

## **Contract for the Provision of Services**

**NHS Patient Surveys – Co-Ordination Centre (Lot 02 – Mixed Methods)**

**Ref: CQC PSO 114**

**December 2019**

# Contents

Contents .....	2
SECTION 1- FORM OF CONTRACT .....	4
SECTION 2- TERMS AND CONDITIONS .....	6
A GENERAL PROVISIONS .....	8
B. THE SERVICES .....	19
C PAYMENT .....	24
D. STATUTORY OBLIGATIONS.....	28
E PROTECTION OF INFORMATION .....	32
F. CONTROL OF THE CONTRACT .....	48
G LIABILITIES.....	54
H DEFAULT, DISRUPTION AND TERMINATION .....	59
I DISPUTES AND LAW .....	68
SCHEDULE 1 - SPECIFICATION.....	72
SCHEDULE 2 – TENDER RESPONSE.....	102
SCHEDULE 3 - PRICING .....	159
SCHEDULE 4 - CHANGE CONTROL .....	173
SCHEDULE 5 - COMMERCIALLY SENSITIVE INFORMATION.....	174
SCHEDULE 6 - NON DISCLOSURE AGREEMENT .....	175
SCHEDULE 7 - CONTRACTOR AND THIRD PARTY SOFTWARE .....	180
SCHEDULE 8 - SECURITY REQUIREMENTS, POLICY AND PLAN .....	181
ANNEX 1 – BASELINE SECURITY REQUIREMENTS .....	186
ANNEX 2 – SECURITY MANAGEMENT PLAN .....	189
SCHEDULE 9 - GUARANTEE.....	194
SCHEDULE 10 - EXIT MANAGEMENT STRATEGY .....	201

SCHEDULE 11 – KEY PERFORMANCE INDICATORS .....	202
SCHEDULE 12 – BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN.....	204
SCHEDULE 13 – MOBILISATION PLAN.....	205
SCHEDULE 14 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS .....	2051
SCHEDULE 15 – EMPLOYMENT PROVISIONS .....	214

CONFIDENTIAL

# SECTION 1- FORM OF CONTRACT

## PARTIES:

- (1) **THE CARE QUALITY COMMISSION** of 3<sup>rd</sup> Floor, 151 Buckingham Palace Road, London, SW1W 9SZ ("the Authority");

## AND

- (2) **MARKET & OPINION RESEARCH INTERNATIONAL t/a IPSOS MORI** of 3 Thomas More Square, London E1W 1YW (registered in England and Wales under number 00948470) (the "Contractor")

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

## WHEREAS

The Authority is the independent regulator of health and social care in England. Its purpose is to make sure health and social care services provide people with safe, effective, compassionate, high quality care and to encourage care services to improve. To deliver this, the Authority monitors, inspects and regulates services to make sure they meet fundamental standards of quality and safety, and it publishes its findings, including performance ratings, to help people make care choices.

The Authority's corporate strategy '[\*Shaping the Future: CQC's strategy for 2016 – 2021\*](#)' sets out the organisation's aim of transforming the way that it uses knowledge and information to deliver the purpose stated above.

Following a competitive tender process, the Authority wishes to appoint the Contractor to provide certain services to deliver the purpose above for the benefit of the general public (as further detailed in clause A2.2 below) 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:	Change Control
Schedule 5:	Commercially Sensitive Information

Schedule 6:	Non-Disclosure Agreement
Schedule 7:	Contractor and Third-Party Software
Schedule 8:	Security Requirements, Policy and Plan
Schedule 9:	Guarantee
Schedule 10:	Exit Management Strategy
Schedule 11:	Key Performance Indicators
Schedule 12:	Business Continuity and Disaster Recovery Plan
Schedule 13:	Mobilisation Plan
Schedule 14:	Processing, Personal Data and Data Subjects

- 1.2 The Contract starts on **01 December 2018** (the “**Commencement Date**”) and ends on **30 November 2021** (the “**End Date**”) the “**Initial Period**” unless it is terminated early or extended in accordance with the Contract.
- 1.3 The Authority may extend the term of the Contract until **30 November 2022** (“**Extension**”). The Authority may, by giving written notice to the Contractor not less than the three (3) Months prior to the last day of the Initial Contract Period, extend the Contract for a further period of 12 Months. The terms of the Contract will apply throughout the period of any Extension.

# SECTION 2- TERMS AND CONDITIONS

## CONTENTS

A1	Definitions and Interpretation
A2	The Authority's Obligations
A3	Contractor's Status
A4	Notices and Communications
A5	Mistakes in Information
A6	Conflicts of Interest
B1	Specification
B2	Provision and Removal of Equipment
B3	Manner of Carrying Out the Service
B4	Key Personnel
B5	Contractor's Staff
B6	Inspection of Premises
B7	Licence to Occupy Premises
B8	Property
B9	Offers of Employment
B10	Employment Provisions
C1	Price
C2	Payment and VAT
C3	Recovery of Sums Due
C4	Price during Extension
D1	Prevention of Fraud and Bribery
D2	Discrimination
D3	Rights of Third Parties
D4	Environmental Requirements
D5	Business Continuity and Disaster Recovery
D6	Health and Safety
E1	Authority Data
E2	Data Protection and Privacy
E3	Official Secrets Acts and Finance Act
E4	Confidential Information
E5	Freedom of Information
E6	Publicity, Media and Official Enquiries
E7	Security
E8	Intellectual Property Rights
E9	Audit
E10	Tax Compliance
F1	Failure to meet requirements
F2	Monitoring of Contract Performance
F3	Remedies for inadequate performance
F4	Transfer and Sub-Contracting

