of the attraction campaign is our response to the challenges outlined above, and a positive way of changing the candidates' mindsets to drive them to application.

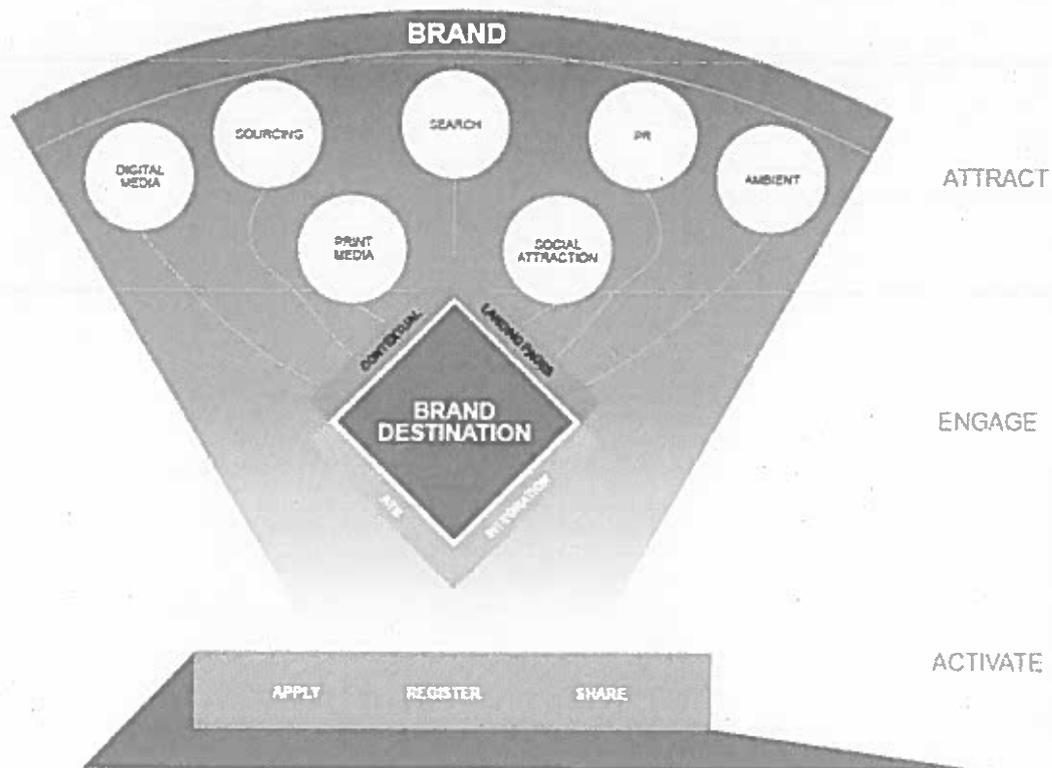
Delivering the right candidates will require developing strong creative messaging to use across a targeted group of platforms which may include job boards, social media and professional networks, as well as promotional material and collateral to be delivered at recruitment events.

Execute

Our strategy will be to segment each audience and plan a targeted attraction and media plan, driving candidates to web content where they will find out more about the opportunities and enter the recruitment process. This destination is critical, and must reflect every element of the brand to ensure a seamless and engaging experience.

A significant element in the TMP proposal will be an increased use of social media and a media relations programme to engage with key press and blogging influencers. A recent project from TMP to recruit Social Care professionals generated the advertising equivalent of [REDACTED] of 'free' publicity and highly favourable press commentary.

The mix of channels used to carry your message will include those featured in the following diagram:



Promoting brands through strong creative messaging is at the heart of our offer. After we have agreed the brief, we will set our teams to work brainstorming ideas and generating exciting creative concepts to draw in the best applicants.

These will be used to create a suite of marketing materials used across a wide range of tried and tested platforms. We'll involve you closely in the work we produce and ensure that it is tested on the relevant audiences. We will also involve our expert diversity associates, ensuring that what goes to market is appealing to minority groups, with any specific cultural requirements taken into account.

Monitor/measure

Measurement and performance management is central to our methodology.

