

Dated

***Contract for the provision of Patient Experience Survey
Programme Co-Ordination Centre Services between***

(1) Care Quality Commission

-and-

(2) Picker Institute Europe Limited

Reference CQC INT 1103

SECTION 1

FORM OF CONTRACT

PARTIES:

- (1) THE CARE QUALITY COMMISSION of 3rd Floor, 151 Buckingham Palace Road, London, SW1W 9SZ (the "Client");

AND

- (2) PICKER INSTITUTE EUROPE LIMITED whose registered office is at Buxton Court, 3 West Way, Oxford, OX2 0JB, Company limited by guarantee registered in England and Wales; 03908160, Charity registered in England and Wales: 1081688, Charity registered in Scotland; SC045048 (the "Contractor")

(each a "Party" and together the "Parties").

WHEREAS

Following a competitive tender process in accordance with the Public Contracts Regulations 2015, the Client wishes to appoint the Contractor to provide Patient Experience Survey Programme Co-Ordination Centre Services "the Services" and the Contractor agrees to provide those services in accordance with these terms and conditions.

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

1.1 The "Contract" comprises the following:

Section 1:	Form of Contract
Section 2:	Terms and Conditions
Schedule 1:	Specification
Schedule 2:	Tender Response
Schedule 3:	Pricing
Schedule 4:	Responsibilities and Contract Management
Schedule 5:	Commercially Sensitive Information
Schedule 6:	Key Performance Indicators
Schedule 7:	Exit Management Strategy
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Schedule 9:	Change Control Notice

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A. GENERAL PROVISIONS

A1 Definitions and Interpretation

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Affected Party” means the Party seeking to claim relief in respect of a Force Majeure Event.

“Approval” means the written consent of the Client.

“Breach of Security” means any incident that results in unauthorised access of data, applications services, networks and/or devices by bypassing their underlying security mechanisms.

“Client” means Care Quality Commission and all associated Advisory Bodies eg Healthwatch England.

“Client 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 Client; 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 Client is the Data Controller.

“Client Software” means software which is owned by or licensed to the Client (other than under or pursuant to the Contract) and which is or will be used by the Contractor for the purposes of providing the Services.

“Client System” means the Client’s computing environment (consisting of hardware, software and/or telecommunications networks of equipment) used by the Client or the Contractor in connection with the Contract which is owned by or licensed to the Client by a third party and which interfaces with the Contractor System or which is necessary for the Client to receive the Services.

“Commencement Date” means the date of the Contract.

“Commercially Sensitive Information” means the information (i) listed in the Commercially Sensitive Information Schedule; or (ii) notified to the Client in writing (prior to the commencement of this Agreement) which has been clearly marked as Commercially Sensitive Information comprised of information:

- (a) which is provided by the Contractor to the Client in confidence for the period set out in that Schedule or notification; and/or
- (b) that constitutes a trade secret.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of clause E3 (Confidential Information));
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) is independently developed without access to the Confidential Information.

“Contract” means this written agreement between the Client and the Contractor consisting of these clauses and any attached Schedules.

“Contracting Authority” means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

“Contractor” means the person, firm or company with whom the Client enters into the Contract.

“Contract Period” means the period from the Commencement Date to:

- (a) the date of expiry set out in clause A2 (Initial Contract Period), or
- (b) following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the extended period,

or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Client under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4 (Price Adjustment on Extension of Initial Contract Period).

“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.

“Contractor System” means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and relating cabling (but excluding the Client System).

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

“Disaster” means an event defined as a disaster in the Business Continuity and Disaster Recovery Plan.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such 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.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Equipment” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“Fees Regulations” means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this 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.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor’s or any sub-contractor’s organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract.

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

“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.

“ICT Environment” means the Client System and the Contractor System

“Information” has the meaning given under section 84 of the FOIA.

“Initial Contract Period” means the period from the Commencement Date to the date of expiry set out in clause A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Key Performance Indicators” means the key performance indicators listed in Schedule 6 and a Key Performance Indicator (“KPI”) shall mean any one of them.

“Key Personnel” means those persons named in the Specification as being key personnel.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

“Loss” means any losses, costs, charges, expenses, interest, fees (including legal fees), payments, demands, liabilities, claims, proceedings, actions, penalties, charges, fines,

damages, destruction, adverse judgments, orders or other sanctions and the term “Losses” shall be construed accordingly

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Monitoring Schedule” means the Schedule containing details of the monitoring arrangements.

“Month” means calendar month.

“Occasion of Tax Non-Compliance” means:

(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:

(i) a relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the Disclosure of Tax Avoidance Schemes rules or any equivalent or similar regime; and/or

(b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Party” means a party to the Contract.

“Premises” means the location where the Services are to be supplied, as set out in the Specification.

“Pricing Schedule” means the Schedule containing details of the Contract Price.

“Prohibited Act” means:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Client a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(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:

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 Client;

(d) 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.

“Property” means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for

Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

“Receipt” means the physical or electronic arrival of the invoice at the address of the Client detailed at clause A5.3 or at any other address given by the Client to the Contractor for the submission of invoices.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Client and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party service provider appointed by the Client to supply any services which are substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

“Relevant Convictions” means a conviction that is relevant to the nature of the Services

“Returning Employees” means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period.

“Schedule” means a schedule attached to, and forming part of, the Contract.

“Security Policy” means ISO/IEC 27001 Information Security Management.

“Services” means the services to be supplied as specified in the Specification.

“Specification” means the description of the Services to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

“Specification Schedule” means the Schedule containing details of the Specification.

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.

“Staff Vetting Procedure” means the Client’s procedures for the vetting of personnel and as advised to the Contractor by the Client.

“Tender” means the document(s) submitted by the Contractor to the Client in response to the Client’s invitation to suppliers for formal offers to supply it with the Services.

“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.

“TFEU” means the Treaty on the Functioning of the European Union.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“Variation” has the meaning given to it in clause F3.1 (Variation).

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 Initial Contract Period

The Contract shall take effect on the Commencement Date of 1 November 2015 and shall expire automatically on 30 November 2017 unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Initial Contract Period)

A3 Contractor's Status

At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A4 Client's Obligations

Save as otherwise expressly provided, the obligations of the Client under the Contract are obligations of the Client in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Client in any other capacity, nor shall the exercise by the Client of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Client to the Contractor.

A5 Notices

A5.1 Except as otherwise expressly provided within 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.

A5.2 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 A5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 5 Working Days after the day on which the letter was posted, or 24 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.

A5.3 For the purposes of clause A5.2, the address of each Party shall be:

(a) For the Client: Care Quality Commission
151 Buckingham Palace Road
London
SW1W 9SZ

For the attention of: [REDACTED]
Tel: [REDACTED]
[REDACTED]

(b) For the Contractor: Picker Institute Europe Limited
Buxton Court
3 West Way
Oxford
OX2 0JB

For the attention of: [REDACTED]
Tel: [REDACTED]
Email: [REDACTED]

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

A6 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Client by the Contractor in connection with the supply of the Services and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

A7 Conflicts of Interest

A7.1 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 Client, 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 Client under the provisions of the Contract. The Contractor will disclose to the Client full particulars of any such conflict of interest which may arise.

A7.2 The Client 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 Client, 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 Client under the provisions of the Contract. The actions of the Client 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 Client.

B. SUPPLY OF SERVICES

B1 The Services

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Client's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Client may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

- B1.2 If the Client informs the Contractor in writing that the Client reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Client, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Client.
- B1.3 Subject to the Client providing written consent in accordance with clause B2.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- B1.4 The Contractor shall comply with its obligations set out in the Specification and Tender (to include, without limitation, the KPIs and all obligation in relation to the quality performance and provision of the Services).
- B1.5 In the event that the Contract is terminated or expires, the Contractor shall continue to provide the Services in respect of any work in progress which was commenced prior to the date of expiration of the Initial Contract Period or (where applicable) the date of expiration of any Extension of Initial Contract Period(s) at no extra cost to the Client. The Contractor shall comply with its obligations in accordance the Exit Management Strategy in Schedule 7.

B2 Provision and Removal of Equipment

- B2.1 Where applicable the Contractor shall provide all the Equipment necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.

- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B2.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Client and shall on request be delivered to the Client as directed by the Client. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Client on request and on completion of the Services.
- B2.6 The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- B2.7 On completion of the Services the Contractor shall remove the Equipment within 20 Working Days together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

B3 Manner of Carrying Out the Services

B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Client prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B4 Key Personnel

B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client.

B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B4.3 Any replacements to the Key Personnel shall be subject to the agreement of the Client. 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.

B4.4 The Client shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B5 Contractor's Staff

B5.1 The Client may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Client, be undesirable.

B5.2 At the Client's written request, the Contractor shall provide a list of the 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 Client may reasonably request.

B5.3 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.

B5.4 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

B5.5 The Client may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check as per the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses

that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

B5.6 If the Contractor fails to comply with clause B5.2 within 1 Month of the date of the request and in the reasonable opinion of the Client, such failure may be prejudicial to the interests of the Crown, then the Client may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

B5.7 The decision of the Client as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.

