

Contract (Short Form – Services)

Contract for the provision of:

**Research to Understand the impact of
characteristics on the speaking up dynamic**

Contract Reference CQC NGO 012

December 2022

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PARTIES

- (1) **CARE QUALITY COMMISSION** for the National Guardian's Office of Citygate, Gallowgate, Newcastle Upon Tyne, NE1 4PA ("**Authority**")

and

- (2) **Picker Institute Europe**, Suit 6 Fountain House, 1200 Parkway Court, John Smith Drive, Oxford, OX4 2JY ("**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. The National Guardian's Office (NGO) is a statutory committee of the Authority and a UK based independent organisation which supports workers to speak up in the context of their roles within the NHS. It was formed in direct response to recommendations made in Sir Robert Francis's report ('The Freedom to speak up', 2015).
2. The Authority seeks a contractor to undertake research to understand the impact of characteristics on the speaking up dynamic as more particularly described in Schedule 1. The Contractor has been appointed by the Authority to provide the Services and the Contractor agrees to provide the Services in accordance with these terms and conditions.
3. Therefore, the Parties have agreed to enter into this Contract for the provision of the Services as defined in the Specifications.

1 Interpretation

1.1 In these terms and conditions:

“Approval” means the written consent of the Authority;

“Authority” means the Care Quality Commission;

“Authority Data” means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or

(b) any Personal Data for which the Authority is the Data Controller;

“Anti-Slavery and Human Trafficking Laws” means all applicable anti-slavery and human trafficking laws, statutes, regulations, policies and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

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

“Central Government Body” (d) Executive Agency; 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

“Change Control Notice (CCN)” means a change control notice in the form set out in Schedule 6;

“Contract” means the contract consisting of these terms and conditions, any attached Schedules, the invitation to tender including Specification, the Tender Response between the Authority the Contractor;

“Contract Period”	shall mean the Term of the Contract;
“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’s Response”	means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Services appended hereto in Schedule 3;
“Contractor System”	means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System);
“Controller, 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 UK GDPR, (ii) the DPA 2018 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 Discloser	means the Party disclosing personal data to the Data Receiver.
Data Receiver	means the Party receiving the Personal Data from the Data Discloser.
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract and/or actual or potential loss

	and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Subject Request”	means a request made by or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access his or her 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;
“Default”	means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other;
“Expiry Date”	means the date for expiry of the Contract as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Specification or Contract otherwise notified as such by the Authority to the Contractor in writing;
“Law”	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law,

	or directives or requirements of any Regulatory Body with which the Contractor is bound;
“LED”	means Law Enforcement Directive (<i>Directive (EU) 2016/680</i>)
“Loss”	means any losses, costs, price, expenses, interest, fees (including legal fees), payments, demands, liabilities, claims, proceedings, actions, penalties, price, fines, damages, destruction, adverse judgments, orders or other sanctions and the term “ Losses ” shall be construed accordingly;
“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;
“Price”	means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 3 for the full and proper performance by the Contractor of its obligations under the Contract;
“Pricing Schedule”	means Schedule 3 containing details of the Price;
“Processing”	has the meaning given to it in the Data Protection Legislation but, for the purposes of the Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;
“Prohibited Act”	<p>means:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; (c) an offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;

- ii) under legislation or common law concerning fraudulent acts; or
- iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;

any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK;

“Protective Measures”	means appropriate technical and organisational measures which include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 5 (Security Requirements and Plan
“Purchase Order Number”	means the Authority’s unique number relating to the supply of the Services by the Contractor to the Authority in accordance with the terms of the Contract;
“Relevant Requirements”	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Replacement Contractor”	means any third-party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination 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;
“Security Plan”	means the Contractor’s security plan prepared pursuant to paragraph 3 of Schedule 5 (Security Requirements and Plan), an outline of which is set out in an Appendix to Schedule 5;
“Security Policy Framework”	means the HMG Security Policy Framework (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/611111/Security-Policy-Framework-v1.1.doc.pdf)
“Services”	means the services to be supplied by the Contractor to the Authority under the

Contract as set out in Schedule 1;

Shared Personal Data	means any Personal Data collected or received by one Party pursuant to this Agreement in respect of which the other Party is a controller
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the 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 Contract;
“Staff Vetting Procedures”	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-Contractor”	means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and “ Sub-Contract ” shall be construed accordingly;
“Sub-processor”	means any third party appointed to process Personal Data on behalf of the Processor related to this Contract;
“Supplier Code of Conduct” of	means the HM Government Contractor Code of Conduct dated September 2017;
“Term”	means the period from the start date of the Contract to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Contract;
“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;
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

- “UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
- “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 Contract;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

2 Priority of documents

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

3 Supply of Services

- 3.1 In consideration of the Authority’s agreement to pay the Price, the Contractor shall supply the Services to the Authority for the Term subject to and in accordance with the terms and conditions of the Contract.
- 3.2 In supplying the Services, the Contractor shall:

- 3.2.1 co-operate with the Authority in all matters relating to the Services and comply with all the Authority's instructions;
- 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor's industry, profession or trade;
- 3.2.3 use Staff who are suitably skilled, experienced and possess the required qualifications to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
- 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification in Schedule 1;
- 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.
- 3.2.7 ensure that all information contained in the Contractor's Response (Schedule 3) remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract"
- 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 Price shall be subject to fair and reasonable adjustment to be agreed in writing between the Authority and the Contractor.
- 3.4 Any Variation will not take effect unless recorded in a Change Control Notice in the form set out in Schedule 6 and approved in writing by the Authority.

