

Contract (Short Form – Services)

Contract for the Provision of the Local System Overview Services
between

(1) The Care Quality Commission

and

(2) The Improvement and Development Agency for Local
Government

Contract Reference CQC PSO 151

01 July 2017

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Terms and Conditions of Contract for Services

THIS CONTRACT IS DATED 1ST JULY 2017

PARTIES

- (1) CARE QUALITY COMMISSION of 151 Buckingham Palace Road, London, SW1W 9SZ 2HQ ("**Customer**").
- and
- (2) Improvement and Development Agency for Local Government of Local Government House, Smith Square, London. SW1P 3HZ. Company number 03675577 ("**Contractor**")
- (Together the "**Parties**")

Background

1. The Secretaries of State for the Department of Health and the Department for Communities and Local Government exercising their powers under section 48 of the Health and Social Care Act 2008 have requested that the Customer undertake a programme of targeted reviews in local authority areas.
2. The purpose of the reviews is to provide a better understanding of the pressures and challenges and identify any areas for improvements in the provision of health and social care within a local system, so that people using services are provided with safe, timely and high quality care.
3. The focus of these reviews will be on NHS care and adult social services which are provided at the interface of health and social care and an assessment of governance resources.
4. The Improvement and Development Agency for Local Government has been appointed by the Customer to provide the Services.
5. Therefore the Parties have agreed to enter into this Contract for the provision of the services defined in the Specification.

1 Interpretation

1.1 In these terms and conditions:

"Approval" Means the written consent of the Customer;

“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 3;
“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;
“Contract”	means the contract consisting of these terms and conditions, any attached Schedules, including the Specification, between (i) the Care Quality Commission (“Customer”) and (ii) the Improvement and Development Agency for Local Government (“Contractor”);
“Contractor”	means the person named as Contractor who was awarded this contract;
“Customer”	means the Care Quality Commission;
“DPA”	means the Data Protection Act 1998;
“Expiry Date”	means the date for expiry of the Contract as set out in the Term;
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“Information Sharing Agreement “	means the Information Sharing Agreement contained in Schedule 4 of this Contract;

“Party”	means the Contractor or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA) which is processed by the Contractor or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Premises”	means the location where the Services are to be supplied, as set out in the Specification;
“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 Contract;
“Request for Information”	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 Contract;
“Services”	means the services to be supplied by the Contractor to the Customer under the Contract;
“Specification”	means the specification for the Services (including as to quantity, description and quality) 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 Contract;
“Term”	means the period from the start date of this Contract e as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Contract;
“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 Contract.
- 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 Contract shall take effect from 01 July 2017 ("the Commencement Date") and shall automatically expire on 01 June 2018 ("the Expiry Date"), unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Contract.

4.2 The Customer may extend the Contract 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 Contract shall apply throughout any such extended period.

5 Charges, Payment and Recovery of Sums Due

5.1 The Charges for the Services shall be as set out in the in Schedule 3 appended hereto 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 Contract. 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 Contract, withhold or reduce payments in the event of unsatisfactory performance.

- 5.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The 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 Contract for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.6 If a payment of an undisputed amount is not made by the 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 Contract (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Contract), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Contract or under any other agreement or contract with the 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.

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 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.
- 6.3 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.

- 6.4 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.
- 6.5 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Contract 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 Contract. Such equipment shall be returned promptly to the Customer on expiry or termination of the Contract.
- 6.6 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 Complaints

- 7.1 Any complaint regarding the conduct of a Customer's Staff or should be made to [REDACTED]
- 7.2 Any complaint regarding the conduct of a Contractor's Staff should be made to the [REDACTED].
- 7.3 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Contract, it may, by giving written notice to the Contractor:
- 7.3.1 refuse admission to the relevant person(s) to the Customer's premises;
 - 7.3.2 direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.3.3 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.

8 Assignment and sub-contracting

- 8.1 The Contractor shall not assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Contract or any part of the Contract.
- 8.2 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Contract without the consent of the Contractor

provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Contract.

9 Intellectual Property Rights

- 9.1 All intellectual property rights in any materials provided by the Customer to the Contractor for the purposes of this Contract 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 Contract for the sole purpose of enabling the Contractor to perform its obligations under the Contract.
- 9.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Contract or arising as a result of the provision of the Services shall vest in the 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 Contract and any intellectual property rights arising as a result of the provision of the Services; and
 - 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
 - a) any intellectual property rights vested in or licensed to the Contractor on the date of the Contract; and
 - b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Services,including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided.
- 9.4 The Contractor shall indemnify, and keep indemnified, the 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, or agents.