B5.8 The Contractor shall provide all necessary training on a continuing basis for all its Staff employed or engaged in the provision of the Services in compliance with the Specification and the Security Policy.

B5.9 The Contractor shall ensure that:

- (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Act 2010; and
- (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Act 2010 and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Act 2010 or the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

B6 **Inspection of Premises**

Save as the Client may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

B7 Licence to occupy Premises

B7.1 Any land or Premises made available from time to time to the Contractor by the Client 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 land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Client may reasonably request.

B7.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Client at the Contractor's expense. The Client shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Client.

B7.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B7.5 The Parties agree that there is no intention on the part of the Client 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 Client retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B8 **Property**

B8.1 Where the Client issues Property free of charge to the Contractor such Property shall be and remain the property of the Client and the Contractor irrevocably licences the Client and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Client. The Contractor shall take all reasonable steps to ensure that the title of the Client to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Client's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Client.

B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Client otherwise within 5 Working Days of receipt.

B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Client's reasonable security requirements as required from time to time.

B8.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Client's Default. The Contractor shall inform the Client within 3 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9 Offers of Employment

Except in respect of any transfer of Staff under TUPE, for the Contract Period and for a period of 12 months thereafter neither the Client nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

B10 Employment Provisions

B10.1 Not later than 12 Months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Client all information that the Client may reasonably request in relation to the Staff including the following:

- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;
- (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B10.1(a);
- (c) the terms and conditions of employment/engagement of the Staff referred to in clause B10.1(a), their job titles and qualifications;
- (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
- (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

B10.2 At intervals determined by the Client (which shall not be more frequent than once every 30 days) the Contractor shall give the Client updated TUPE information.

- B10.3 Each time the Contractor supplies TUPE information to the Client it shall warrant its completeness and accuracy and the Client may assign the benefit of this warranty to any Replacement Contractor.
- B10.4 The Client may use TUPE information it receives from the Contractor for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- B10.5 If TUPE applies to the transfer of Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the Client (both for themselves and any Replacement Contractor) against all Losses and other liabilities which the client or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE information;
 - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
 - (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Client or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
 - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union body or person; and
 - (e) any claim by any person who is transferred by the Contractor to the Client and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- B10.6 If the Contractor becomes aware that TUPE information it provided has become inaccurate or misleading, it shall notify the Client and provide the Client with up to date TUPE information.
- B10.7 The Client does not accept any responsibility for and gives no warranty in respect of the TUPE information that has been supplied to the Client by the present Contractor.

- B10.8** The Contractor undertakes to the Client that, during the 12 Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
 - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability)
 - (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Contractor (provided that any such transfer removal, reduction or variation is not in any way related to the transfer of the Services); or
 - (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.
- B10.9** The Contractor acknowledges that the Client has made no assurance about the effect of TUPE and has formed its own view on whether TUPE applies before submitting its tender to supply the Services. The Contractor agrees that the Contract Price shall not be varied on the grounds that TUPE does or does not apply irrespective of the belief of the Client of the Contractor prior to execution of the Contract.
- B10.10** This clause B10 applies during the Contract Period and indefinitely thereafter.

C **PAYMENT AND CONTRACT PRICE**

C1 **Contract Price**

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Client shall pay the Contract Price in accordance with clause C2 (Payment and VAT).

C1.2 The Client shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2 **Payment and VAT**

C2.1 The Client shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice, submitted monthly in arrears.

C2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice.

C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a 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.

C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

C2.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed

on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.

C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Client on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

C3 Recovery of Sums Due

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of the Contract), the Client may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Client.

C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Contractor shall make all payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price adjustment on extension of the Initial Contract Period

C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Client agrees to extend the Initial Contract Period pursuant to clause F8 (Extension of Initial Contract Period) the Client shall, in the 6 month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Contract Price.

C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.

C4.3 If a variation in the Contract Price is agreed between the Client and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

C4.4 Any increase in the Contract Price pursuant to clause C4.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule) between the Commencement Date and the date 6 Months before the end of the Initial Contract Period.

C5 Euro

C5.1 Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Client.

C5.2 The Client shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Contractor.

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Corruption

- D1.1 The Contractor shall not offer or give, or agree to give, to the Client or any other public body or any person employed by or on behalf of the Client or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Client or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- D1.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Client or any other public body or any person employed by or on behalf of the Client or any other public body in connection with the Contract.
- D1.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses D1.1 or D1.2, the Client may by notice:
- (a) terminate the Contract and recover from the Contractor the amount of any Loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
 - (b) recover in full from the Contractor any other Loss sustained by the Client in consequence of any breach of those clauses.
 - (c) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default.

- D1.4** The Contractor shall not during the Contract Period:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Client or any of its employees, consultants, contractors, sub-contractors or agents to contravene the Bribery Act 2010 otherwise incur any liability in relation to the Bribery Act 2010.
- D1.5** The Contractor shall, during the Contract Period:
- (a) 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 Bribery Act 2010 and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause D1.5(a) and make such records available to the Client on request.
- D1.6** The Contractor shall immediately notify the Client in writing if it becomes aware that any breach of clauses D1.1, D1.2 or D1.4 has occurred or is likely to occur, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) 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; and/or
 - (c) received a request or demand for any undue financial or other advantages of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- D1.7** If the Contractor notifies the Client pursuant to clause D1.6, the Contractor shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation. This obligation continues for twelve (12) years following expiry or termination of this contract.

D1.8 If the Contractor notifies the Client pursuant to clause D1.6, the Contractor shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation. This obligation continues for twelve (12) years following expiry or termination of this contract.

D2. NOT USED

D3. Discrimination

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall take all reasonable steps to secure the observance of clause D3.1 by all Staff.

D4 The Contracts (Rights of Third Parties) Act 1999

A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both 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.

D5 Environmental Requirements

The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Client's environmental policy, which is to conserve

energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

D6 Health and Safety

D6.1 The Contractor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Client shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract, this will include a provision of the clients health and safety policy and associated documents were appropriate.

D6.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Client in respect of Staff and other persons working there.

D6.3 The Contractor shall notify the Client immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D6.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract. This will include the provision of appropriate risk assessments, safe systems of work, permits to work, evidence of competence were appropriate.

D6.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) and any associated documents are is made available to the Client on request.

D7 Business Continuity and Disaster Recovery Plan

D7.1 The Contractor shall comply at all times with the relevant provisions of the Business Continuity and Disaster Recovery Plan to be appended hereto in Schedule 9.

D7.2 The Business Continuity and Disaster Recovery Plan shall be compliant with the current British Standard (BS25999) code of practice and specification for business continuity management or equivalent. In particular the Business Continuity and Disaster Recovery Plan must show that the Contractor is able to maintain the Services throughout the term of the contract as far as practicable in the event of a Disaster, unforeseen business disruption or emergency event.

D7.3 The Client further reserves the right to undertake or commission an independent audit of the Business Continuity Plan that is put in place by the Contractor in respect of Services supplied to or on behalf of the Client.

D7.4 Following the declaration of a Disaster in respect of any of the Services, the Contractor shall:

- (a) implement the Disaster Recovery Plan
- (b) continue to provide the affected Services to the Client in accordance with the Disaster Recovery Plan; and
- (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

D7.5 To the extent that the Contractor complies fully with the provisions of this clause D7 (and the reason for the declaration of a Disaster was not a breach of any of the other terms of this Contract on the part of the Contractor), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in Schedule 6 but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

D8 EXIT MANAGEMENT STRATEGY

D8.1. Within ninety (90) days of the Commencement Date, the Contractor shall provide a draft Exit Management Strategy (to be appended to Schedule 7) and within ten (10) Working Days of provision of such Exit Management the Parties shall meet and use all reasonable endeavours to agree the contents of the Exit Management Strategy, which must provide for the orderly transition of the provision of the Services from the Contractor to the Client and/or any replacement contractor in the event of any termination (in whole or in part) or expiry of this Contract and allow for the Contractor to comply with its obligations under clause H5 and H6. If the Parties are unable to agree the contents of the Exit Management Strategy within a 20 Working Day period, either Party may refer the dispute for resolution in accordance with clause I2.

D8.2. The Contractor shall keep the Exit Management Strategy under continuous review and include any proposed updates. Within ten (10) days after services of a Termination Notice by either Party or six (6) months prior to the end of the expiry of the Contract, the Contractor shall update the Exit Management Strategy into a final form that could be implemented immediately and provides for a transition to and it compatible with any mobilisation plan of any replacement contractor of the Client (as the case may be) and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Management Strategy can be submitted to the Client for review and approval. The Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Management Strategy.

E PROTECTION OF INFORMATION

E1 Data Protection Act

E1.1 For the purposes of this Clause E1, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing shall have the meaning prescribed under the DPA.