4 Term

- 4.1 The Contract shall take effect on 21st November 2022 shall expire on 31st March 2023, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Authority may extend the Contract for a period of up to 3 months by giving not less than 1 months' 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 Price, Payment and Recovery of Sums Due

- 5.1 The Price for the Services shall be as set out in the 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 Price 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 Schedule 2. Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3 In consideration of the supply of the Services by the Contractor, the Authority shall pay the Contractor the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number. The Authority may, without prejudice to any other rights and remedies under the Contract, withhold or reduce payments in the event of unsatisfactory performance.
- 5.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Authority shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.6 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 If any sum of money is recoverable from or payable by the Contractor under the Contract (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Contractor under the Contract or under any other agreement or contract with the Authority. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.
- 5.8 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- 5.8.1 Provisions having the same effect as clauses 5.2 to 5.6 of the Contract and
- 5.8.2 Provisions requiring the counterparty to that subcontract to include in any sub-contract which it awards provisions having the same effect as clauses 5.2 to 5.6 of this Contract.
- 5.8.3 In this clause 5.8 'sub-contract' means a contract between two or more Contractors, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

6 Premises and equipment

- 6.1 If necessary, the Authority shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Authority's premises by the Contractor or the Staff shall be at the Contractor's risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Authority's premises, on completion of the Services or termination or expiry of the Contract (whichever is the earlier) the Contractor shall vacate the Authority's premises, remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Authority's premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Authority's premises or any objects contained on the Authority's premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Authority may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Authority shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Authority's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Authority's security requirements.
- 6.5 Where all or any of the Services are supplied from the Contractor's premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Authority in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Authority for the purposes of the Contract shall remain the property of the Authority and shall be used by the Contractor and the Staff only for the purpose of carrying out the Contract. Such equipment shall be returned promptly to the Authority on expiry or termination of the Contract.
- 6.7 The Contractor shall reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Authority shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Authority is notified otherwise in writing within 5 Working Days.
- 6.8 Any Premises/land made available from time to time to the Contractor by the Authority in connection with the contract, shall be made available to the contractor on a non-exclusive licence basis free of charge and shall be used by the contractor solely for the purpose of performing its obligations under the contract. The Contractor shall have the use of such Premises/land as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

- 6.9 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- 6.10 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- 6.11 All the Contractor's equipment shall remain at the sole risk and responsibility of the Contractor, except that the Authority shall be liable for loss of or damage to any of the Contractor's property located on Authority's Premises which is due to the negligent act or omission of the Authority.

7 Staff and Key Personnel

- 7.1 If the Authority reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Contract, it may, by giving written notice to the Contractor:
- 7.1.1 refuse admission to the relevant person(s) to the Authority's premises;
 - 7.1.2 direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Authority to the person removed is surrendered,
- and the Contractor shall comply with any such notice.
- 7.2 The Contractor shall:
- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures; 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 Contract;
 - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Authority; and
 - 7.2.4 shall at all times comply with the Supplier Code of Conduct (<https://www.gov.uk/government/publications/Contractor-code-of-conduct>).
 - 7.2.5 ensure that it does not engage in any act or omission that would contravene Anti-Slavery and Human Trafficking Laws.

- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Authority (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 7.5 At the Authority's written request, the Contractor shall provide a list of names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 7.6 The Contractor's Staff, engaged within the boundaries of the Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 7.7 The Authority may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Criminal Records Bureau check as per the Staff Vetting Procedures.

8 Assignment and sub-contracting

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

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

9 Intellectual Property Rights

- 9.1 All intellectual property rights in any materials provided by the Authority to the Contractor for the purposes of this Contract shall remain the property of the Authority but the Authority hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Contractor to perform its obligations under the Contract.
- 9.2 Save for the Contractor's Background Intellectual Property, all intellectual property rights in any materials created or developed by the Contractor pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Authority. If, and to the extent, that any intellectual property rights in such materials vest in the Contractor by operation of law, the Contractor hereby assigns to the Authority by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Contractor hereby grants the Authority:
- 9.3.1 a royalty-free, non-exclusive licence to use the Contractor's Background Intellectual Property until termination or expiry of the Contract, or until publication of any project report on the Authority's website, whichever is later; 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 created or developed pursuant to the Contract and any intellectual property rights arising as a result of the provision of the Services
- b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Services,
- including any modifications to or derivative versions of any such intellectual property rights, which the Authority reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided.
- 9.4 The Contractor shall indemnify, and keep indemnified, the Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the

Services, to the extent that the claim is attributable to the acts or omission of the Contractor its Staff, agents or sub-contractors.

- 9.5 The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Services and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

10 Governance and Records

- 10.1 The Contractor shall:

10.1.1 attend progress meetings with the Authority at the frequency and times specified by the Authority and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Authority at the times and in the format specified by the Authority.