- 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 Contract, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all payments made by the 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 Contract.

11 Confidentiality, Transparency and Publicity

- 11.1 Subject to clause 11.2, each Party shall:

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

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

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

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

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

11.2.3 on a confidential basis, to its professional advisers;

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

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

11.2.6 where the receiving Party is the 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 Contract is not Confidential Information and the Contractor hereby gives its consent for the Customer to publish this Contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the

Contract agreed from time to time. The 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 Contract is exempt from disclosure in accordance with the provisions of the FOIA.

- 11.4 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Contract or any part of the Contract in any way, except with the prior written consent of the 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:

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 Contract 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 Contract, 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 Parties will comply with applicable laws and standards including data protection and freedom of information legislation. In particular, the parties agree to comply with the requirements of the Information Sharing Protocol attached to this Contract in Schedule 4.

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 Contract.

- 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 Contract, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.4, in no event shall the Contractor be liable to the 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 Contract shall be construed to limit or exclude either Party's liability for:

- 14.3.1 death or personal injury caused by its negligence or that of its Staff;
 - 14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
 - 14.3.3 any other matter which, by law, may not be excluded or limited.
- 14.4 The Contractor's liability under the indemnity in 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 million pounds (£5,000,000);
 - c) Professional indemnity with the minimum cover per claim of one million pounds (£1,000,000);
- or any sum as required by Law unless otherwise agreed with the 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 Contract.

15 Force Majeure

- 15.1 Neither Party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the Contractor. Each Party shall promptly notify the other Party in writing, using the most expeditious method of delivery, when such circumstances cause a delay or failure in performance, an estimate of the length of time delay or failure shall continue and when such circumstances cease to cause delay or failure in performance. If such circumstances continue for a continuous period of more than 30 days, either Party may terminate the Contract by written notice to the other Party.
- 15.2 Any failure by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent or supplier shall be regarded as due to Force Majeure only if that agent 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 Contract at any time by notice in writing to the Contractor to take effect on any date falling at least 2 months (or, if the 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 Contract by written notice to the Contractor with immediate effect if the Contractor:
 - 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Contract which is not capable of remedy;
 - 16.2.2 repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
 - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
 - 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - 16.2.5 breaches any of the provisions of clauses 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 Contract by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Contract shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1,

6.5, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.4, 19 and 20.8 or any other provision of the Contract that either expressly or by implication has effect after termination.

16.6 Upon termination or expiry of the Contract, the Contractor shall:

16.6.1 give all reasonable assistance to the 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 Contract. 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 Contract.

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 Contract 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 Contract 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 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, 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 Contract or any other contract with the Crown (including the Customer) the Customer may:
 - 18.4.1 terminate the Contract 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 Contract; 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 Contract in accordance with the Dispute Resolution Policy contained in Schedule 5.

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 Contract is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Contract 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 Contract cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 In the event that the Contractor is unable to accept the variation to the Specification or where the Parties are unable to agree a change to the Charges the Customer may:
- 20.4.1 allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;
 - 20.4.2 terminate the Contract with immediate effect, except where the Contractor has already provided all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirement of the Specification, and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at clause 19.
- 20.5 The Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the 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 Contract shall be valid only if it is communicated to the

other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

- 20.7 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.8 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract (whether under the Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.9 If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.
- 20.10 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the 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 Contract. 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 Contract 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 Contract constitutes the entire contract between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

21 Notices

21.1 Except as otherwise expressly provided in the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

21.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter), Such letters shall be addressed to the other Party in the manner referred to in clause 21.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

21.3 For the purposes of clause 21.2, the address of each Party shall be:

21.3.1 For the Customer:

Care Quality Commission
Citygate
Gallowgate
Newcastle Upon Tyne
NE1 4PA
For the attention of: [REDACTED]

[REDACTED]

For the Contractor:

The Improvement and Development Agency for Local Government
Local Government House,
Smith Square,
London.
SW1P 3HZ
For the attention of: [REDACTED]

[Tel:] : [REDACTED]

[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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

SCHEDULES

Schedule 1- Specification

Background

Following the budget announcement of additional funding for adult social care, the Department of Health has asked CQC to undertake a programme of targeted reviews in local authority areas.

These local system reviews , exercised under the Secretaries of State Section 48 powers, will be focused on the interface of health and social care and will include a review of commissioning across service interface and an assessment of the governance of resources.

In addition, the local system review's will look specifically at how people move between health and social care, including delayed transfers of care with particular reference to people aged 65 and over.