F5 Waiver  
F6 Variation  
F7 Severability  
F8 Remedies Cumulative  
F9 Entire Agreement  
F10 Counterparts

G1 Liability, Indemnity and Insurance  
G2 Warranties and Representations  
G3 Force Majeure

H1 Termination on Insolvency and Change of Control  
H2 Termination on Default  
H3 Non-Default Termination or Change of Government Policy  
H4 Termination under the Regulations  
H5 Consequences of Expiry or Termination  
H6 Disruption  
H7 Recovery upon Termination  
H8 Retendering and Handover  
H9 Exit Management  
H10 Exit Procedures  
H11 Knowledge Retention

I1 Governing Law and Jurisdiction  
I2 Dispute Resolution

# A GENERAL PROVISIONS

## A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

**"Affected Party"** means the Party seeking to claim relief in respect of a Force Majeure Event;

**"Affiliate"** means in relation to a body corporate, any other entity which directly or indirectly Controls is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

**"Agreement"** means this Contract;

**"Approval"** and **"Approved"** means the prior written consent of the Authority;

**"Authorised Representative"** means the Authority representative named in the CCN as authorised to approve agreed Variations;

**"Authority Data"** means:

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

**"Authority Premises"** means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Services;

**"Authority Software"** means software which is owned by or licensed to the Authority (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;

**"Authority System"** means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services;

**"BPSS"** means the HMG Baseline Personnel Security Standard for Government employees.

**"Breach of Security"** means any incident that result in unauthorised access of data, applications, services, networks and/or devices by bypassing their underlying security mechanisms;



**"CCN"** means a change control notice in the form set out in Schedule 4;

**"Commencement Date"** means the date set out in paragraph 1.2 of the Form of Contract;

**"Commercially Sensitive Information"** means the information listed in Schedule 5:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in Schedule 5; 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 or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information;

**"Contract"** has the meaning given in paragraph 1.1 of the Form of Contract;

**"Contract Period"** means the period from the Commencement Date to:

- (a) the End Date; or
- (b) following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract;

**"Contracting Authority"** means any contracting authority (other than the Authority) as defined in regulation 2 of the Regulations;

**"Contractor Personnel/Staff"** means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

**"Contractor Software"** means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 7;

**"Contractor System"** means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System);

**"Control"** means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

**"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 offices and government agencies and **"Crown Body"** is an emanation of the foregoing;

**"Data Controller, Data Processor, Data Subject, Personal Data, Personal Data Breach and Data Protection Officer"** shall each have the same meaning given in the GDPR;

**"Data Loss Event"** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

**"Data Protection Legislation"** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to the processing of Personal Data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy;

**"Data Protection Impact Assessment"** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**"Data Subject Access Request"** means a request made by or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access his or her Personal Data;

**"Default"** means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other;

**"Deliverable"** means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at any stage during the performance of this Contract as set out in Schedule 1;

**"Disaster"** means an event defined as a disaster in the Business Continuity and Disaster Recovery Plan;

**"DOTAS"** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992;

**"DPA"** means the Data Protection Act 2018 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**"EIR"** means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**"Employment Liabilities"** means any Loss including those incurred by or attributed to the Authority (which shall include any incurred as a result of an indemnity or warranty given, or to be given, by the Authority to a Replacement Contractor or sub-contractor);

**"End Date"** means the date set out in paragraph 1.2 of the Form of Contract;

**"Equipment"** means the Contractor's equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the delivery of the Services;

**"Extension"** has the meaning given in paragraph 1.3 of the Form of Contract;

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**"Force Majeure Event"** means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor's supply chain;

**"Form of Contract"** means Section 1 of the Contract;

**"GDPR"** means the General Data Protection Regulation (*Regulation (EU) 2016/679*)

**"General Anti-Abuse Rule"** means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

**"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;

**"Halifax Abuse Principle"** means the principle explained in the CJEU Case C-255/02 Halifax and others;

**"HMRC"** means HM Revenue & Customs;

**"ICT Environment"** means the Authority 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 End Date;

**"Intellectual Property Rights"** means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

**"ITEPA"** means the Income Tax (Earnings and Pensions) Act 2003;

**"Key Personnel"** mean those persons named in the Specification as key personnel;

**"Key Performance Indicators"** means the key performance indicators listed in the Schedule 11 and a Key Performance Indicator ("KPI") shall mean any one of them;

**"Know-How"** means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods);

**"Law"** means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply;

**"LED"** means Law Enforcement Directive (*Directive (EU) 2016/680*);

**"Loss"** means any losses, costs, charges, expenses, interest, fees (including legal fees on a solicitor/client basis), disbursements and costs of investigation, litigation, settlements, payments, demands, liabilities, claims, proceedings, actions, penalties, charges, fines, damages, destruction, adverse judgments, orders or other sanctions whether arising in contract, tort (including negligence), breach of statutory duty or otherwise 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;

**"Material Breach"** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10;

**"Month"** means calendar month;

**"NICs"** means National Insurance Contributions;

**"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 DOTAS 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;

**"Personal Data"** personal data (as defined in the Data Protection Legislation) which is Processed by the Contractor or any Sub-contractor on behalf of the Authority or a Central Government Body pursuant to or in connection with this Contract;