- 10.2 The Contractor shall keep and maintain until 6 years after the end of the Contract, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be reasonably requested by the Authority in connection with the Contract.

11 Confidentiality, Transparency and Publicity

- 11.1 Subject to clause 11.2, each Party shall:

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

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

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

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

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

11.2.3 on a confidential basis, to its professional advisers;

- 11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 11.2.5 where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Contract provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Contractor's confidentiality obligations under the Contract; and
- 11.2.6 where the receiving Party is the Authority:
- a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;
 - b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Authority transfers or proposes to transfer all or any part of its business;
 - c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - d) in accordance with clause 12.

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

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

12 Freedom of Information

- 12.1 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 Contract 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 Contract, 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 Data

13.1 Authority Data

- 13.1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 13.1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 13.1.3 To the extent that Authority Data is held and/or Processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- 13.1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.

- 13.1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.
- 13.1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.
- 13.1.7 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
 - (b) itself restore or procure the restoration of Authority Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 13.1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

13.2 Personal Data

- 13.2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor.
- 13.2.2 The Parties agree that they will comply with the provisions on Processing, Personal Data and Data Subjects in Schedule 4.
- 13.2.3 The Parties shall at all times comply with Data Protection Legislation.

13A Security

- 13A.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises and shall ensure that all Staff comply with such requirements.
- 13A.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with Schedule 5 (Security Requirements and Plan).
- 13A.3 The Contractor shall comply, and shall procure compliance of its Staff, with Schedule 5 (Security Requirements and Plan).
- 13A.4 The Authority shall notify the Contractor of any changes or proposed changes to Schedule 5 (Security Requirements and Plan). Any changes shall be agreed in accordance with the procedure in clause 20.3.

- 13A.5 Until and/or unless a change to the Price is agreed by the Authority, the Contractor shall continue to perform the Services in accordance with its existing obligations.
- 13A.6 The Contractor shall be liable for, and shall indemnify the Authority against all Losses suffered or incurred by the Authority and/or any third party arising from and/or in connection with any Breach of Security or attempted Breach of Security (to the extent that such Losses were not caused by any act or omission by the Authority).

14 Liability and Insurance

- 14.1 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- 14.2 Subject always to clauses 14.3, 14.4 and 14.5:
- 14.2.1 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Contract, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the estimated yearly Price paid or payable to the Contractor under this Contract whichever is higher; and
- 14.2.2 except in the case of claims arising under clauses 9.4 and 18.4 in no event shall the Contractor be liable to the Authority for any:
- a) loss of profits;
 - b) loss of business;
 - c) loss of revenue;
 - d) loss of or damage to goodwill;
 - e) loss of savings (whether anticipated or otherwise); and/or
 - f) any indirect, special or consequential loss or damage.
- 14.3 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- 14.3.1 death or personal injury caused by its negligence or that of its Staff;
- 14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
- 14.3.3 any other matter which, by law, may not be excluded or limited.
- 14.4 The Contractor's liability under the indemnity in clauses 9.4 and 18.4 shall be unlimited.

14.5 The Contractor's liability for all Losses suffered or incurred by the Authority arising from the Contractor's Default resulting in the destruction, corruption, degradation or damage to Authority Data or Personal Data or any copy of such Authority Data or Personal Data shall in no event exceed £40,000.00

14.6 The Contractor shall hold:

- a) Employer's liability insurance of £5,000,000 providing an adequate level of cover in respect of all risks which may be incurred by the Contractor;
- b) Public liability with the minimum cover per claim of one million pounds £1,000,000;
- c) Product liability with the minimum cover per claim of one million pounds £1,000,000;
- d) Professional indemnity with the minimum cover per claim of one million pounds (£1,000,000);

or any sum as required by Law unless otherwise agreed with the Authority in writing. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration (or 12 (Twelve) years if the Contract is executed as a deed) or earlier termination of the Contract.

15 Force Majeure

15.1 Neither Party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the Contractor. Each Party shall promptly notify the other Party in writing, using the most expeditious method of delivery, when such circumstances cause a delay or failure in performance, an estimate of the length of time delay or failure shall continue and when such circumstances cease to cause delay or failure in performance. If such circumstances continue for a continuous period of more than 30 days, either Party may terminate the Contract by written notice to the other Party.

15.2 Any failure by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or Contractor shall be regarded as due to Force Majeure only if that agent, sub-contractor or Contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.

16 Termination

16.1 The Authority may terminate the Contract at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Contract is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

- 16.2 Without prejudice to any other right or remedy it might have, the Authority may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor:
- 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Contract which is not capable of remedy;
 - 16.2.2 repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
 - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
 - 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13, 17, 18.4 and 20.11; or
 - 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction.
- 16.3 The Contractor shall notify the Authority as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Contractor may terminate the Contract by written notice to the Authority if the Authority has not paid any undisputed amounts within 60 days of them falling due.
- 16.5 If the Authority terminates the Contract under this clause, the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.
- 16.6 Termination or expiry of the Contract shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 13A, 14, 16.7, 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.
- 16.7 Upon termination or expiry of the Contract, the Contractor shall:
- 16.7.1 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

- 16.7.2 return all requested documents, information and data to the Authority as soon as reasonably practicable.