The local system reviews will consider system performance along a number of 'pressure points' on a typical pathway of care and will also focus on the interface between social care and general primary care and acute and community health services.

Each of the 20 systems reviewed will be provided with a bespoke response detailing local findings.

The findings of all the reviews will be compiled into a National Report to give overall advice to the Secretaries of State.

The intention is that these system reviews will provide a useful reflection for each of the local areas highlighting what is working well and where there are opportunities for improving how the system works for people using services.

Please see attached a timeline and description of the review process contained in Schedule 2 of this schedule.

Requirement

In order to carry out the reviews the Care Quality Commission will require additional resources. The additional resources will be Specialist Professional

Advisors and will be provided as and when required by the Care Quality Commission. The Specialist Professional Advisors will work with multiple teams in delivering the reviews and as part of delivering activity the interface will naturally enhance the knowledge and information that inspectors hold on the wider system of commissioning health services. It is anticipated that the time commitment for a Specialist Professional Advisor is between 6 and 7 Days per review and will be required as follows:

- . 1-2 days spent in planning and preparing for the site visit
- 5 days which will be spent on site within the local system.

The Specialist Professional Advisors will have the following experience and skill sets:

- Senior Leadership of organisations that have commissioned health care services and have current credibility in leadership and wider system community.
- Proven senior experience in a specialist area such as the design and delivery of Adult Social Care, Health care, and or Community based care
- Experience of services commissioning the systems and the strategic environment in which this is done
- Strong understanding of the health and/or social care sector
- Highly-developed analytical and communication skills
- A track record of working successfully with senior teams in large organisations
- Current skills, knowledge and experience in area of specialism
- To be able provide specialist advice and input into the Care Quality Commission's (CQCs) system review activity. This advice ensures that CQC's judgements are informed by up to date and credible professional knowledge and experience.

Schedule 2- Provisional Review Methodology and Timeline

To support the review, (as well as longer-term 'Place'-based fieldwork and BAU cross-sector working), Intelligence is developing area-level data profiles containing cross-sector analysis.

Data profiles will feature analysis of a range of quantitative metrics. Qualitative information gathered via the System Information Return will be appended to the profiles.

The analysis included with the profiles will reflect and build on the analysis DH undertakes to select the areas for the review. Our analytical approach will align with DH's to ensure we reflect a consistent view of system performance. CQC has been involved in discussions with DH to advise on the measures and analytical approach. The final list of measures and detailed analytical methodology will be supplied by DH shortly.

Data profiles will be developed iteratively, with profiles for the earlier local authorities focused around a list of high-priority measures. Profiles for later local authorities will include additional analysis