E1.2 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

E1.3 Notwithstanding the general obligation in clause E1.2, where the Contractor is processing Personal Data (as defined by the DPA) as a Data Processor for the Client the Contractor shall:

- (a) Process the Personnel Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Client;
- (b) comply with all applicable laws;
- (c) Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body;
- (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (e) take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
- (f) obtain prior written consent from the Client in order to transfer the Personal Data to any sub-contractor for the provision of the Services;

- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Client;
- (h) ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E1;
- (i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Client
- (j) not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation imposed upon the Client; and

E1.4 notify the Client (within 5 Working Days) if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data; or
- (b) a complaint or request relating to the Client's obligations under the DPA;

E1.5 The provision of this Clause E1 shall apply during the Contract Period and indefinitely after its expiry.

E2 Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989

E2.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and

(b) Section 182 of the Finance Act 1989.

E2.2 In the event that the Contractor or its Staff fail to comply with this clause, the Client reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E3 Confidential Information

E3.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and Environmental Information Regulations, the content of this Contract is not Confidential Information. The Client shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Client to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Agreement, to the general public.

E3.2 The Client may consult with the Contractor to inform its decision regarding any redactions but the Client shall have the final decision in its absolute discretion.

E3.3 The Contractor shall assist and cooperate with the Client to enable the Client to publish this Contract.

E3.4 The Parties shall use of all reasonable endeavours to procure that their employees, agents and sub-contractors keep confidential and do not make any disclosure of Confidential Information to any third Party and only use such Confidential Information in connection with the performance of the Contract and in accordance with the provision of the Non-Disclosure Agreement appended hereto this Agreement.

E4 Freedom of Information

E4.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

E4.2 The Contractor shall and shall procure that any sub-contractors shall transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;

(a) provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within [five] Working Days (or such other period as the Client may specify) of the Client's request; and

(b) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E4.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

E4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.

E4.5 The Contractor acknowledges that (notwithstanding the provisions of Clause E4) the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of

the Freedom of Information Act 2000 (“**the Code**”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where E4.5(a) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

E4.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

E4.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Client may be obliged to disclose it in accordance with this clause E4.

E5 Publicity, Media and Official Enquiries

E5.1 Without prejudice to the Client’s obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E5.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E5.1.

E6 Security

- E6.1** The Client shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Client while on the Premises, and shall ensure that all Staff comply with such requirements.
- E6.2** The Client shall give the Contractor upon request copies of its written security procedures.
- E6.3** The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E6.4** Notwithstanding clause E6.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Client Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency and the Contractor shall immediately take all reasonable steps necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (c) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
 - (d) as soon as reasonably practicable provide the Client with full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Client.

- E6.5 Any cost arising out of the actions of the Parties taken in compliance with clause E6.4 shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Client Data (whilst the Client Data was under the control of the Contractor); and
 - (b) by the Client if the Malicious Software originates from the Client Software or Client Data (whilst the Client Data was under the control of the Client)

E6.6 The Contractor shall be liable for, and shall indemnify the Client against all Losses suffered or incurred by the Client 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 Client).

E7 Intellectual Property Rights

- E7.1 All Intellectual Property Rights in any guidance, specifications, instructions, surveys, questionnaires, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):
- (a) furnished to or made available to the Contractor by or on behalf of the Client shall remain the property of the Client; and
 - (b) prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Client;
 - (c) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E7.2 The Contractor hereby assigns to the Client, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E7.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

E7.3 The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright produced by the Contract or the performance of the Contract.

E7.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Client to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Client.

E7.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client and the Crown harmless from and against all Losses and other liabilities which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

(a) items or materials based upon designs supplied by the Client; or

- (b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.

E7.6 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor to the Client.

E7.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action for breach of or alleged breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Client; and
- (c) shall not settle or compromise any claim without the Client's prior written consent (not to be unreasonably withheld or delayed).

E7.8 The Client shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Client for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Client in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E7.5(a) or (b).

E7.9 The Client shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Client or the Contractor in connection with the performance of its obligations under the Contract.

E7.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
- (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client,

and in the event that the Contractor is unable to comply with clauses E7.10(a) or (b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract with immediate effect by notice in writing.

E7.11 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Client reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

E8 Audit

- E8.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, 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, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be requested by the Client in connection with the Contract.
- E8.2 The Contractor agrees to make available to the Client, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.
- E8.3 The Contractor shall permit duly authorised representatives of the Client and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- E8.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Client and for carrying out examinations into the economy, efficiency and effectiveness with which the Client has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

F. **CONTROL OF THE CONTRACT**

F1 **Transfer and Sub-Contracting**

F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.3 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Client, be sent by the Contractor to the Client as soon as reasonably practicable.

F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Client incurs under clause C2.6). Any assignment under this clause F1.4 shall be subject to:

- (a) reduction of any sums in respect of which the Client exercises its right of recovery under clause C3 (Recovery of Sums Due);
- (b) all related rights of the Client under the contract in relation to the recovery of sums due but unpaid; and
- (c) the Client receiving notification under both clauses F1.5 and F1.6.

F1.5 In the event that the Contractor assigns the right to receive the Contract price under clause F1.4, the Contractor or the Assignee shall notify the Client in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Contractor shall ensure that the Assignee notifies the Client of the Assignee's contact information and bank account details to which the Client shall make payment.

F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Client.

F1.8 Subject to clause F1.10, the Client may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting Authority; or

(b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client;
or

(c) any private sector body which substantially performs the functions of the Client,

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

F1.9 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the “Transferee”):

- (a) the rights of termination of the Client in clauses H1 (Termination on change of control and insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

F2 Waiver

- F2.1** The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- F2.2** No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A6 (Notices).
- F2.3** A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F3 Variation

- F3.1** If, after the Commencement Date, the Client's requirements change, the Client may request a Variation subject to the terms of this clause F3.
- F3.2** The Client may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Client. If the Contractor accepts the Variation it shall confirm it in writing.
- F3.3** If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Client may:
- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or

(b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F3.4 Any Variation will not take effect unless recorded in a Change of Control Notice as attached hereto in Schedule 9 and approved in writing by the Client.

F3.5 The provisions of clause F3.4 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Client. However, the Client shall have the right to review such a Variation and require a Change of Control Notice to be entered into on a retrospective basis which may itself vary the emergency Variation.

F4 Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Remedies in the event of inadequate performance

F5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Client shall notify the Contractor, and where considered appropriate by the Client, investigate the complaint.

The Client may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.

F5.2 In the event that the Client is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Client may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

F5.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Client may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Client or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Client shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense

remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Client may direct.

F5.5 In the event that:

- (a) the Contractor fails to comply with clause F5.4 above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or
- (b) the Contractor persistently fails to comply with clause F5.4 above,

the Client may terminate the Contract with immediate effect by notice in writing.

F6 Remedies Cumulative

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 Monitoring of Contract Performance

The Contractor shall comply with the monitoring arrangements set out in the Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

F8 Extension of Initial Contract Period

Subject to clause C4 (Price adjustment on extension of the Initial Contract Period), the Client may, by giving written notice to the Contractor not less than One Month(s) prior to

the last day of the Initial Contract Period, extend the Contract for a further period of up to 12 Month(s). The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

F9 Entire Agreement

F9.1 The Contract constitutes the entire agreement 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.

F9.2 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) the clauses of the Contract;
- (b) the Schedules; and
- (c) any other document referred to in the clauses of the Contract.

F10 Counterparts

This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G **LIABILITIES**

G1 **Liability, Indemnity and Insurance**

G1.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or

- (b) Fraud; or

- (c) fraudulent misrepresentation; or

- (e) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other Loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, Loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.

G1.4 Subject always to clause G1.1, the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed 100%.
- (b) the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by clauses E7.3 (Intellectual Property Rights) or G1.4(a)) shall in no event exceed the greater of or one hundred per cent (100%) [Subject to clarification of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises].

G1.5 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:

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

G1.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses, wasted expenditure, additional costs of procuring a Replacement Contractor, any compensation or interest paid to a third party by the Client, a fine or penalty incurred by the Client pursuant to Law, or any costs incurred by the Client in defending any proceedings resulting from the direct Default of the Contractor.

G1.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such

insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

- G1.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force and providing an adequate level of cover in respect of all risks which may be incurred by the Contractor.
- G1.9 The Contractor shall give the Client, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.
- G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

G2 Professional Indemnity

The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less one million pounds sterling (£5,000,000) for each individual claim or such higher limit as the Client may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

G3 Warranties and Representations

The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or

threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the three 3 years prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
- (g) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;

- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Client in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

H **DEFAULT, DISRUPTION AND TERMINATION**

H1 **Termination on insolvency and change of control**

H1.1 The Client may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- (h) any event similar to those listed in clause H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Contractor shall notify the Client immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("**change of control**"). The Client may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Client becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

H2 Termination on Default

H2.1 The Client may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Client within 25 Working Days, or such other period as may be specified by the Client, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Client, capable of remedy; or
- (c) the Default is a material breach of the Contract.