16.7

17 Compliance

- 17.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's premises and which may affect the Contractor in the performance of its obligations under the Contract.

- 17.2 The Contractor shall:

- 17.2.1 comply with all the Authority's health and safety measures while on the Authority's premises; and

- 17.2.2 notify the Authority immediately of any incident occurring in the performance of its obligations under the Contract on the Authority's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

- 17.3 The Contractor shall:

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

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

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

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

- 17.5.1 the Official Secrets Acts 1911 to 1989; and

- 17.5.2 section 182 of the Finance Act 1989.

18 Prevention of Fraud, Corruption and Bribery

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

- 18.1.1 Committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act and/or
- 18.1.2 Been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 18.2 The Contractor shall not during the Term:
 - 18.2.1 commit a Prohibited Act; and/or
 - 18.2.2 do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 18.3 The Contractor shall, during the Term establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and shall notify the Authority immediately if it has reason to suspect that any breach of clauses 18.1 and/or 18.2 has occurred or is occurring or is likely to occur.
- 18.4 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Authority) the Authority may:
 - 18.4.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract; or
 - 18.4.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

19 Dispute Resolution

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

- 19.3 If the Parties fail to appoint a Mediator within one month 20 Working Days of the agreement to refer to a Mediator, either Party shall apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
- 19.4 If the Parties fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, or such longer period as may be agreed by the Parties, either Party may refer the dispute to Court.
- 19.5 The commencement of mediation shall not prevent the Parties commencing or continuing court or arbitration proceedings in relation to the dispute.

20 General

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Contract, and that the Contract is executed by its duly authorised representative.
- 20.2 A person who is not a Party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
- 20.3 Subject to Clause 3.4, the Contract cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may:
 - 20.4.1 allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification;
 - 20.4.2 terminate the Contract with immediate effect, except where the Contractor has already provided all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirement of the Specification, and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at clause 19.
- 20.5 The Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.6 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other Party in writing and

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

- 20.7 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.8 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract (whether under the Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.9 If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.
- 20.10 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.
- 20.11 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or potential conflict between the pecuniary or personal interest of the Contractor and the duties owed to the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 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 Authority:

Care Quality Commission

2 Redman Place, Stratford, London, E20 1JQ

For the attention of [REDACTED] [REDACTED]

Tel: 03000 616161

Email: [REDACTED] [REDACTED]

21.3.2 For the Contractor:

Picker Institute Europe, Suite 6 Fountain House, 1200 Parkway Court, John Smith Drive, Oxford, OX4 2JY

For the attention of [REDACTED]

Tel: 01865 208100

Email: [REDACTED]

Email: [REDACTED]

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

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

22 Governing Law and Jurisdiction

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

23 TUPE

Not applicable

IN WITNESS of which this Contract has been duly executed by the Parties.

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

[Redacted signature]

[Redacted signature]

SIGNED for and on behalf of **Picker Institute Europe**

Authorised Signatory 1:

[Redacted signature]

[Redacted signature]

Authorised Signatory 2:

[Redacted signature]

SCHEDULE 1 –SPECIFICATION

We possess a range of characteristics. We want to research the impact of characteristics on the speaking-up dynamic - namely, are specific characteristics more or less likely to act as barriers to speaking up?

This work aims to further the NGOs understanding of barriers to speaking up, which aligns with the 'champion and support workers to speak up' arm of our strategic framework (2021 - 2026).

We will be researching the following characteristics: ethnicity, gender and seniority. FTSU Guardians and workers have told us that these characteristics impact the speaking-up dynamic. But we want to further our understanding of why and make recommendations as to how barriers can be overcome.

Picker will conduct this research through mixed methods:

- *focus groups and interviews conducted via MS Teams*
- *an asynchronous focus group led via a private Guild group (<https://guild.co/>)*

Picker will transcribe and analyse responses and draft and share an anonymised report with the research findings with the NGO.

£26,533.20 (Inc Vat)

Care Quality Commission
T70 Payables F175
Topcliffe Lane
Wakefield
WF3 1WE

Invoices will be paid within 30 days of receipt.

daily moderation)

Category	Amount
£22,111	
Total	£22,111

SCHEDULE 3 – CONTRACTOR’S RESPONSE



ANNEX 1: TENDER CLARIFICATIONS – NOT USED

SCHEDULE 4 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

BACKGROUND

- A. This Schedule 4 sets out the framework for the sharing of Personal Data as between the Parties as Controllers. It defines the principles and procedures that the Parties shall adhere to and the responsibilities owed to each other as Controllers.
- B. The Data Discloser agrees to share the Shared Personal Data (Annex 1 of this Schedule 4) with the Data Receiver in the UK on the terms set out in this Schedule 4.
- C. The Data Receiver agrees to use the Shared Personal Data within the EEA on the terms set out in this Schedule 4.

OVERRIDING PROVISIONS

- A. In the event of any inconsistency the order of precedence of documentation shall be as follows (in descending order of precedence):
 - 1. the main body of the Contract;
 - 2. the Specification - Schedule 1 of this Contract;
 - 3. any other Schedule to the Contract (excluding the Contractor's Response); and
 - 4. the Contractor's Response – Schedule 3 of this Contract

- B. The Party

acknowledge and accept that the order of prevailing provisions as set out in paragraph A of this section.