**"Pre-Existing Intellectual Property Rights"** shall mean any Intellectual Property Rights vested in or licensed to the Authority or the Contractor prior to or independently of the performance by the Authority of the Contractor of their obligations under this Contract;

**"Premises"** means the location where the Services are to be supplied as set out in the Specification;

**"Price"** means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 3 for the full and proper performance by the Contractor of its obligations under the Contract;

**"Pricing Schedule"** means Schedule 3 containing details of the Price;

**"Processing"** has the meaning given to it in the Data Protection Legislation but, for the purposes of the Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;

**"Prohibited Act"** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority 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 Authority;
- (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 Authority in connection with the Contract;

**"Protective Measures"** means appropriate technical and organisational measures which include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

**"Purchase Order"** means the document in which the Authority specifies the Services which are to be supplied by the Contractor under 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 Schedule 1;

**"Receipt"** means the physical or electronic arrival of the invoice at the address specified in clause A4.4 or at any other address given by the Authority to the Contractor for the submission of invoices from time to time;

**"Regulations"** means the Public Contract Regulations 2015 (SI 2015/102);

**"Regulator Correspondence"** means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under this Contract;

**"Regulatory Body"** means a government department 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 Authority;

**"Relevant Conviction"** means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority;

**"Relevant Requirements"** means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

**"Relevant Tax Authority"** means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

**"Replacement Contractor"** means any third party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract;

**"Request for Information"** means a request for information under the FOIA or the EIR;

**"Restricted Countries"** means

- (a) any country outside the European Economic Area; and
- (b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;

**"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;

**"Security Policy"** means ISO/IEC 27001 Information Security Management;

**"Services"** means the services set out in Schedule 1 including any modified or alternative services;

**"Specification"** means the description of the Services to be supplied under the Contract as set out in Schedule 1 including, where appropriate, the Key Personnel, the Premises and the Quality Standards;

**"SSCBA"** means the Social Security Contributions and Benefits Act 1992;



**"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 Authority's procedures for the vetting of personnel and as advised to the Contractor by the Authority;

**"Sub-Contractor"** means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and **"Sub-Contract"** shall be construed accordingly;

**"Sub-processor"** means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement;

**"Supplier Code of Conduct"** means HM Government Supplier Code of Conduct dated September 2017

**"Tender"** means the Authority's invitation to supply to contractors consisting of the Specification, these clauses and form of Letter of Engagement;

**"Tender Response"** means the document submitted by the Contractor to the Authority in response to the Authority's invitation to suppliers for formal offers to supply the Services appended hereto in Schedule 2;

**"Termination Notice"** means a written notice delivered by the Authority to the Contractor indicating that it intends to terminate this Contract in accordance with its terms;

**"TFEU"** means the Treaty on the Functioning of the European Union;

**"Third Party IP Claim"** has the meaning given to it in clause E8.7 (Intellectual Property Rights);

**"Third Party Software"** means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 7;

**"Treaties"** means the Treaty on European Union and the TFEU;

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**"Valid Invoice"** means an invoice containing the information set out in clause C2.5;

**"Variation"** means a variation to the Specification, the Price or any of the terms or conditions of the Contract;

**"VAT"** means value added tax charged or regulated 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;

*In the Contract, unless the context implies otherwise:*

- (a) the singular includes the plural 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) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words "other", "in particular", "for example", "including" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (h) references to the Contract are references to the Contract as amended from time to time.

## **A2 The Authority's Obligations**

- A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority 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 Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Contractor.
- A2.2 The Authority warrants that its procurement of the Services from the Contractor is not for the Authority's own commercial gain, but to fulfil its obligations as an independent regulator of health and social care in England and to improve the quality of health and social care services.

## **A3 Contractor's Status**

- A3.1 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.

- A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.

#### **A4 Notices and Communications**

- A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email.

- A4.2 If it is not returned as undelivered a notice served:

- (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
- (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

- A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

- A4.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

- (a) For the Authority:

Contact Name [REDACTED]

Address: Care Quality Commission, 151 Buckingham Palace Road, London, SW1W 9SZ; and

Email: [REDACTED]

- (b) For the Contractor:

Contact Name: [REDACTED]

Address: Ipsos MORI, 3 Thomas More Square, London E1W 1YW; and

Email: [REDACTED]

#### **A5 Mistakes in Information**

- A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the Services and shall pay the Authority any extra costs (subject to the Authority using best endeavours to mitigate any such costs) occasioned by any discrepancies, errors or

omissions therein except where such discrepancies, errors or omissions either fall within any accepted margins of error as notified by the Contractor to the Authority from time to time, originate from documentation supplied by the Authority or from the incorrect interpretation or completion of a survey by a respondent

#### **A6 Conflicts of Interest**

- A6.1 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 Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.
- A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **B. THE SERVICES**

#### **B1 Specification**

- B1.1 In consideration of the Contractor supplying the Services the Contractor shall be paid the Price.
- B1.2 The Contractor shall comply fully with its obligations set out in the Specification and Tender (to include, without limitation, the KPIs and all obligations in relation to the quality, performance and provision of the Services).
- B1.3 In the event that this Agreement or any Purchase Order terminates or expires, the Contractor shall, if requested to do so by the Authority, continue to provide the Services commenced prior to the date of such termination or expiry at no extra cost to the Authority other than the continued payment of the Price for such Services. The Contractor shall comply with its obligations in accordance with the Exit Management Strategy in Schedule 10.