H2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Client in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Client fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Client exercising its rights under clauses C3.1 (Recovery of Sums Due).

H3 Non-Default Termination or Change of Government Policy

H3.1 The Client shall have the right to terminate the Contract at any time by giving 1 Months' written notice to the Contractor.

H3.2 The Client may terminate the Contract by giving to the Contractor at least 1 Months' notice in writing where there is a change in government policy or a change in Law which means that, in the opinion of the Client acting reasonably, the Services are no longer required or are no longer affordable to the Client.

H3A Termination under the Regulations

H3A.1 The Client may terminate the Contract on written notice to the Contractor if:

(a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations 2015 ("the Regulations");

(b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract; or

(c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

H4 Consequences of Expiry or Termination

H4.1 Where the Client terminates the Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Client may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. The Client shall take all reasonable steps to mitigate such additional expenditure.

Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Client to the Contractor (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 Client), until the Client has established the final cost of making the other arrangements envisaged under this clause.

H4.2 If the Client terminates the Contract under clause H3 (Non-Default Termination or Change of Government Policy) the Client 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 Client.

H4.3 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection Act), E2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E3 (Confidential Information), E4 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Expiry or Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

- H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Client, its employees or any other contractor employed by the Client.
- H5.2 The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Client acting reasonably, then the Contract may be terminated with immediate effect by the Client by notice in writing.
- H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Client, the Contractor may request a reasonable allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H6 Recovery upon Termination

- H6.1 On the termination of the Contract for any reason, the Contractor shall:
- (a) immediately return to the Client all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;

- (b) immediately deliver to the Client all Property (including materials, documents, information and access keys) provided to the Contractor under clause B11. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Client to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress, pursuant to clause B1.5
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Client for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Client or the Replacement Contractor to conduct due diligence.
- (e) immediately vacate any Client Premises occupied by the Contractor.

H6.2 If the Contractor fails to comply with clause H6.1 (a) and (b), the Client may recover possession thereof and the Contractor grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H6.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H6(c) and (d) free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H7 Force Majeure

- H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
- H7.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.
- H7.4 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- H7.5 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.

I **DISPUTES AND LAW**

11 **Governing Law and Jurisdiction**

Subject to the provisions of clause I2, the Client and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

12 **Dispute Resolution**

12.1 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 10 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Executive Director of Intelligence and Strategy (or equivalent)] of each Party.

12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

12.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

12.5

The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an option shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without prior written consent of both Parties; and

- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts [unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6].

I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

- (a) the Client may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
- (b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Client of its intentions and the Client shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
- (c) the Contractor may request by notice in writing to the Client that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Client may consent as it sees fit.

I2.7 In the event that any arbitration proceedings are commenced pursuant to clause I2.6:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Client shall give a written notice of arbitration to the Contractor (the “Arbitration Notice”) stating:
 - (i) that the dispute is referred to arbitration; and

- (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Client under clause I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

Contract for Services

SIGNED for and on behalf of CARE QUALITY COMMISSION

Signature:


Name:

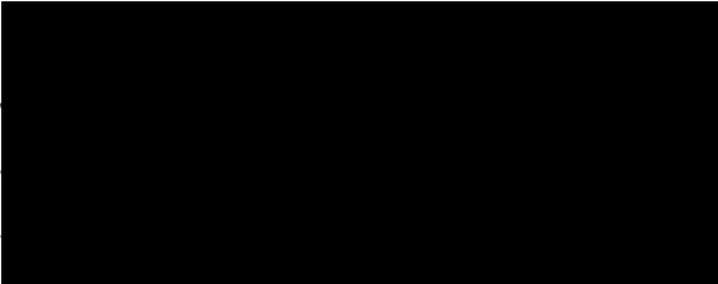

Position:


SIGNED for and on behalf of PICKER INSTITUTE EUROPE

Signature:

Name:

Position:



Schedule 1

The Client Specification

DEFINITIONS

CQC wants to ensure that its surveys and feedback mechanisms continuously improve and reflect the way health and social care services are delivered. We will do this by developing national surveys or feedback mechanisms and undertaking on-going development or a substantive review of existing methods.

For the purposes of this procurement, CQC defines ‘national survey’ and ‘feedback mechanism’ as:

- national survey: data collection of the self-reported experiences of those who use or provide services, undertaken at all relevant sites at the same time and using the same tools and methodology to ensure comparability across providers. Samples are sufficiently robust to draw conclusions about experiences of care at a local and national level without the need for further investigation.
- other feedback mechanism: a process of gathering information about the experiences of those who use or provide services undertaken at specific sites is not designed to provide comparable data across all providers in a specific sector. Samples and the consistent application of the same tools and methodology may not be sufficiently robust to draw conclusions about experiences of care at a local and national level without the need for further investigation.

For the purposes of this contract, CQC defines ‘on-going development’ and ‘substantive review’ as:

- on-going development: small scale changes to maintain the quality and relevance of an existing survey or feedback mechanism. Changes will be limited to parts of a questionnaire or individual tools or processes. Examples of this include where we may want to:
 - understand any learning from previous iterations of the survey including information that may improve sampling, questionnaires and reporting.
 - add, improve or remove a small number of questions in a questionnaire.
 - review how questions or response options are phrased to ensure that they reflect the findings of cognitive testing.

- improve guidance documents to ensure compliance with requirements around data cleaning or sampling.
- add or improve quality assurance checks.
- substantive review: a review of a whole, or the majority of, a questionnaire, feedback mechanisms, underlying methodology or output. Examples of this include where we may want, for example, to:
 - update an entire questionnaire in line with changes to national policy concerning best practice within the health or social care area being reviewed. An update may also be required where CQC changes its approach to assessing quality.
 - change a survey or feedback process following a pilot of an alternate approach within the health or social care area being reviewed.
 - change the website used to publish the results of surveys updating the majority of pages and/or reviewing the whole website's layout.
 - change the layout, content or method of production for benchmark reports.
 - change the analytical method used for calculating the results of the benchmarking reports based on the findings of a review by CQC's Statistics Team.

CO-ORDINATION CENTRE

CQC seeks to procure a Co-ordination Centre that will act as an expert partner in the development and delivery of CQC's patient experience activity, including the national survey programme and other methods of gathering feedback from people who use, deliver or otherwise experience services.

It seeks to do this across nine packages of work which it intends to commission from the Co-ordination Centre as needed. The nine types of work which it intends to commission through this contract are:

- Development and delivery of a new national survey.
- Substantive review and delivery of a national survey.
- On-going development and delivery of a national survey.
- Development and delivery of a feedback mechanism.
- Substantive review and delivery of a feedback mechanism.

- On-going development and delivery of a feedback mechanism.
- Delivery of a substantive review of a reporting tool, dedicated website or an overarching methodological approach to undertaking a survey or feedback mechanism.
- Piloting approaches to develop improvements.
- Undertake specific analysis as required.

THE FRAMEWORK: CURRENT EXPECTATIONS

Our current expectations about the programmes of work included are as follows:

- **Expected minimum (national surveys):**
 - three annual national surveys: adult inpatient, community mental health, and Children and Young Persons inpatient and day case. In each case the surveys will be subject to on-going development and delivery of the survey. The Children's survey may be subject to a substantive review depending on the results of the first national survey being published in 2015.
 - substantive review of adult inpatient survey to ensure that it is developing in line with best practice and appropriate policy. The review will include consideration of response rates and piloting options to improve the survey.
 - three surveys on rotation every **three** years so that one survey is delivered each year: maternity, accident and emergency, and outpatients. This will include substantive reviews of these surveys, starting with outpatients.
- **Expected minimum (other feedback mechanism):**
 - The quarterly collection, analysis and reporting on feedback for community based care, shared lives and hospice care provided in people's own homes where registered providers of care have at least 200 people receiving care.

- substantive review of all existing feedback methods and processes for community based care, shared lives and hospice care provided in people's own homes.
- **Likely mid-point (national surveys):**
 - three annual national surveys: adult inpatient, community mental health, and Children and Young Persons inpatient and day case. In each case (see point below regarding a substantive review of the adult inpatients survey) the surveys will be subject to on-going development and delivery of the survey. The Children's survey may be subject to a substantive review depending on the results of the first national survey being published in 2015.
 - substantive review of adult inpatient survey to ensure that it is developing in line with best practice and appropriate policy. The review will include consideration of response rates and piloting options to improve the survey.
 - three surveys on rotation every two years covering: maternity, accident and emergency, and outpatients. This will include substantive reviews of these surveys, starting with outpatients.
 - delivery, following three substantive reviews, of improvements across the survey programme. This may include a review of the analytical methods applied to the survey programme, the website used to publish the programme on, and the benchmark reports used.
- **Likely mid-point (other feedback mechanism):**
 - The quarterly collection, analysis and reporting on feedback for community based care, shared lives and hospice care provided in people's own homes. This includes all registered providers of care who provides these services.
 - substantive review of all existing feedback methods and processes for community based care, shared lives and hospice care provided in people's own homes.