1. PURPOSE

- 1.1 The Parties consider this data sharing initiative necessary for the following purpose:

- (a) to enable the Contractor to provide the “Understanding the impact of characteristics on the speaking up dynamic”.

1.2 The Parties agree to only process the data contained in Annex 1 (“Shared Personal Data”) to this Schedule 4 for the purposes contained in paragraph 1 of this Schedule 4. The Parties shall not process the Shared Personal Data in any manner which is incompatible with the purposes described in paragraph 1.

- 1.3 Each Party shall appoint a single point of contact (“SPoC”) who will work together to reach an agreement with regards to any issues arising from the data sharing and to actively improve the effectiveness of the data sharing initiative. The points of contact for each Party are:

- (a) Nimali de Silva, Data Protection Officer, Governance and Legal Services, Care Quality Commission, Citygate, Gallowgate, Newcastle upon Tyne NE1 4PA, email: information.access@cqc.org.uk
- (b) Mike Donoghue dpo@pickereurope.ac.uk

2. COMPLIANCE WITH DATA PROTECTION LEGISLATION

- 2.1 Each Party must ensure compliance with the Data Protection Legislation at all times during the Contract Period of the Contract including having valid registration and paid such fees as are required by Information Commissioner's Office.

3. SHARED PERSONAL DATA

- 3.1 The Shared Personal Data contained within Annex 1 to this Schedule 4 will be shared between the Parties during the Contract Period of the Contract.
- 3.2 The types of special categories of Personal Data that can be shared between the Parties during the Contract Period are set out in Schedule 4.
- 3.3 Further detail on the Shared Personal Data as described in **paragraph 3.1** and **3.2** is set out in paragraph 1 of this Schedule 4 together with any access and processing restrictions as agreed and established by the Parties.
- 3.4 The Shared Personal Data must not be irrelevant or excessive with regard to the agreed purpose contained in paragraph 1.

4. LAWFUL, FAIR AND TRANSPARENT PROCESSING

- 4.1 Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with **4.2** during the Contract Period of the Contract.
- 4.2 Each Party shall ensure that it has legitimate grounds under the Data Protection Legislation for the processing of Shared Personal Data.
- 4.3 The Data Discloser shall, in respect of Shared Personal Data, ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their personal data, the legal basis for such purposes and such other information as is required by Article 13 of the UK GDPR including:
 - (i) if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer; and
 - (ii) Shared Personal Data will not be transferred outside the EEA pursuant to paragraph 8 of this Schedule 4, without the agreement of either Party and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the Controller to enable the Data Subject to understand the purpose and risks of such transfer.
- 4.4 The Data Receiver undertakes to inform the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their personal data, the legal

basis for such purposes and such other information as is required by Article 14 of the UK GDPR including:

- (i) if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the data subject to understand the purpose and risks of such transfer; and
- (ii) Shared Personal Data will be not transferred outside the EEA pursuant to paragraph 8.2 of this Schedule 4 without the agreement of either Party and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the Controller to enable the Data Subject to understand the purpose and risks of such transfer.

5. DATA QUALITY

- 5.1 The Parties have developed a reliable means of converting Shared Personal Data to ensure compatibility with each Party's respective datasets and to ensure its accuracy.
- 5.2 Shared Personal Data must be limited to the Personal Data described in paragraphs 3.1 and 3.2.

6. DATA SUBJECTS' RIGHTS

- 6.1 The Parties each agree to provide such assistance as is reasonably required to enable the other Party to comply with requests from Data Subjects to exercise their rights under the Data Protection Legislation within the time limits imposed by the Data Protection Legislation.
- 6.2 The SPoC for each Party is responsible for maintaining a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request. The SPoC for each Party are detailed in paragraph 1.3.

7. DATA RETENTION

- 7.1 The Data Receiver shall not retain or process Shared Personal Data for longer than is necessary to carry out the purposes agreed in paragraph 1.
- 7.2 Notwithstanding 7.1, the Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective industries.
- 7.3 The Data Receiver shall ensure that any Shared Personal Data are destroyed in accordance with the agreed Deletion Procedure set out in Schedule 4 of the Contract in the following circumstances:
 - (a) on termination of the Contract;
 - (b) on expiry of the Contract Period of the Contract;
 - (c) once processing of the Shared Personal Data is no longer necessary for the purposes it were originally shared for, as set out in paragraph 1.
- 7.4 Following the deletion of Shared Personal Data in accordance with paragraph 7.3, the Data

Receiver shall notify the Data Discloser that the Shared Personal Data in question has been deleted in accordance with the Deletion Procedure in Schedule 4 to the Contract.

8. TRANSFERS

8.1 For the purposes of this clause, transfers of personal data shall mean any sharing of personal data by the Data Receiver with a third party other than those detailed in Picker's standard terms and conditions, and shall include, but is not limited to, the following:

subcontracting the processing of Shared Personal Data; and/or

granting a third party controller access to the Shared Personal Data.

8.2 If the Data Receiver appoints a third party processor to process the Shared Personal Data it shall comply with Article 28 and Article 30 of the UK GDPR and shall remain liable to the Data Discloser for the acts and/or omissions of the processor.