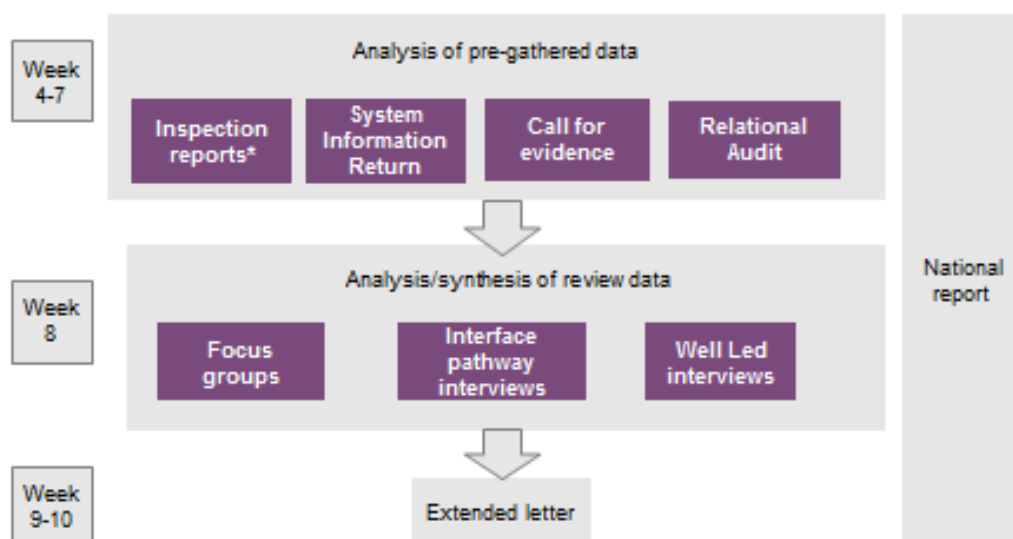
Data Profiles – High Priority Metrics

Demographic Context	Quality of Service	Activity/Flow through System
<ul style="list-style-type: none"> • % Population aged 65+ • % Population White British • IMD quintile 	<ul style="list-style-type: none"> • CQC Area Ratings Score • Overall Provider Ratings by Sector • Change in ratings by Sector 	<ul style="list-style-type: none"> • A&E 4 hour waits • Emergency admissions per 1000 18+ (<i>DH metric</i>) and 65+ and from care home postcodes • % admissions with LOS >7days (18+, 65+ and from care home postcodes) • Percentiles LOS for emergency admissions (<i>DH metric</i>) • Total DTOC days per 100,000 (<i>DH metric</i>) • DTOC days attributable to NHS/ASC/Both and DTOC by reason for delay • Emergency readmissions 65+ (<i>DH metric</i>) and from care home postcodes • Proportion of discharges which occur at the weekend vs weekday • Proportion of 65+ discharged from hospital into reablement/rehabilitation services, and those that were still at home 91 days after discharge (<i>DH metric</i>) • Key Ambulance System Performance Indicators

Data Profiles – High Priority Metrics

System Provision /Capacity	Staffing	Funding	Service User Experience
<ul style="list-style-type: none"> Acute Hospital Bed Occupancy Capacity per 100,000 pop (aged 65+) of Residential, Nursing and Community (DCA) ASC Services ASC Entries and Exits (% Increase/decrease in Residential and Nursing home beds and DCA services over last 2 years) Patients per FTE GP & Nurse NHSE Primary care access: Extended access to GP services on a weekend and evening (<i>DH metric</i>) 	<ul style="list-style-type: none"> Services that are missing a registered manager Turnover of registered managers The professional and caring staff vacancy and turnover rate within ASC services 	<ul style="list-style-type: none"> % of ASC services that are fully self-funded vs % of services that are LA funded Surplus /deficit by NHS hospital provider Average GP pounds per patient 	<ul style="list-style-type: none"> Health-related quality of life for people with long-term conditions Proportion of people feeling supporting to manage their long-term condition (<i>DH metric</i>) Social care-related quality of life score (<i>DH metric</i>)

Qualitative data analysis



Schedule 3- Charges and Invoicing

Charges

The costs of the Specialist Professional Advisor will be between [REDACTED] [REDACTED] dependant on skill levels and experience.

CEO services will be provided free of charge.

The day rate of an SPA will be agreed prior to commencement of the services.

CQC will book all travel and accommodation required by the Specialist Professional Advisors in completing their duties

Car mileage will be reimbursed at prevailing CQC rates

Taxis will be reimbursed on submission of a valid receipt

The total value of the contract will not exceed £40,000 (excluding VAT).

Invoicing

Invoices must be submitted on a monthly basis and will be paid within 28 days

Schedule 4 – Information Sharing Agreement

Schedule 5 – Dispute Resolution Policy

DISPUTE RESOLUTION PROCEDURE

The discharges of the Services save for the specific matter in dispute, shall not be affected or suspended in the event of and during any dispute.

STAGE ONE – [REDACTED], [REDACTED]

All disputes between the Parties arising out of or relating to this Contract shall in the first instance be referred by way of escalation to Head of Hospital Inspections (North Region) for CQC and Head of Care and Health Improvement Programme for the Local Government Association, who shall use all reasonable skill, care and diligence to try and resolve disputes speedily and to the mutual satisfaction of all involved.

STAGE TWO – [REDACTED] [REDACTED] [REDACTED]

[REDACTED] within (10) five Working Days of a reference under Stage One and provided that no right of termination has been exercised, then the matter shall be referred to Deputy Chief Inspector for Primary Medical Services and Integrated Care for CQC and Head of Policy for the Local Government Association, who shall endeavour to meet, investigate and resolve the dispute within 5 Working Days of the referral from the officers for Stage One.

STAGE THREE – [REDACTED] [REDACTED]

Where a solution acceptable to both Parties is not achieved within (10) Working Days of a reference from Stage Two officers and provided that no right of termination has been exercised, then the matter shall be referred the matter to the Chief Inspector of General Practice, Primary Medical Services and Integrated Care for CQC and the Deputy Chief Executive for the Local Government Association, who shall endeavour to meet, investigate and resolve the dispute within 5 Working Days of the referral from the officers for Stage Two.

STAGE FOUR –

Where a solution acceptable to both Parties is not achieved within (5) Working Days of a reference from Stage Three officers and provided that no right of termination has been exercised, then the matter shall be referred the matter