#### **B2 Provision and Removal of Equipment**

- B2.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority 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 Authority'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.

- B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B2.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.
- B2.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.
- B2.7 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- B2.8 Within 20 Working Days following the end of the Contract Period, the Contractor shall remove the Equipment 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 shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein

### **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 the Service has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority 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 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. The Contractor shall ensure that those Staff are properly managed and supervised.
- B3.3 If the Specification includes installation of equipment the Contractor shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Contractor:

- (a) accept the installation; or
  - (b) reject the installation and inform the Contractor why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.
- B3.4 If the Authority rejects the installation pursuant to clause B3.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Authority may terminate the Contract with immediate effect by notice.
- B3.5 The installation shall be complete when the Contractor receives a notice issued by the Authority in accordance with clause B3.3(a). Notwithstanding acceptance of any installation in accordance with clause B3.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.
- B3.6 During the Contract Period, the Contractor shall:
  - (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation;
  - (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
  - (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.
- B3.7 The Contractor and Contractor Personnel shall at all times comply with the Supplier Code of Conduct (<https://www.gov.uk/government/publications/supplier-code-of-conduct>).

#### **B4 Key Personnel**

- B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.
- B4.2 The Contractor shall designate a Key Personnel to act on behalf of the Contract as the Contract manager to oversee the provision of the Services and liaise and report to the representatives of the Authority.
- B4.3 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.
- B4.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, 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 Authority 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 effect on the Services which could be caused by a change in Key Personnel.

B4.5 The Authority may, by notice to the Contractor, ask it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.

## **B5 Contractor's Staff**

B5.1 The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's 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 Authority's reasonable opinion, be undesirable or if not suitably qualified to carry out the Services.

B5.2 The Contractor shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the Authority's Staff Vetting Procedures.

B5.3 The Authority may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. 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.

B5.4 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B5.5 If the Contractor fails to comply with clause B5.4 within two Months of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Authority, then the Authority 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 Authority.

B5.6 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.

B5.7 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, the Security Policy and the Security Plan.



**B5.8** 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 ("the Equality Legislation"); and
- (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation or the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

**B6 NOT USED**

**B7 Licence to Occupy Premises**

**B7.1** Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be 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 termination of the Contract.

**B7.2** The Contractor shall limit access to the land or Premises to such Staff as is necessary for 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 Authority may reasonably request.

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

**B7.4** The Contractor shall (and shall ensure that any Staff on the Authority's Premises shall) observe and 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 on the Authority's Premises as determined by the Authority

**B7.5** The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

**B8 Property**

**B8.1** All Property is and shall remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter 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 Authority. The Contractor shall take all reasonable

steps to ensure that the title of the Authority 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 Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

- 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 Authority 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 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 Authority'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, unless such loss or damage was caused by the Authority's negligence. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **B9 Offers of Employment**

- B9.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter neither party shall employ or make an offer employment to the other party's staff who have been associated with the Services and/or the Contract without consent of the other Party.

## **B10 Employment Provisions**

The Employment Provisions contained in Schedule 15 shall apply.

# **C PAYMENT**

## **C1 Price**

- C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Price in accordance with clause C2 (Payment and VAT) and the Pricing Schedule.
- C1.2 NOT USED

## **C2 Payment and VAT**

- C2.1 The Authority 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 submit invoices to the Authority in accordance with the provisions entitled 'Milestone Payments' as set out in Schedule 3.



- C2.3 .The Parties consider that the provision of the Services is outside the scope of VAT, pursuant to paragraph 5.7 of HMRC's Educational and Vocational training (VAT Notice 701/30), since the provision of the Services is for the wider public benefit.
- C2.3.1 If HMRC considers that VAT is due for the provision of the Services, the Contractor shall issue the Authority with an invoice for a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract. The Authority shall pay such invoices in accordance with this clause C2.
- C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- C2.5 Valid Invoices shall include:
- (a) the Contractor's full name, address and title of the Contract;
  - (b) the Purchase Order number
- and, if requested by the Authority:**
- (c) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
  - (d) the name of the individuals to whom the timesheet relates and hourly rates for each;
  - (e) identification of which individuals are Contractor's staff and which are Sub-Contractors;
  - (f) the address of the Premises and the date on which work was undertaken;
  - (g) the time spent working on the Premises by the individuals concerned;
  - (h) details of the type of work undertaken by the individuals concerned;
  - (i) details of plant or materials operated and on standby;
  - (j) separate identification of time spent travelling and/or meal or rest breaks; and
  - (k) where appropriate, details of journeys made and distances travelled.
- C2.6 The Authority shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.
- C2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.
- C2.8 NOT USED
- C2.9 NOT USED
- C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation;

facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.

C2.11 NOT USED

C2.12 NOT USED

C2.13 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Authority's instructions).

C2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Contractor shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts. DN: Please use above clause if the Contractor is required to provide plant.

C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.

C2.16 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.

C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.

C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:

Care Quality Commission  
T70 Payables F175  
Phoenix House  
Topcliffe Lane  
Wakefield  
West Yorkshire WF3 1WE

C2.19 If the Contractor enters into a Sub-Contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the Sub-Contract which requires payment to be made of all sums due from it to the Sub-Contractor within 30 days from the receipt of a valid invoice.