8.3 The Data Receiver shall not disclose or transfer Shared Personal Data outside the EEA without the agreement of the Data Discloser and pursuant to the requirements of paragraph 4.4.

9. SECURITY AND TRAINING

9.1 The Data Discloser shall only provide the Shared Personal Data to the Data Receiver by using secure methods as agreed and set out in Schedule 4 of the Contract.

9.2 The Parties undertake to have in place throughout the Contract Period appropriate technical and organisational security measures to:

(a) prevent:

(i) unauthorised or unlawful processing of the Shared Personal Data; and

(ii) the accidental loss or destruction of, or damage to, the Shared Personal Data;

(b) ensure a level of security appropriate to:

(i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

(ii) the nature of the Shared Personal Data to be protected.

9.3 It is the responsibility of each Party to ensure that its staff members are appropriately trained to handle and process the Shared Personal Data in accordance with the technical and organisational security measures set out in Schedule 4 of the Contract.

9.4 The level, content and regularity of training referred to in clause 9.3 shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and processing of the Shared Personal Data.

10. PERSONAL DATA BREACHES AND REPORTING PROCEDURES

10.1 The Parties shall each comply with its obligation to report a Personal Data Breach to the Information Commissioner's Office and (where applicable) Data Subjects under Article 33

of the UK GDPR and shall each inform the other Party of any Personal Data Breach irrespective of whether there is a requirement to notify any Information Commissioner's Office or Data Subject(s).

- 10.2 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

11. REVIEW AND TERMINATION OF AGREEMENT

- 11.1 No additional Data Receiver shall be part of this data sharing initiative and Schedule 4 without the written consent of every Party to this Schedule 4.
- 11.2 In the event that a Party terminates this Schedule 4 or a new Data Receiver joins the agreement in accordance with paragraph 11.1, an amended and updated version of this Schedule 4 will be drafted as soon as practicable and circulated to all other Parties.
- 11.3 The Parties shall review the effectiveness of this data sharing initiative every 12 months and on the addition and removal of a Party, having consideration to the aims and purposes set out in paragraphs 1.1 and 1.2. The Parties shall continue, amend or terminate this Schedule 4 depending on the outcome of this review.
- 11.4 The review of the effectiveness of the data sharing initiative will involve:
- (a) assessing whether the purposes for which the Shared Personal Data is being processed are still the ones listed in paragraph 1 of this Schedule 4;
 - (b) assessing whether the Shared Personal Data is still as listed in Annex 1 of this Schedule 4;
 - (c) assessing whether the legal framework governing data quality, retention, and data subjects' rights are being complied with; and
 - (d) assessing whether personal data breaches involving the Shared Personal Data have been handled in accordance with this Schedule 4 and the applicable legal framework.

- 11.5 Each Party reserves its rights to inspect the other Party's arrangements for the processing of Shared Personal Data and to terminate this Schedule 4 where it considers that the other Party is not processing the Shared Personal Data in accordance with this Schedule 4.

12. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE INFORMATION COMMISSIONER'S OFFICE

- 12.1 In the event of a dispute or claim brought by a Data Subject or the Information Rights Commissioner's concerning the processing of Shared Personal Data against either or both Parties, the Parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- 12.2 The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Information Commissioner's Office. If they do

participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

- 12.3 Each Party shall abide by a decision of a competent court or of the Information Commissioner's Office.

13. WARRANTIES

- 13.1 Each Party warrants and undertakes that it will:

- (a) process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations;
- (b) respond without undue delay to enquiries from the Information Commissioner's Office in relation to the Shared Personal Data;
- (c) respond to Data Subject Requests in accordance with the Data Protection Legislation; and
- (d) take all appropriate steps to ensure compliance with the security measures set out in Schedule 4 of the Contract.

- 13.2 The Data Discloser warrants and undertakes that it is entitled to provide the Shared Personal Data to the Data Receiver and it will ensure that the Shared Personal Data are accurate.

- 13.3 The Data Receiver warrants and undertakes that it will not disclose or transfer the Shared Personal Data to a third party Controller located outside the EEA unless it complies with the obligations set out in paragraph 8.3 above.

- 13.4 Except as expressly stated in this Schedule 4 all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

14. INDEMNITY

- 14.1 Save for the provisions of clause 14 of the Contract, the Data Discloser and Data Receiver undertake to indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of any of the provisions of this Schedule 4, except to the extent that any such liability is excluded under paragraph 14.2.

- 14.2 Indemnification hereunder is contingent upon:

- (a) the Party(ies) to be indemnified (the indemnified Party(ies)) promptly notifying the other Party(ies) (the indemnifying Party(ies)) of a claim;

- (b) the indemnifying Party(ies) will consult with each other in relation to the defence and settlement of any such claim, and
- © indemnified Party(ies) providing reasonable co-operation and assistance to the indemnifying Party(ies) in defence of such claim.

15. ALLOCATION OF COST

Each Party shall perform its obligations under this Schedule 4 at its own cost.

16. LIMITATION OF LIABILITY

Save for paragraph 14 of this Schedule 4, the provisions of clause 14 of the Contract (Liability and Insurance) shall apply.