- **Potential maximum (national surveys):**
 - three annual national surveys: adult inpatient, community mental health, and Children and Young Persons inpatient and day case. In each case (see point below regarding a substantive review of the adult inpatients survey) the surveys will be subject to on-going development and delivery of the survey. The Children's survey may be subject to a substantive review depending on the results of the first national survey being published in 2015.
 - substantive review of adult inpatient survey to ensure that it is developing in line with best practice and appropriate policy. The review will include consideration of response rates and piloting options to improve the survey.
 - Piloting new approaches to existing annual surveys for, for example, adult inpatient and community mental health.
 - three surveys on rotation every two years covering: maternity, accident and emergency, and outpatients. This will include substantive reviews of these surveys, starting with outpatients.
 - development and delivery of a new additional survey to be included in the rotations above.
 - Delivery, following three substantive reviews, of improvements across the survey programme. This may include a review of the analytical methods applied to the survey programme, the website used to publish the programme on, and the benchmark reports used.
 - two sets of additional analysis to support, for example, the publication of thematic reviews or CQC's State of Care each year for three years.
- **Potential maximum (other feedback mechanism):**

- The quarterly collection, analysis and reporting on feedback for community based care, shared lives and hospice care provided in people's own homes. This includes all registered providers of care who provides these surveys.
- substantive review of all existing feedback methods and processes for community based care, shared lives and hospice care provided in people's own homes.
- quarterly collection, analysis and reporting on feedback for hospice care provided in hospices. This includes all registered providers of care who provides these services.
- quarterly collection, analysis and reporting on feedback for residential care. This includes all registered providers of care who provides these services.

THE FRAMEWORK: MINIMUM EXPECTATIONS TIMETABLE

The National Patient Experience Survey Programme outlined in 'Expected minimum' above operates, typically, on the following timescales:

- Annual Survey: Acute inpatient survey (Questionnaire developed: January - May; Fieldwork: September to January; Reporting: April)
- Annual Survey: Community mental health survey (Questionnaire developed: November - December; Fieldwork: March to June; Reporting: September)
- Annual Survey: Children and Young Person's Inpatient and day case (timings to be agreed following the completion of the 2014 pilot)
- Rotating survey: Maternity survey (Questionnaire developed: January -March; Fieldwork: April to August; Reporting: December)
- Rotating survey: A&E survey (Questionnaire developed: January - March; Fieldwork: May to September; Reporting: December)

- Rotating survey: Outpatients survey (Questionnaire developed: March; Fieldwork: June to October; Reporting: February)

The feedback questionnaires outlined in 'the likely mid point' above operates on the following timescales:

- There is a 12 week process for collecting feedback each quarter. This starts 14 weeks prior to the start of each quarter so that all analysed data for each setting is available in packs 2 weeks prior to the start of the quarter. For example, in process for quarter three 2015 starts on 22 June 2015.

THE FRAMEWORK: DETAILED REQUIREMENTS

Work package 1: Development and delivery of a new national survey

This work package is considered within the **potential maximum** outlined above. Where this work package is commissioned the Co-ordination Centre must:

- develop methods, processes and tools to collect, analyse and report on experiences of those who use, or provide, services. This will include:
 - providing an expert review of the scope provided by CQC for gaining feedback from people who use or provide care services and the provisions of enhancements to that scope as necessary.
 - providing the secretariat for an appropriate steering group established by CQC to support the development and delivery of any survey.
 - the co-establishment and delivery of any focus groups or other involvement mechanisms from key stakeholders to understand, for example, what should be collected and how.

- identifying options and agreed recommendations from the review based on the risks, issues, costs and benefits of all options outlined.
- developing and delivering all methods, guidance, tools and support required for a national survey and to ensure the confidentiality of data and information security arrangements in line with national requirements. For example sampling guidance and appropriate declarations, and guidance to support the delivery of the survey.
- developing and delivering all processes and materials to ensure agreement by appropriate ethics, confidentiality and other organisations to allow the undertaking of national surveys. For example the application forms and follow-up material needed to ensure ethics and confidentiality committees (including section 251) agree to the undertaking of a survey.
- developing and delivering all methods, tools and processes to advise and advertise the undertaking of surveys to all stakeholders including providers of care and the users of services. For example the preparation of any leaflets or flyers required to advertise a survey.
- developing and delivering all methods, tools and processes to ensure good quality samples of those who use or provide services including any material needed to allow people to opt-out of surveys.
- developing and delivering all questionnaires to collect information about those who use or provide services, designed in line with stakeholder requirements and tested on a representative range of patients or service users.
- developing and delivering all methods, tools and processes to monitor progress and support Approved Contractor and in-house providers in undertaking their duties locally.
- analysing all quantitative data collected to support the generation of benchmark reports for individual providers and national summaries of performance

- analysing all qualitative data collected to identify themes discussed within the comments, their sentiments and to escalate any serious concerns, including safeguarding issues, as defined by CQC.
- generating a publishable data set from the results of the survey showing the response to each question by provider and indicating, for example, results by demographic characteristic.
- generating all reporting outputs and tools for individual providers.
- publishing of local level results from the survey on a dedicated website along with the tools and guidance used in the delivery of each survey.
- developing and delivering the content of a dedicated website for the purposes of the programme.
- developing and delivering all methods, guidance, tools to check, clean and to undertake quality assurance of all data collected and publications produced. This includes providing CQC with appropriate assurance that all checks have been complete.
- developing and delivering handover of all materials, data and learning generated from the undertaking of a survey.
- developing and delivering all materials, tools and processes needed to evaluate and learn from the development and delivery of a survey.
- developing and delivering all methods, tools and processes to develop and deliver a robust audit trail for the programme.

- developing and delivering all methods, tools and processes to manage development and delivery of the programme including the reporting of progress as determined by CQC.

Work package 2: Substantive review and delivery of a national survey

This work package is considered within the **expected minimum** for the Children and Young Person's Inpatient and Day Case Survey outlined above. Where this work package is commissioned the Co-ordination Centre must:

- review and improve existing national surveys to ensure that they develop in line with best practice and CQC's approach to regulation. A substantive review will take into account the findings from evaluation of the survey and the views of key stakeholders. Stakeholder lists will be agreed with CQC but must include patients and the public, whose views should be understood from focus groups, interviews and participation on steering groups as appropriate. Each substantive review will cover a review of the content and design of all survey methods and tools outlined in work package 1.
- publish a development report outlining their approach and findings.
- commission or deliver the survey as outlined in work package 1 once the substantive review is complete.

Work package 3: On-going development and delivery of a national survey

This work package is considered within the **Likely mid-point** outlined above. Where this work package is commissioned the Co-ordination Centre must:

- review and improve the existing national survey to identify where and how improvements can be made. This review will take into account the findings from evaluation of the survey and the views of key stakeholders including CQC on best practice. Development will include a review of the content and design of some of the survey methods and tools outlined in work package 1.

- deliver each existing national survey programme including all survey methods and tools outlined in work package 1.
- publish a development report outlining their approach.
- commission or deliver the survey as outlined in work package 1 once the substantive review is complete.

Work package 4: Development and delivery of a feedback mechanism

This work package is considered within the **potential maximum** outlined above. Where this work package is commissioned the Co-ordination Centre must:

- develop methods, processes and tools to collect, analyse and report on feedback. This will include:
 - commission or deliver the methods, processes and tools agreed with CQC to collect, analyse and report on feedback including:
 - providing an expert review, including a literature review, of the scope provided by CQC for gaining feedback from people who use or provide care services and the provisions of enhancements to that scope as necessary.
 - providing the secretariat for an appropriate steering group established by CQC to support the development and delivery of feedback mechanisms.
 - the co-establishment and delivery of any focus groups or other involvement mechanisms from key stakeholders to understand, for example, what should be collected and how.
 - identifying options and agreed recommendations from the review based on the risks, issues, costs and benefits of all options outlined.
 - developing and delivering all guidance and scheduling tools to support the collection, analysis and use of feedback.
 - developing and delivering all processes and materials to ensure agreement regarding the management of confidential information in collecting feedback.

- developing and delivering all data collection tools to collect information about those who use or provide services, agreed with CQC and its steering group.
- developing and delivering all materials, tools and processes to ensure and collect good quality samples or censuses of those who use, or provide, services.
- developing and delivering all materials, tools and processes to send out questionnaires, and record and capture responses in preparation for analysis.
- developing and delivering all materials, tools and processes to quality assure captured feedback.
- developing and delivering all materials, tools and processes to analyse feedback as agreed with CQC. This includes all materials, tools and processes to check and cleanse the data including identifying the correct provider location.
- analysing all qualitative data collected to identify themes discussed within the comments, their sentiments and to escalate any serious concerns, including safeguarding issues, as defined by CQC.
- developing and delivering all outputs from the analysis as agreed with CQC.
- developing and delivering handover of all materials, data and learning generated from the delivery of feedback mechanisms.
- developing and delivering all materials, tools and processes needed to evaluate and learn from the development and delivery of feedback.
- developing and delivering all methods, tools and processes to develop and deliver a robust audit trail for feedback.
- developing and delivering all methods, tools and processes to manage development and delivery of the programme including the reporting of progress as determined by CQC.