C2.20 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority 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 C2.21 shall be paid by the Contractor

to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

- C2.21 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.22 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank plc.
- C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

### **C3 Recovery of Sums Due**

- C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement with the Authority or the Crown.
- C3.2 Any overpayment by either Party, whether of the 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 Authority 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 Authority 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 during Extension**

- C4.1 Subject to Schedule 3 and clause F6, the Price shall apply for the Initial Contract Period and until the end date of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

#### **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 Authority.
- C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1.

## **D. STATUTORY OBLIGATIONS**

#### **D1 Prevention of Fraud and Bribery**

- D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (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.
- D1.2 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 Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- D1.3 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 Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

- D1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware that any breach of clauses D1.1 and/or D1.2 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 advantage 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.
- D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority 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.
- D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:
- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - (b) immediately terminate the Contract and recover from the Contractor the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
  - (c) recover in full from the Contractor any other Loss sustained by the Authority in consequence of any breach of those clauses.
- D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).
- D1.8 The Contractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority 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 Authority 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.

- D1.9 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.

## **D2 Discrimination**

- D2.1 The Contractor shall:

- (a) perform its obligations under the Contract in accordance with:
  - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
  - ii) the Authority's equality and diversity policy as given to the Contractor from time to time;
  - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

## **D3 Rights of Third Parties**

- D3.1 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.

## **D4 Environmental Requirements**

- D4.1 The Contractor shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Contractor shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender. Without prejudice to the generality of the foregoing, the Contractor shall:

- (a) comply with all Policies and/or procedures and requirements set out in the Specification and Tender in relation to any stated environmental and social requirements, characteristics and impacts of the Services and the Contractor's supply chain;
- (b) maintain relevant policy statements documenting the Contractor's significant social and environmental aspects as relevant to the

Services being supplied and as proportionate to the nature and scale of the Contractor's business operations; and

- (c) maintain plans and procedures that support the commitments made as part of the Contractor's significant social and environmental policies, as referred to in Clause D4.1 (b).

D4.2 The Contractor shall meet reasonable requests by the Authority for information evidencing the Contractor's compliance with the provisions of this Clause D.

## **D5 Business Continuity and Disaster Recovery Plan**

D5.1 Within thirty (30) Working Days from the Call Off Commencement Date the Supplier shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

D5.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

D5.1.2 the recovery of the Services in the event of a Disaster.

D5.2 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 12.

D5.3 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 terms of the contract as far as practicable in the event of a Disaster, unforeseen business disruption or emergency event.

D5.4 The Authority 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 Authority.

D5.5 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 Authority 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.

D5.6 To the extent that the Contractor complies fully with the provisions of this clause D5 (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 11 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.

## **D6 Health and Safety**

- D6.1 The Contractor shall perform its obligations under the Contract in accordance with:
- (a) all applicable Law regarding health and safety (including Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety); and
  - (b) the Authority's health and safety policy while at the Authority's Premises.
- D6.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

# **E PROTECTION OF INFORMATION**

## **E1 Authority Data**

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or Processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.
- E1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.
- E1.7 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or



- (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

E1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

## **E2 Data Protection & Privacy**

E2.1 The Contractor shall (and shall procure that its entire Staff) comply with any notification requirements under Data Protection Legislation and both Parties will duly observe all their obligations under Data Protection Legislation which arise in connection with the Contract.

E2.2 The Contractor will, in conjunction with the Authority, in its own right and in respect of the Services, shall ensure it will be compliant with the provisions of the GDPR and Data Protection Legislation.

E2.3 The Contractor shall designate and will provide the Authority with the contact details of its data protection officer where this position is required by the Data Protection Legislation or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations in this Clause E2.

E2.4 Notwithstanding the obligations in clause E2.1 if the Contractor is Processing Personal Data as a Data Processor for the Authority, the Contractor shall:

- (a) Prior to the processing of any Personal Data under this Contract and where requested by the Authority provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment ("DPIA"). Such assistance may, at the discretion of the Authority include (but not be limited to):
  - i. A systematic description of the envisaged processing operations and the purpose of the processing;
  - ii. An assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- (b) implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected including the measures as are set out in Clause E1 (Authority Data) and Clause E7 (Security) and Schedule 8 (Security Requirements, Policy and Plan).

- (c) Process the Personal Data only in accordance with Schedule 14 and/or written instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Authority unless the Contractor is required to do so otherwise by Law. If it is so required, the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (d) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under the Contract or as is required by Law or any Regulatory Body;
- (e) Keep a record of all categories of processing activities carried out on behalf of the Authority, containing;
  - i) the categories of processing carried out on behalf of the Authority;
  - ii) where applicable, any transfers of Personal Data to Restricted Countries or an international organisation.
- (f) Ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (g) take all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel:
  - a. do not process Personal Data except in accordance with this Agreement (and in particular Schedule 14);
  - b. are aware of and comply with the Contractor's duties under this Clause E2 and Clauses E1 (Authority Data) and E4 (Confidentiality);
  - c. are subject to appropriate confidentiality undertakings with the Contractor or any relevant Sub-contractor;
  - d. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
  - e. have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Data Protection Legislation);
- (h) not disclose or transfer the Personal Data to, or allow the processing of Personal Data by any Sub-Contractor and/or Affiliates for the provision of the Services without Approval;
- (i) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (j) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data;
- (k) notify the Authority within 48 hours if it:
- a. receives from a Data Subject (or third party on their behalf):
    - i. a Data Subject Access Request (or purported Data Subject Access Request);
    - ii. a request to rectify, block or erase any Personal Data; or
    - iii. any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - b. considers that any of the Authority's instructions from the Authority infringe the Data Protection Legislation;
  - c. receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract; or
  - d. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - e. is required by Law to commit an act or omission to that would, but for Clause E2.10, constitute a breach of this Clause E2;
  - f. becomes aware of a Data Loss Event
- (l) The Contractor's obligation to notify under Clause E2.4(k) shall include the provision of further information to the Authority in phases, as details become available.