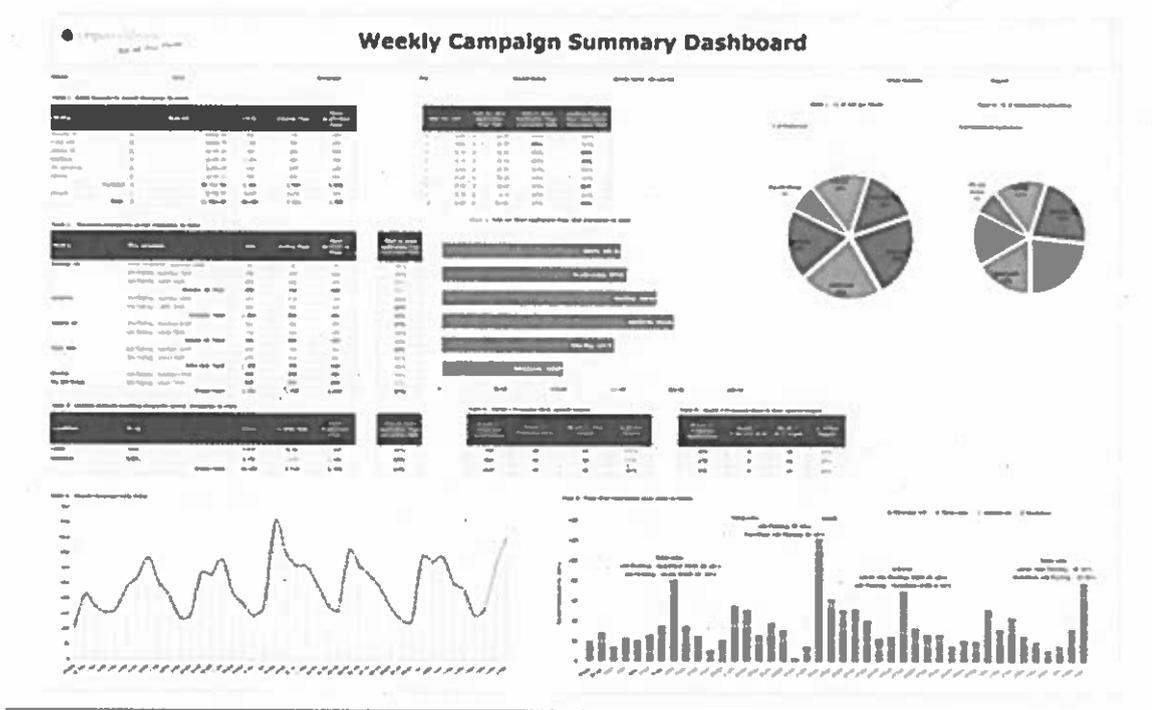
Each element of our attraction strategy is tagged, allowing us to monitor performance across all digital platforms; this returns vital information which enhances existing campaigns and provides insight to improve future performance. We will share this information with you, as well as media providers, in order to negotiate additional inventory and coverage.

Weekly Dashboard Report

We'll provide a dashboard each week providing an overview of your recruitment activity for each rolling campaign, produced in an ideal format to enable multiple service users to share information across divisions and locations.

This information allows us to work proactively with key stakeholders, including third parties, to track the volume of candidates, ensuring that the media spend is utilised wisely and optimised where we have specific location or niche skill set challenges. A good example of this would be the work we have done to recruit Investigators for the IPCC, particularly numbers from diverse groups.

Your dedicated Project Manager and Client Manager will review these reports with you at the scheduled weekly teleconference or monthly meeting.



We are comfortable of being able to meet your deadlines of a campaign going live by mid-January.

Review

Throughout the delivery of this project we will constantly monitor and analyse responses at regular intervals to ensure the numbers and quality are coming through. Our suggestion would be to meet or hold a weekly conference call during peak periods (together with monthly review meetings) as a project group to share current data, discuss any project risks and identify areas for improvement.

We would lead on these and create a bespoke review toolkit to include:

- Project Plan outlining deliverables and timelines
- KPIs specific to the project needs
- Full SLA to be agreed by both parties
- Risk Register
- Action Log

Adding value to CQC

At TMP we believe in knowledge transfer with clients and can offer free training and coaching in a number of areas:

- use of social media and developing in-house capability
- LinkedIn – how to maximise on its potential
- Employer branding – a best practice guide
- Diversity – regular workshops and knowledge-sharing on latest innovations
- ATS – we understand that CQC will shortly be reviewing their ATS provider. TMP has conducted several audits and evaluations in this area and can offer advice and insight into the relative strengths and weaknesses of the different platforms.

Risk and Contingency Planning

TMP treats risk and contingency planning with the utmost seriousness, and we have developed internal and external processes to identify, quantify and mitigate any risks when implementing our service.