Work package 5: A substantive review and delivery of a feedback mechanism

This work package is considered within the **expected minimum** outlined above. Where this work package is commissioned the Co-ordination Centre must:

- review and improve existing feedback mechanisms to ensure that they develop as directed by CQC. This review will take into account the findings from evaluation and the

views of key stakeholders including CQC. This review will include the content and design of all feedback methods and tools outlined in work package 4.

- commission or deliver each feedback mechanism following any substantive review including all methods and tools outlined in work package 4.

Work package 6: On-going development and delivery of a feedback mechanism

This work package is considered once substantial reviews are complete. Where this work package is commissioned the Co-ordination Centre must:

- review and improve existing feedback mechanism to ensure that they develop before each cycle, or as directed by CQC. This review will take into account the findings from evaluation, the views of key stakeholders including CQC and, for example, the results of cognitive testing. This review will include the content and design of all methods and tools outlined in work package 4.
- commission or deliver each existing feedback mechanism including all methods and tools outlined in work package 4.

Work package 7: Delivery, following a substantive review, of a reporting tool, dedicated website or an overarching methodological approach to undertaking a survey or feedback mechanism

This work package is considered within the **likely mid point** outlined above. Where this work package is commissioned the Co-ordination Centre must:

- review and improve existing reporting tools, dedicated websites or process for collecting feedback to ensure that they develop as directed by CQC. This review will take into account the findings from evaluation and the views of key stakeholders including CQC. This review will include the content and design of all methods and tools outlined below.
- commission or deliver the methods, processes and tools agreed with CQC to produce enhanced reporting tools, dedicated websites or analytical methodologies including:

- providing an expert review of the scope provided by CQC for any substantive review and the provisions of enhancements to that scope as necessary.
- the co-establishment and delivery of an appropriate steering group with representation from CQC and other key stakeholders as required by CQC to support any substantive review.
- completing a review in line with the agreed scope including the identification of agreed recommendations from the review, and the risks, issues, costs and benefits of all options outlined.
- developing and delivering all materials, tools and processes, agreed with CQC and its steering group, required following any substantive review, to a high quality standard and within agreed timescales and budgets.
- Undertaking the review and completing all agreed tasks against an agreed timeline.
- developing and delivering handover of all materials, data and learning generated as a result of completing any substantive review.
- developing and delivering materials, tools and processes needed to evaluate and learn from completing any substantive review.
- developing and delivering methods, tools and processes to develop and deliver a robust audit trail from completing any substantive review.
- developing and delivering methods, tools and processes to manage development and delivery of the programme including the reporting of progress as determined by CQC.

Work package 8: Piloting approaches to develop improvements

This work package is considered within the **potential maximum** outlined above. Where this work package is commissioned the Co-ordination Centre must:

- pilot improvements to the existing national survey programme and feedback mechanisms to collect the experiences of those who use, or provide, services. Pilots will take into account the findings from evaluation and the views of key stakeholders including CQC. This review will include the content and design of all methods and tools outlined below.
- commission or deliver the methods, processes and tools agreed with CQC to piloting improvements to the programme including:
- providing an expert review of the scope provided by CQC for any pilot and the provisions of enhancements to that scope as necessary.
- the co-establishment and delivery of an appropriate steering group with representation from CQC and other key stakeholders as required by CQC to support any substantive review.
- the completion of a pilot in line with the agreed scope including the identification of agreed recommendations from the pilot, and the risks, issues, costs and benefits of all options outlined.
- developing and delivering all materials, tools and processes, agreed with CQC and its steering group, required following any pilot.
- the reporting, as appropriate, of the findings of a pilot including the recommendations from that pilot including proposed next steps.
- Undertaking the pilot and completing all agreed tasks against an agreed timeline.
- developing and delivering handover of all materials, data and learning generated as a result of completing any pilot.
- developing and delivering all materials, tools and processes needed to evaluate and learn from completing any pilot.

- developing and delivering all methods, tools and processes to develop and deliver a robust audit trail from completing any pilot.
- developing and delivering all methods, tools and processes to manage development and delivery of the programme including the reporting of progress as determined by CQC.

Work package 9: Undertake specific analysis as required.

This work package is considered within the **likely maximum** position outlined above. Where this work package is commissioned the Co-ordination Centre must:

- undertake additional analysis as needed to support CQC’s delivery of the survey programme, thematic reviews where the topic under review can be further understood using survey data, or our State of Care publications on the quality of care within the sectors that we regulate. This may include:
 - Analysis of results over time for specific questions
 - Analysis of results for specific population groups including those with long term conditions
 - Analysis of results which relate to a specific theme including, for example, integration of services.

THE FRAMEWORK: CONTRACTING FUTURE REQUIREMENTS

During the life of the contract, however, CQC intends to agree any additional work beyond the minimum expected to include packages covered by the likely mid-point and potential maximum outlined above as required. It will do this by:

- Preparing a specification document outlining our specific requirements

- Asking the contractor to provide a short proposal to set out how they propose to meet the requirements and provide a firm cost based on the case study costs provided in response to this tender.

- Agreeing a final programme of work and costs.

Schedule 2

Proposal Submission

Strategic Vision

In setting out our proposals for the co-ordination centre, we are delighted to present our strategic vision for the patient survey programme and CQC's wider work on collecting feedback from users of health and social care services. This is timely, as recent developments at CQC and in government policy invite further evolution of existing collections to address future regulatory needs and satisfy stakeholders.

Our vision for the co-ordination centre is one of partnership, creativity, and effective delivery. In this section, we describe how we:

- understand and share CQC's strategic aims;
- use our vast experience and expertise to dependably deliver; and
- bring a proven track record as an innovator and industry leader.

Bringing together these characteristics, we will work in partnership with CQC to design, deliver, and improve coherent sets of products that will recognise and advance your strategic aims.

Shared vision

The Picker Institute is a charity committed to the highest quality health and social care for all, always.

We are here to:

- **Influence** policy and practice so that health and social care systems are always centred around people's needs and preferences
- **Inspire** the delivery of the highest quality care, developing tools and services which enable all experiences to be better understood
- **Empower** those working in health and social care to improve experiences by effectively measuring, and acting upon people's feedback

We have an international reputation for excellence in the measurement and use of user experience information. Over the last fifteen years we have promoted the use of robust, reliable measures of patient and service user experience. These tools, including but not limited to survey instruments, provide a basis for measuring, from the user perspective, whether services are person-centred. We have always argued that systematically collected user feedback is a key measure of service quality.

As a long term partner of CQC, and with our focus on health and care policy, we have a good understanding of CQC's strategic direction and the information and intelligence requirements arising from this. Moreover, there are many similarities between the aims and activities of our organisations. CQC has always shared the Picker Institute's commitment to using user experience: indeed, CQC has a statutory requirement to "perform its functions... in a way that focuses on the needs and experiences of people who use... services" (*Health and Social Care Act 2008*). CQC's intelligence-led model of regulation makes extensive use of data from patient and user feedback, particularly via national surveys, but in the future the regulator will be expected to provide this information at a sub-organisational level (Department of Health, 2013) and deploy it as part of a new regulation model that increasingly includes comprehensive inspection data. We have already begun to help CQC address these aims by proposing changes, now implemented, to increase the sample size (and thus the granularity) of the NHS inpatient survey.

As well as these general challenges, CQC's business plan for 2015/16 identifies some specific priority areas (Care Quality Commission, 2015a). These priority areas align closely to our own work, demonstrating our capacity to function not just as a provider but as an expert partner:

- **Integrated care** – or 'person centred co-ordinated care' (Redding, 2013) – is a top priority for everyone in health and social care: yet there is recognition that measuring the quality of integration is profoundly challenging. For CQC, this is relevant to a requirement to establish an approach to regulating 'new models of care'. We are already addressing these issues through industry-leading research on measures of people's experiences of integrated care. For example, we recently completed two widely cited projects looking at measures of integrated care for the NHS Outcomes Framework (Graham et al., 2014; King, Gibbons, Graham, & Walsh, 2014), and are nearing completion of a new collaborative effort to develop a questionnaire tool for measuring older people's experiences of person-centred co-ordinated care for service improvement (Thorlby, n.d.). Our Director of Policy, Chris Graham, is also a member of the advisory group for CQC's review of integrated care for older people (ICOP).
- CQC is developing a programme of work looking at **pathways of care**. We recently published the most comprehensive study yet to look at people's experiences of care along pathways (Fitzpatrick et al., 2015)
- In future, CQC intends to "**analyse how health and care services can work in a community**" rather than focus exclusively on single providers. We have long maintained that a focus on the

overall performance of local health economies is vital to discourage providers from acting as ‘silos’; this is illustrated in our reports on integrated care and care pathways described above.