**E2.4A** Notwithstanding the provisions of clauses E2.1 and E2.4, where the Contractor is Processing Personal Data for the Authority, the parties acknowledge that the Authority is the Data Controller and the Contractor is the Data Processor. The Authority shall set out the scope, nature and purpose of the Processing by the Contractor, the duration of the Processing and the types of Personal Data and the categories of Data Subject in the form appended hereto in Schedule 14 – Processing, Personal Data and Data Subject.

- E2.5 Taking into account the nature of the processing, the Contractor shall provide the Authority with full co-operation and assistance (within the timescales reasonably required by the Authority) in relation to either Party's obligations under Data Protection Legislation or any complaint, communication or request made as referred to in Clause E2.4(k), including by promptly providing:
- a. the Authority with full details and copies of the complaint, communication or request;
  - b. where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
  - c. the Authority, on its request, with any Personal Data it holds in relation to a Data Subject;
  - d. assistance as requested by the Authority following any Data Loss Event; and
  - e. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office (ICO), or any consultation by the Authority with the Information Commissioner's Office;
- E2.6 The Contractor shall, if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause E2 and provide to the Authority copies of all documentation relevant to such compliance including, processing records, procedures, guidance, training and manuals.
- E2.7 The Contractor shall allow the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E9 (Audit), the Contractor's Data Processing activities (and/or those of Staff) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- E2.8. The Contractor shall not Process or otherwise transfer any Personal Data in or to any Restricted Country without the Authority's prior written consent. If, after the Effective Date, the Contractor or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the Contractor shall, in seeking consent, submit such information as the Authority's shall require in order to enable it to consider the request and acknowledges that such consent may be given subject to conditions which will, if appropriate, be incorporated into this Contract at the Contractor's cost and expense using the Change Control Procedure.
- E2.9 The Contractor will notify the Authority immediately, and in any event no later than 12 hours, after becoming aware of a Data Loss Event, in particular the notification will be made regardless as to whether or not the Contractor has established any unauthorised access or other harm has actually arisen from the event. Notification must not be delayed for the purpose of establishing the effects of an identified Data Loss Event. In particular the Contractor will;
- i) when notifying the Authority of a Data Loss Event will describe the nature of the event including the categories and approximate number of data subjects

concerned and the categories and approximate number of Personal Data records concerned;

- ii) Cooperate fully with any Authority investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);
- iii) [provide immediate access to the Contractor's premises and systems for the purposes of any Authority investigation under [Clause E2.4 ii] above]
- iv) Take all necessary actions to remedy the causes or adverse effects of the Data Loss Event and to ensure the protection of Personal Data from any further loss. Where the contractor reasonably considers that immediate action is required to ensure the protection of personal data, or to prevent or mitigate a serious risk of harm, damage or loss to data subjects arising from a Data Loss Event, they may take such action without requiring prior authorisation from the Authority circumstances where it is not reasonably possible to seek or obtain such authorisation in a timely manner;
- v) Not make any public statement of any kind without the Approval of the Authority;
- vi) Where appropriate, provide all assistance necessary to enable the Authority to fulfil its obligations to Information Commissioner within 72 hours after becoming aware of the Data Loss Event; and
- vii) notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

E2.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause E2. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Authority determines that the processing is not occasional;
- (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E2.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- (a) notify the Authority in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Authority;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and  
(d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

- E2.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- E2.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- E2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- E2.15 At the end of the Term or earlier termination of this Contract, at the Authority's request, the Contractor shall delete or return all Personal Data to the Authority and delete any copies of such Personal Data except where required to retain any copies by Law.
- E2.16 The Contractor shall comply at all times with Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- E2.17 The Contractor shall use its reasonable endeavours to assist the Authority to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of the Authority's obligations under the Data Protection Legislation to the extent the Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- E2.18 The Contractor shall indemnify the Authority on a continuing basis against any and all Losses incurred by the Authority arising from the Contractor's Default under this Clause E2 and/or any failure by the Contractor or any Sub-Contractor to comply with their respective obligations under Data Protection Legislation.
- E2.19 Nothing in this Clause E2 shall be construed as requiring the Contractor or any relevant Sub-contractor to be in breach of any Data Protection Legislation.
- E2.20 The provision of this clause E2 applies during the Contract Period and indefinitely after its expiry.

### **E3 Official Secrets Acts and Finance Act**

- E3.1 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.

E3.2 The Contractor shall not remove from the Authority's premises any classified or privacy marked material without the Authority's express agreement. The Contractor must keep any such material so removed under conditions approved by the Authority for the housing of such classified or privacy marked material.