17. THIRD PARTY RIGHTS

- 17.1 Except as expressly provided in paragraph 6 of this Schedule 4 (Data Subjects Rights) and, a person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 17.2 No one other than a Party to this Schedule 4 (and the Contract) their successors and permitted assignees, shall have any right to enforce any of its terms.

18. WAIVER

The waiver provisions of this Schedule 4 shall be in accordance with clause 20.6 of the Contract.

19. Variation

Any variation of this Schedule 4 shall be in accordance with clause 3.4 of the Contract.

20. SEVERANCE

The severance provisions of this Schedule 4 shall be in accordance with clause 20.9 of the Contract.

21. CHANGES TO THE APPLICABLE LAW

If during the Contract Period the Data Protection Legislation change in a way that this Schedule 4 is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree that the SPoCs will negotiate in good faith to review this Schedule 4 in the light of the new legislation.

22. NOTICES

A notice given under this Schedule 4 is not valid if sent by email. All notices must comply with clause 21 of the Contract.

23. GOVERNING LAW

This Schedule 4 and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

24. JURISDICTION

Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims), arising out of or in connection with this Schedule 4 or its subject matter or formation.

Annex 1 – Shared Personal Data

Description	Details
Identities of the parties	The Parties acknowledge that they are Independent Controllers for the purposes of Data Protection Legislation in respect of the Shared Personal Data referred to in this Schedule
Subject matter of the processing	<p>The Parties acknowledge that they are independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none">• Business contact details of Staff• Business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Staff) engaged in the performance of the Contractor duties under this Agreement). <p>The capture, processing and storing of data on programme delegates and key stakeholders within CQC. Participant names, email addresses and job titles to fulfil the delivery of the services.</p> <p>Worker research into how characteristics impact the speak up dynamic</p>
Duration of the processing	The duration of the contract including any agreed extensions which is 01/11//2022 – 31/03/2023 or 30 th June 2023 if contract

	extended as per clause 4 of this Contract.
Nature and purposes of the processing	<p>Purpose: To further the NGOs understanding of barriers to speaking up we want to carry out research about the impact of characteristics on the speaking up dynamic ,i.e., are certain characteristics more or less likely to act as a barrier to speaking up. This aligns with the arm of NGOs strategy to champion and support workers to speak up. The three characteristics that are being researched are: ethnicity, gender and seniority – these are characteristics that FTSU guardians and workers have told us are a barrier to speaking up. A research piece was carried out in 2021 ‘Difference matters: the impact of ethnicity on speaking up’ which identified that there is an impact but we would like to further our understanding of why and make recommendations as to how barriers can be overcome.</p> <p>Nature: Data will be collected through mixed methods; focus groups and interviews conducted via Teams to be recorded and transcribed (with participant consent). There will also be an asynchronous focus group conducted via a private Guild group. To take part in the asynchronous focus group, all participants will be provided guidance with how to set up an anonymous profile and how to navigate the platform for the duration of the group.</p> <p>Each question post will be deleted as soon as the desired number of responses is reached.</p> <p>All data collected will be processed by Picker and stored on their servers. Processing will include the transcription and thematic analysis of responses. A report documenting the findings (anonymised) will be sent to the NGO. Picker will not share the data except in accordance with the agreed instructions of the NGO. Qualitative recordings from the Focus Groups, and responses to the recruitment screening questionnaire, will be retained for six months before being securely deleted. Any sensitive or confidential material is stored securely in line with Picker's data protection policy.</p>

<p>Shared Personal Data</p>	<p>NGO will contact potential participants directly and will not share any personal data directly with Picker. Any interested participants will then complete a screening questionnaire (set up by Picker) which will collect the following information to assess their eligibility. The screening questionnaire will be shared only with Picker (not with NGO). Picker will not share any personal information provided in the screening questionnaire with NGO.</p> <p>The information collected in the screening questionnaire includes:</p> <p>Which NHS Trust they work for</p> <p>Role within the NHS</p> <p>Gender</p> <p>Ethnicity</p> <p>Age</p> <p>Name/ email/ telephone number to make contact for interview/ focus group</p> <p>How long they have worked for NHS</p> <p>If they have wanted to speak up about an issue in the workplace within the last 12 months (this will be extended to the last 24 or 36 months if recruitment proves slow – and each of these time durations will be collected in the screening survey)</p> <p>Information on participant's ethnicity, gender and seniority will be collected in order to answer the research question.</p> <p>All outputs will be anonymised and no participant will be identifiable. No other protected characteristics will be collected as they are not relevant to the research question</p>
<p>Categories of Data Subject</p>	<p>Staff (including volunteers, agents and temporary workers)</p>

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	<p>An anonymised report with the research findings will be shared with the NGO.</p> <p>Qualitative recordings are retained for six months by Picker unless another retention period is agreed. Any sensitive or confidential material is stored securely in line with Picker's data protection policy. After six months these records are destroyed securely.</p> <p>The retention schedule for all NGO information is held by the KIM team. The information stored and the duration is reflected in series 19 of the asset register which is held by KIM colleagues.</p>

SCHEDULE 5 – SECURITY REQUIREMENTS AND PLAN

INTERPRETATION AND DEFINITION

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

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

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

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

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

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

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

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

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

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

1. INTRODUCTION

This Schedule 5 covers:

- 1.1 principles of security for the Contractor System, derived from HMG Security Policy Framework, including without limitation principles of physical and information security;
- 1.2 wider aspects of security relating to the Services;

- 1.3 the creation of the Security Plan;
- 1.4 audit and testing of the Security Plan; and
- 1.5 breaches of security.