CQC’s national patient survey programme (henceforth abbreviated to NPSP) has been a key part of our work since its inception, and we are proud of our involvement in its establishment and development. The programme was one of the first of its kind in the world and has inspired similar initiatives in many other countries (eg DeCourcy, West, & Barron, 2012): we have been directly involved in the establishment in several of these, including contributing to the design of survey programmes as geographically disparate as Iceland, Hong Kong, and Australia. Closer to home, we have more experience than any other organisation of working with NHS providers to measure and use patient experience information. We are the approved survey contractor for over half of England’s NHS acute trusts, and we regularly work with front-line organisations to help them action-plan and design service improvements based on feedback from patients.

Traditional statistical sample surveys, although vital to our work, are just one of the ways that we collect and use feedback. We have always argued that patient surveys should be supplemented by and triangulated with other sources of feedback and ways of hearing patient and public voices. We regularly design and conduct qualitative research focussing on gathering a richer account of people’s experiences of care. Similarly, we use alternative methods – including ‘near real-time’ feedback, online collections, and the friends and family test to help collect evidence for the organisations that we work with. We are thus adept at processing and handling many different types of user voice information, and recognise that collections need to be designed to match their purpose rather than inflexibly corresponding to an idealised and sometimes unnecessary view of what constitutes ‘scientific rigour’. This is particularly relevant where results do not need to be generalized back to a wider population or compared across organisations (eg Graham & Woods, 2013).

Fundamentally, we believe that patient feedback should be collected for a purpose – not for the sake of collecting it. It is a strength of CQC’s NPSP that it is able to fulfil a number of purposes – providing data for regulation, including via intelligent monitoring, as well as informing patients and the public, contributing to national policy debates, and providing evidence to drive and test improvement locally. But any attempt to cover multiple purposes within a single collection raises challenges, which we are very conscious of: different needs and uses have to be balanced.

Through our work we have had ample opportunity to identify areas in which the current programme, and CQC’s other collection activities, could be improved to better meet the needs of all users. These address a vision of the NPSP as the primary source of credible, reliable data on user experience: a programme

increasingly tooled to the demands of a system of intelligence driven regulation and well evidenced local improvement and accountability. To meet this vision, we will help CQC to realise a series of improvements – and throughout our proposal, we set out areas of opportunity for innovation, including an assessment of how this will benefit CQC and other users.

Dependable experts

We have unparalleled expertise in collecting user feedback from national surveys and other methods.

We have provided survey co-ordination centres for CQC and its predecessor organisations since the very start of the NPSP, and the team have decades' worth of experience of working on the programme.

Our experience is described in detail in Section 5 'Experience and Team', but – to summarise – we have direct and extensive experience of developing, maintaining, and co-ordinating every current survey in CQC's national programme. Additionally, we have managed the co-ordination centre for the NHS Staff Survey – the world's largest workforce survey – since 2011. We have developed and managed two national surveys of parents' experiences of neonatal services for Bliss and NHS England. We have managed national surveys of GP and hospital patients in Scotland. We have co-ordinated 'voluntary' national surveys covering children's health services outside of the national programme. The vast majority of these projects have featured a 'devolved' model with extensive involvement of individual healthcare providers, giving us unique experience of the unusual challenges associated with conducting surveys in this way.

Every national survey that we have co-ordinated – including more than 45 in CQC's national programme – has featured complete or very near complete participation from eligible trusts. All have resulted in multi-faceted packages of outputs including national reports of headline findings, tailored results for presentation by clients, and detailed graphical and numeric results for individual organisations.

Additionally, we have considerable experience of working in the areas covered by CQC's other feedback mechanisms. As an organisation, we have successfully completed a number of projects featuring qualitative and quantitative assessment of user experiences in hospices and community based social care services. These include the use of alternative collection methodologies, as detailed further in section 0 below. We have particular insight into CQC's regulatory role and user experience work in social care. Our Director of Research & Policy, Chris Graham, previously worked at CQC and led work on the Commission's special review of healthcare in care homes in 2010. In 2013, we worked with the King's Fund to complete a feasibility study looking at potential for CQC to undertake surveys in adult social care settings (Picker Institute Europe & King's Fund, 2013).

Taken together, our experience and expertise very closely match the profile required for the co-ordination centre. Throughout this document, we give examples of how we will leverage our skills and knowledge to ensure that CQC can depend upon the co-ordination centre to provide the highest quality of service and trusted advice.

Innovation

Over the last fifteen years, we have been involved in the establishment of some of the largest and most robust measures of patient experience anywhere in the world. We have a reputation for rigour and methodological awareness. We are regarded as pioneers and leaders in the field of user experience: we have a strong track record of innovation and an ambition to continue to advance the state of the art. Here, we set out just a few examples of our innovative practice.

In 2006 we became one of the first organisations to start collecting feedback from patients and service users in ‘near real-time’. Our ‘Frequent Feedback’ programme, helped pioneer the use of electronic devices (including tablets and PDAs) to collect quantitative and qualitative data about people’s experiences at the point of care. This predated by two years a policy directive from the then Secretary of State for Health, Andy Burnham, for all NHS trusts to collect ‘near real-time’ feedback – and it similarly foreshadowed the NHS friends and family test. Whilst ‘near real time feedback’ has been widely adopted across the NHS, it has often received limited evaluation and has not been effectively co-ordinated by suppliers and providers. Partly in response to this, we were awarded funding from the National Institute of Health Research (NIHR) in 2014 to undertake a major study, to be completed in collaboration with the University of Oxford, looking at the role and impact of this type of feedback in improving compassion in care.

As well as developing new methods, we have sought to refine and sharpen existing approaches. As the co-ordination centre for the NHS Staff Survey, we have managed the most fundamental change to that programme since its launch: the introduction of online response into the survey. From 2013, NHS organisations have been able to choose to send email invitations to staff rather than paper questionnaires. Because this virtually eliminates the per-unit cost of the survey, trusts have been able to increase their sample sizes: rather than selecting a random sample of a maximum of 850 staff, trusts are now allowed to conduct a census. This has seen a massive surge in the total sample size, which has near tripled to more than 600,000 in 2014. This fundamental shift in the way the survey operates has been well received by stakeholders and has happened without disruption to the survey or its timelines: this demonstrates our ability and willingness to make significant and dramatic improvements to long-established collections.

We believe that CQC's current NPSP – although an excellent source of systematic feedback – and other feedback mechanisms similarly offer room for improvement. Throughout our proposal we identify key points where we have specific recommendations for change – and, by way of illustration, highlights include:

- Investigating the feasibility of larger or more statistically efficient sampling methods to extend the value of data from existing surveys.
- Creating new tools to support trusts in sampling.
- Trialling the use of short-form measures to provide partial survey data for current non-respondents and improve representativeness.
- Our approach to the central administration of feedback mechanisms ensures good quality data and synchronisation across collections – whilst proposed pilots demonstrate our forward thinking in developing them.

A robust and transparent project management approach, to include regular recording and review of costs, risks, and timetables, all of which will be shared with CQC.

Summary

There is considerable alignment between the aims and objectives of CQC and the Picker Institute. We share a focus on person-centred health and social care, and a commitment to effective use of patient experience information. We share priorities for future developments, and have begun to elaborate on how these will be addressed.

We have the expertise to manage the complex and demanding role of the co-ordination centre. We have provided survey co-ordination centres for the Care Quality Commission (CQC) and its predecessors since the beginning of the NPSP in 2001. Over the last fourteen years, we have collaborated with the regulator on almost 50 national surveys collecting over 2,400,000 responses. Every survey in the NPSP has been substantively designed and developed by the Picker Institute.

Finally, we have sought to show how we will leverage our expertise to innovate in ways that produce benefits in terms of CQC's organisational objectives. We propose improvements that could advance CQC's strategic aims without undermining the existing value of collections. Overall: we will deliver and improve the programme in collaboration with CQC and in line with the regulator's current and future requirements.

Design and delivery of surveys

In this section we set out our approach to the delivery, development and substantive review of surveys within the NPSP. We focus on key design and methodological issues and identify potential innovations that could improve surveys in the future.

The NPSP has been in existence since 2001 and has continued to build and develop to meet the changing needs of the regulator. Originally, the survey programme was designed to meet a range of different needs for different stakeholders:

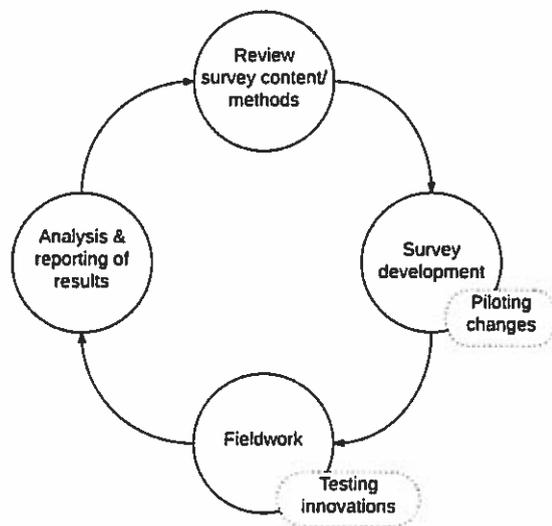
- For regulators & national bodies: high quality, reliable data suitable for assessing and comparing institutional performance.
- For providers: benchmarking data to compare themselves to other organisations; evidence to identify areas for improvement in experiences.
- For patients and the public: trustworthy information about the quality of local health services, and evidence to support informed choices about providers.