Prior to our initial kick off meeting, TMP will produce a RAID log (which details the Risks, Actions, Issues and Dependencies). Then following the meeting, this log will be updated to accurately reflect the challenges that, in our experience of managing similar projects, we could encounter. We then weave this information into our Implementation Plan, which sets out a detailed, step-by-step approach to setting up and running the service. Objectives and timelines are detailed, as well as the key people who will be involved in each step, from TMP and the client.

For multi-dimensional recruitment marketing like this we always agree a detailed scope of work documentation and SLA to ensure that all stakeholders agree on the contract deliverables, requirements and procedures. As an organisation, we strive always to be open and honest in our discussions, and will aim for genuinely two-way dialogue to promote a positive and rewarding relationship for everyone concerned.

We believe that having robust data is critical to the success of every campaign and client that we work with. Therefore we have invested heavily in systems and processes to allow us to do this. We believe in not only reporting at the end of the campaign, but every week during the recruitment cycle, to ensure that we are up to date with progress.

Post-contract award, our Measurement and Insight team will provide best practice consultation on which reports are typically provided as part of our service offering, and agree key delivery dates.

A change request process will be in place throughout the contract, ensuring that any scope changes are effectively managed in a timely and efficient manner.

Quality Assurance

TMP Worldwide has a commitment to providing the highest level of service and customer satisfaction to our clients (measured by our industry recognised Net Promoter Score within our annual customer survey). We are passionate about having a right first time approach, something we believe is vital to the efficient and profitable growth of the company.

SLAs

At TMP it's not just about the what, it's about the how. Quality is integral to the management of our campaigns. At the 'initiate' phase of each project, clear quality Service Level Agreements (SLAs) are agreed with the client; these are reviewed at monthly meetings.

We agree a bespoke SLA at the beginning of every new client relationship to ensure that all stakeholders agree on the contract deliverables, requirements and procedures. If a problem arises, a formal escalation process is agreed with the client and included within the SLA. As an organisation, we strive always to be open and honest in our discussions, and will aim for genuinely two-way dialogue to promote a positive and rewarding relationship for everyone concerned.

TMP have quality objectives against which performance is reviewed every month at a formal one-to-one. If any measure is not met on two consecutive occasions, a formal action plan is invoked. To support the Quality Assurance process we have a team of Quality Assurance Co-ordinators, who have been recruited and trained specifically for this role.

Each week a report on all areas of quality assessment is reviewed for individuals and the team. The Business Director will review this and share the findings with the client.

We know that a fair representation of a diverse population within a workforce has been proven to not only be morally important for an employer's reputation, but also a contributor towards its performance. We are committed to helping employers achieve this through enhanced candidate attraction strategies.

TMP are perfectly positioned to support you in the realm of diversity and inclusion, having a track record of delivering a diverse range of candidates through various attraction methodologies including:

- Employer branding for hard to reach groups
- Diversity proofing all communication activities
- Community engagement
- Outreach – events and marketing
- Innovative social media and digital strategies
- Direct sourcing for a range of specialist and difficult to recruit to roles

We have key partnerships in place to deliver diversity expertise to benefit our clients' campaigns. To support us in market-testing campaigns and building community engagement programmes, TMP has a strategic partnership with Here & Now 360 – a leading diversity marketing and engagement organisation working exclusively with minority communities across the UK.



Investing in DIVERSITY

HR Seminar focused on recruiting a diverse workforce

Wednesday 21st May 2014
8.30 - 13.00
Bank of England
20 Moorgate London, EC2R 6DA

tmp.worldwide
Out Service Fast Stream
BANK OF ENGLAND
HR lounge
astar-fanshawe
From difference to diverse performance

We are committed to sharing the latest thinking around engaging with under-represented audiences through conferences and seminars that we run for clients. A recent event (see image above) that we produced was co-hosted by the Bank of England, involved speakers from a variety of employers and was attended by over 100 clients.

SCHEDULE 4 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

Description	Details
Subject matter of the processing	TMP do not receive any personal data from CQC to fulfil the contract.
Duration of the processing	1 April 2018 – 31 March 2019
Nature and purposes of the processing	N/A
Type of personal data	N/A
Categories of Data Subject	N/A
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	N/A

SCHEDULE 5 – Not Used

SCHEDULE 6 – CHANGE CONTROL

Contract Change Note

Contract Change Note Number	
Contract Reference Number & Title	
Variation Title	
Number of Pages	

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	£
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
Revised 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 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 – NOT USED

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	Supplier (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	Supplier	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

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SCHEDULE 8 – EXIT MANAGEMENT STRATEGY

[Exit Management Strategy to be agreed mutually]