2. PRINCIPLES OF SECURITY

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

3. SECURITY PLAN

- 3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 5.
- 3.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.
- 3.3 Prior to the Commencement Date the Contractor will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.

- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 19 (Dispute Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.4 shall be deemed to be reasonable.
- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
- 3.5.1 the provisions of this Schedule 5;
 - 3.5.2 the provisions of Schedule 1 relating to security;
 - 3.5.3 the Information Assurance Standards;
 - 3.5.4 the data protection compliance guidance produced by the Authority;
 - 3.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;
 - 3.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and
 - 3.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.
- 3.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.
- 3.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.
- 3.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 5.

4. AMENDMENT AND REVISION

- 4.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:
- 4.1.1 emerging changes in Good Industry Practice;
 - 4.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;
 - 4.1.3 any new perceived or changed threats to the Contractor System;
 - 4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or
 - 4.1.5 a reasonable request by the Authority.
- 4.2 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a Variation and shall not be implemented until Approved.

5. AUDIT, TESTING AND PROTECTIVE MONITORING

- 5.1 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in an Approved form) as soon as practicable after completion of each Security Test.
- 5.2 Without prejudice to any other right of audit or access granted to the Authority pursuant to the Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.
- 5.3 Where any Security Test carried out pursuant to paragraphs 5.1 or 5.2 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 4.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with HMG Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

6. BREACH OF SECURITY

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

- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Contractor shall immediately take all reasonable steps necessary to:
- 6.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and
 - 6.2.2 prevent an equivalent breach in the future;
 - 6.2.3 collect, preserve and protect all available audit data relating to the incident and make it available on request to the Authority;
 - 6.2.4 investigate the incident and produce a detailed report for the Authority within 5 working days of the discovery of the incident.
- 6.3 Such steps shall include any action or changes reasonably required by the Authority. If such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under the Contract, then the Contractor shall be entitled to refer the matter to the variation procedure set out in the Contract.
- 6.4 The Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

7. CONTRACT EXIT – SECURITY REQUIREMENTS

In accordance with clause 16 of the Contract, on termination of the Contract, either via early termination or completion of the Contract then the Contractor will either return all data to the Authority or provide a certificate of secure destruction using an industry and Authority approved method. Destruction or return of the data will be specified by the Authority at the time of termination of the Contract.

APPENDIX 1- OUTLINE SECURITY PLAN

ANNEX 1: BASELINE SECURITY REQUIREMENTS

1. SECURITY CLASSIFICATION OF INFORMATION

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

2. END USER DEVICES

- 2.1 The Contractor shall ensure that any Authority which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component

which has been formally assured through a recognised certification process agreed with the Authority except where the Authority has given its prior written consent to an alternative arrangement.

- 2.2 The Contractor shall ensure that any device which is used to Process Authority Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

2A. TESTING

The Contractor shall at their own cost and expense, procure a CHECK or CREST Certified Contractor to perform an ITHC or Penetration Test prior to any live Authority data being transferred into their systems. The ITHC scope must be agreed with the Authority to ensure it covers all the relevant parts of the system that processes, stores or hosts Authority data.

3. DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION

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

The Contractor shall:

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

4. NETWORKING

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

5. SECURITY ARCHITECTURES

5.1 Contractors should design the service in accordance with:

- NCSC " Security Design Principles for Digital Services "
- NCSC " Bulk Data Principles "
- NSCS " Cloud Security Principles "

6. PERSONNEL SECURITY

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

7. IDENTITY, AUTHENTICATION AND ACCESS CONTROL

7.1 The Contractor must operate an appropriate access control regime to ensure that users and administrators of the service are uniquely identified. The Contractor must retain records of access to the physical sites and to the service.

8. AUDIT AND PROTECTIVE MONITORING

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

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

8.2 The Contractor and the Authority shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

8.3 The Contractor shall retain audit records collected in compliance with this Paragraph 8.3 for a period of at least 6 months.

9. VULNERABILITIES AND CORRECTIVE ACTION

9.1 Contractors shall procure and implement security patches to vulnerabilities in accordance with the timescales specified in the NCSC Cloud Security Principle 5.

9.2 Contractor must ensure that all COTS Software and Third Party COTS Software be kept up to date such that all Contractor COTS Software and Third Party COTS Software are always in mainstream support.

10. RISK ASSESSMENT

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

ANNEX 2: CONTRACTOR'S SECURITY MANAGEMENT PLAN



PICKER SECURITY
MANAGEMENT PLAN

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

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

SIGNED ON BEHALF OF THE AUTHORITY:	SIGNED ON BEHALF OF THE CONTRACTOR:
Signature:	Signature:

Name:	Name:
Position:	Position:
Date:	Date:

SCHEDULE 7 – THIRD PARTY SOFTWARE – 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	Contractor (if Affiliate of the Contractor)	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

THIRD PARTY SOFTWARE

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

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

SCHEDULE 8 – EXIT MANAGEMENT STRATEGY – NOT USED