E3.3 In the event that the Contractor or its Staff fails to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

#### **E4 Confidential Information**

E4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is Confidential Information. The Authority 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 FOIA.

E4.2 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

E4.3 Notwithstanding any other term of this Contract, the Contractor hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.

E4.4 The Authority may consult with the Contractor to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.

E4.5 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

E4.6 If required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 6. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.

E4.7 If requested by the Authority, the Contractor shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.

E4.8 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.



- E4.9 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E4.10 Clause E4.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was obtained from a third party without obligation of confidentiality;
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - (e) it is independently developed without access to the other Party's Confidential Information.
- E4.11 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:
- (a) for the purpose of the examination and certification of the Authority's accounts;
  - (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
  - (d) to any consultant, contractor or other person engaged by the Authority
- provided that in disclosing information under clauses E4.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- E4.12 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.



- E4.13 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.
- E4.14 If the Contractor does not comply with clauses E4.1 to E4.6 the Authority may terminate the Contract immediately on written notice to the Contractor.
- E4.15 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.16 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.
- E4.17 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.12.

## **E5 Freedom of Information**

- E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- E5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and the Contractor shall and shall procure that any Sub-Contractors shall:
- (a) give the Authority a copy of all Information in connection with the Contract in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
  - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
  - (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.
- E5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.
- E5.4 The Contractor acknowledges that (notwithstanding the provisions of clause E4) the Authority 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 ('Code'), be obliged under the FOIA, or the EIR 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 E5.4(a) applies the Authority 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.

- E5.5 The Contractor shall ensure that all information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

## **E6 Publicity, Media and Official Enquiries**

- E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, 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.

- E6.2 The Contractor shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

## **E7 Security**

- E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.

- E7.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

- E7.3 The Contractor shall comply, and shall procure compliance of its Staff, with the Security Plan and Security Policy.

- E7.4 NOT USED

- E7.5 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

- E7.6 Notwithstanding clause E7.5, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority 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 Authority with full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

**E7.7** Any cost arising out of the actions of the Parties taken in compliance with clause E7.6 shall be borne by the Parties as follows:

- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
- (b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

**E7.7A** The Contractor controlled architecture and environment used to process or store Authority Data will be certified to the NCSC Cyber Essentials Plus certification scheme.

**E7.8** The Contractor shall be liable for, and shall indemnify the Authority against all Losses suffered or incurred by the Authority and/or any third party arising from and/or in connection with any Breach of Security or attempted Breach of Security (to the extent that such Losses were not caused by any act or omission by the Authority).

## **E8 Intellectual Property Rights**

In order to enable the Authority to procure research services from research providers in the future:

**E8.1** All Intellectual Property Rights in any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, questionnaires or other material which is:

- (a) furnished to or made available to the Contractor by or on behalf of the Authority;
- (b) prepared by or for the Contractor for use in relation to the performance of its obligations under the Contract; or

- (c) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services (together with clauses E8.1 (a) and (b) the "IP Materials")

shall vest in the Authority and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

- E8.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1(b) and (c). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) 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 and do all acts as are necessary to execute this assignment.

The Parties acknowledge that the Authority is subject to the Open Government License and once the Deliverables are published on the Authority's website, the terms of the Open Government License shall apply (<https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>).

- E8.3 The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract.
- E8.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority 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, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.
- E8.5 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 the Authority and the Crown from and against all Losses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause E8.5, except to the extent that any such claim results directly from:
  - (a) items or materials based upon designs supplied by the Authority; or
  - (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- E8.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual

Property Right in materials supplied and/or licensed by the Contractor to the Authority.

E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority or the Contractor) arising from the performance of the Contractor's obligations under the Contract ("**Third Party IP Claim**"), provided that the Contractor shall at all times:

- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and
- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E8.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause E8.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.5(a) or (b).

E8.9 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E8.10 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.4 and G2.1(g)) 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; or
- (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Contractor is unable to comply with clauses E8.10(a) or (b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.

E8.11 The Contractor shall retain all of its background Intellectual Property Rights. The Contractor grants to the Authority a royalty-free, perpetual, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and

which the Authority reasonably requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

#### **E8A Use of Documents and Information**

- E8.1 Except with the consent in writing of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.
- E8.2 Except with the consent in writing of the Authority the Contractor shall not make use of the Contract or information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract.
- E8.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion of the Contract.
- E8.4 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E8.5 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E8.6 To the extent that Authority Data is held and/or processed by the Contractor the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification Schedule [and/or the Exit Management Strategy].
- E8.7 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E8.8 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster
- E8.9 Recovery Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than [three] monthly intervals.
- E8.10 The contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

E8.11 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan and the Contractor shall do so as soon as practicable but not later than [ten calendar days]; and/or
- (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan.

E8.12 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

## **E9 Audit**

E9.1 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 Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.

E9.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.

E9.3 The Contractor shall permit duly authorised representatives of the Authority 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.

E9.4 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 Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

## **E10 Tax Compliance**



- E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
  - (b) promptly give the Authority:
    - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
    - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- E10.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:
- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Staff.