The overall design of the programme is necessarily driven by the most demanding of these requirements: the need for data robust and reliable enough to make sensitive and consequential judgements about organisational performance. The fundamental approach to the NPSP has thus been to scientific methods capable of systematically gathering reliable, representative feedback from service users. Typically this has meant using paper surveys (for their near universal coverage); comparatively large samples (to produce organisational-level estimates); and a 'devolved' approach (to spread costs and to encourage providers to take ownership of their results).

To date, the NPSP has generally met the needs of stakeholders, and particularly of CQC. Given that CQC's Intelligent Monitoring model has changed, along with the changing landscape of health care, there may be areas where improvements could better address contemporary and future requirements. However, any changes need to be approached with care: one of the strengths of the programme today is the large volume of historic data for existing surveys, so the benefit of any new innovations needs to be weighed against the risk of disrupting time series.

Although time series data from the national surveys is particularly valuable, surveys in the programme should not be thought of as static and unchanging. We view them – particularly annual surveys – as following a continual cycle of implementation, review, and improvement. This is illustrated in figure 1, below, & is analogous to the process cycles in improvement science approaches such as Plan Do Study Act:

Figure 1: Summary survey lifecycle, showing the various stages of an ongoing survey such as the national inpatient survey



Here, we describe each of these phases – starting, as we would for a new survey, with two core features of survey design: sampling & questionnaire development.

Sampling and the national patient survey programme

Sampling is the method by which individuals are selected to be invited to complete a survey. Sampling techniques are commonly divided into two broad categories: **probability** and **non-probability** sampling. In probability sampling every ‘unit’ (eg patient) within the population has a known chance of selection. Because the selection of individuals is probability based, results from a survey conducted in this way can be generalised as an ‘estimate’, with calculable reliability, of the true figure one would obtain by surveying the whole population (also known as the ‘parameter’).

Non-probability sampling approaches, by contrast, do not seek to be statistically generalizable. They are valid techniques but tend to be used for studies when statistical generalisations or comparisons between organisations do not need to be made. For example, feedback about the quality of care provided by an individual care home could be gathered using a non-probability method. Given that the specification requires that surveys “ensure comparability across providers” (p2), however, non-probability sampling will generally not be appropriate for use in NPSP collections – and thus this section focuses instead on probability methods.

Within the NPSP, existing collections use a devolved process for survey administration – meaning that NHS trusts are responsible for drawing the samples themselves. This means that methods used in national collections must be accessible enough to be implemented by NHS staff with minimal risk of

error. Alternatively, far more complex sampling approaches could be managed directly by the co-ordination centre – but this would require a level of access to patient data that is unlikely to be realised given current information governance arrangements. Decisions about sampling approaches therefore need to be balanced in respect of providing robust, precise and reliable data against pragmatism. Because of this, most surveys in the NPSF use relatively simple methods, as illustrated in table 1, below.

Table 1: Sampling methods used in national patient surveys

Approach	Sample type	Example survey
Sampling back sequentially from a fixed date until the required sample is obtained	Pseudo-probability 'flow' sample	Inpatient survey
Randomly selecting the required number of people from a list of all patients treated/discharged within a specified time period	Simple random sample	Community mental health survey
Selecting every <i>k</i> th patient from a sorted list of all people treated/discharged within a specified time period	Systematic random sample	Accident and emergency departments survey

The approach used for the national inpatient survey – a consecutive sample of adult patients recently discharged from hospital after having been an inpatient for at least one night – is not strictly a probability sample. Rather it can be considered as a **'pseudo probability sample'**, because it should approximate a simple random sample on the generally safe assumption that the order in which people are discharged does not (for large values of *n*) relate to the quality of experiences. This approach is useful when trusts have large variance in patient throughput, such as inpatient discharges, as it minimises the work required of trust personnel.

Simple random sampling is the most basic of probability methods, and is currently used on the community mental health survey. This method is appropriate when trusts have a sufficiently large 'stock' of patients within a given sampling. In a simple random sample, all population members have an equal probability of selection, and there are $\binom{n}{r}$ possible unique samples where *n* is the total number of eligible service users and *r* is the number required in the sample. A simple random sample is easy to draw but it does not build in any 'implicit stratification' in the way some more complex methods do. That is, the vast majority of the $\binom{n}{r}$ possible samples will provide good representation of the target

population – but it is *technically* possible for a genuinely random sample to feature extreme bias (eg, selecting only male patients).

Systematic random samples are a slightly more complex variant on the simple random sample. They guard against poor sample representation due to chance, and are relatively simple for trust staff to implement without any substantial disadvantage. A systematic sample is drawn by dividing the number of service users within the selection period (n) by the number required in the sample (r) to obtain a sampling interval, k . A random integer smaller than k , j , is used to select the first person in the sample, and every subsequent k th individual in the list is also selected. By pre-sorting the file by, for example, date of birth within gender, an implicit stratification is incorporated. Like a simple random sample, they give each patient an equal probability of selection. By contrast, they can produce only n/r unique samples – but these are ‘implicitly stratified’ by whatever variables are used to sort the list prior to selection. This can be useful if a particular dimension is likely to be related to responses – as is certainly the case with respondent age in national patient surveys.

Alternative sampling approaches

The NPSP’s current sampling approaches are administratively simple but offer relatively limited control over sample composition. In future, more complex methods could better guarantee representative samples or allow alternative analyses.

One such technique is **stratified sampling**. In stratified sampling, the population is divided into strata based on one or more demographic dimensions – eg by age, gender, or ethnic group. The chance of selection for any given individual then depends on which stratum they are in. In **proportionate stratification**, the odds of selection for each stratum are equal, and consequently the size of each stratum should be proportional to the size of the population of patients from this stratum. A more complex variation is **disproportionate stratified sampling**. Here, patients from smaller strata are given an increased chance of selection relative to those from larger strata; for example, BME patients would be more likely to be selected than white patients. Weighting could then be used to give different groups equal or proportionate input into the final results. This approach can allow comparisons of relatively small subgroups whilst still enabling representative overall estimates.

Stratification is an attractive approach: if properly designed and implemented, it offers a more statistically efficient sample with reduced sampling variance – and, in the case of disproportionate stratification, the opportunity to collect reliable data on minority groups without dramatically increasing the overall sample size for the survey. This kind of approach might be particularly useful for newer surveys with less longitudinal data that would require additional weighting for comparison. For example,

the sampling approach for future iterations of the national children's and young people day case and inpatient survey could be altered to implement a sample stratified by age, route of admission and type of admission (ie: day case or inpatient).

The disadvantage of these approaches is the difficulty of implementing them locally. Our experience suggests that NHS staff responsible for drawing samples may struggle with stratification. This could be addressed via interventions to reduce the administrative burden on trust staff. For confidentiality reasons we do not foresee being able to access data from trusts' patient administration systems directly, but there are two methods that could be explored:

- Trusts could provide the co-ordination centre with an anonymous list of all eligible patients, removing identifiable data like names and addresses but retaining stratification variables and survey-specific unique reference numbers. The co-ordination centre could then select the sample from this anonymous dataset and provide the trust with a list of selected reference numbers.
- Trusts could be provided with a software tool – eg a template Excel spreadsheet – that automatically selects a stratified sample once patient data is entered into it. We have already developed tools to test the feasibility of this approach.

The first involves significant extra input from the co-ordination centre: although this would be offset with a reduction in the time required for sample checking, it remains less preferred. The second approach is not without risk, as there remains a potential for human error in deploying any tool locally – but it is the preferred option as it makes good use of technology to reduce overall resource requirements.

An alternative to disproportionate stratified sampling that allows deliberate over-sampling of certain groups is **boost sampling**, which may be considered a minor variation on existing methods. For example, a boost sample of patients from BME groups could be added to the national inpatient survey: this would require trusts to select their main sample as usual, then continue counting back and selecting more consecutively discharged BME patients until the required number was achieved. This would allow additional analysis of the data with minimal change to the core sample. Boost sampling could even allow coverage of new populations without developing wholly new surveys, providing there are sufficient commonalities in how services are provided. For example, an additional sample of day case patients could be added to the national inpatient survey to extend the survey & benefit from economies of scale.

Where a new sampling approach is to be implemented, we would advise conducting a sampling pilot to test its feasibility and practicality. We have undertaken sampling pilots previously, such as for the development of a potential Category C Ambulance Service Users Survey in 2011: this pilot was