## **F. CONTROL OF THE CONTRACT**

### **F1A Monitoring of Contract Performance**

- F1A.1 The Contractor shall comply with the monitoring arrangements set out in the KPI Schedule and the Specification including, but not limited to:
- (a) reporting performance of the Services against the KPIs;
  - (b) providing all management and reporting information listed in the Specification at such intervals as specified; and
  - (c) providing such other performance data and information as the Contractor may be required to produce by the Authority under the Specification or otherwise under the Contract from time to time.
- F1A.2 The Contractor shall measure its performance against the KPIs, and within 7 days of submitting of its claim for payment each Month, the Contractor shall provide the Authority with a performance report setting out the Contractor's performance against all KPIs and the Overall KPI Performance Score in respect of the immediately preceding Month. Where KPI's are only measured Quarterly or Half Yearly they shall be reported in the Month immediately following the relevant Quarterly or Half Yearly performance report date.



## **F1 Failure to meet requirements**

- F1.1** If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, 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 Authority.

## **F3 Remedies for inadequate performance**

- F3.1** If the Authority reasonably believes the Contractor has committed a Material Breach it 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 has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
- (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 Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
- (a) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or
- (a) terminate the Contract in accordance with clause H2.

- F3.2** Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority 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 Authority 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 Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services and the Contractor shall be responsible for its own costs.

- F3.3** If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

- F3.4** If the Contractor has been notified of a failure in accordance with clause F3.3 the Authority may:

- (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are

necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or

- (b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

**F3.5** If the Contractor has been notified of a failure in accordance with clause F3.3, it shall:

- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
- (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Authority.

**F3.6** If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F3.5 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

#### **F4 Transfer and Sub-Contracting**

**F4.1** Except where clauses F4.5 and F4.6 both apply, the Contractor shall not transfer, novate, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

**F4.2** The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.

**F4.3** The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.

**F4.4** If the Authority has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.

**F4.5** Notwithstanding clause F4.1, the Contractor may assign to a third party (the "Assignee") the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.5 shall be subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
  - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - (c) the Authority receiving notification under both clauses F4.6 and F4.7.
- F4.6 If the Contractor assigns the right to receive the Price under clause F4.5, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F4.7 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment at least [5] Working Days prior to submission of the relevant invoice.
- F4.8 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval of the Authority.
- F4.9 Subject to clause F4.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
  - (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 Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F4.10 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.11, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F4.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.9 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority 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 Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee;
  - (b) 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.

- F4.12 The Authority 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 Authority 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.
- F4.13 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.
- F4.14 The Authority shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- F4.15 Provided that the Authority has given prior written consent, the Contractor shall be entitled to novate the Contract where:
- (a) the specific change in contractor was provided for in the procurement process for the award of this Contract;
  - (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Contract.

## **F5 Waiver**

- F5.1 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.
- F5.2 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 A4 (Notices and Communications).
- F5.3 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.

## **F6 Variation**

- F6.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause F6.
- F6.2 The Authority 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 Authority. If the Contractor accepts the Variation it shall confirm it in writing.

F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority 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).

F6.4 Any Variation will not take effect unless recorded in a Change of Control Notice as attached hereto in Schedule 4 and approved in writing by the Authority.

F6.5 The provisions of clause F6.4 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 Authority. However, the Authorised Representative 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.

## **F7 Severability**

F7.1 If any provision of the Contract which is not of a fundamental nature 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.

## **F8 Remedies Cumulative**

F8.1 Except as expressly provided in 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.

## **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 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**

F10.1 The 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 limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clause D1; or
- (e) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out 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 by any act or omission of the Contractor.

G1.2A Liability under Clauses E2.18 and E7.8 shall be unlimited.

G1.3 Subject to clause G1.1 and G1.2A the Contractor's aggregate liability in respect of the Contract shall not exceed [one hundred per cent (100%) of the Contract Value paid or payable by the Authority to the Contractor in the year in which the liability arises (such Contract Value to be subject to clarification) ].

- G1.4 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 Authority or by breach by the Authority of its obligations under the Contract.
- G1.5 The Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - (b) any wasted expenditure or charges;
  - (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
  - (d) any compensation or interest paid to a third party by the Authority; and
  - (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:
- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
  - (b) indirect, special or consequential loss.
- G1.7 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out 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 years following the end of the Contract.
- G1.8 The Contractor shall hold:
- (a) employer's liability insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor;
  - (b) public liability with the minimum cover per claim of [REDACTED];
  - (c) product liability with the minimum cover per claim of [REDACTED]



- and  
(d) professional indemnity with the minimum cover per claim of [REDACTED]  
[REDACTED]

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

- G1.9 The Contractor shall give the Authority, 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 the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority 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.
- 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 Warranties and Representations**

- G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:
- (a) it has full capacity and authority and all necessary consents to enter into and perform 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 Response or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
  - (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 an 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, or 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) 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;
- (i) in the 3 years (or period of existence where the Contractor has not been in existence for 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;
- (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 Authority 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.
- (l) (if an individual) he is regarded by HM Revenue & Customs as self-employed and accordingly shall indemnify the Authority against tax, national insurance contributions or similar impost for which the Authority may be liable in respect of the Contractor by reason of this Contract.

### **G3 Force Majeure**

- G3.1** Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure

Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.

- G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
  - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to continue to perform its obligations under the contract and 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.
- G3.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
    - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
    - ii) neither Party shall be liable for any Default arising as a result of such failure;
  - (b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.
  - (c) either Party is prevented 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.

**G3.7** 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.

**G3.8** Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

#### **G4 Guarantee**

Within 10 Working Days of receipt of a written request from the Authority, the Contractor shall provide to the Authority the most recent set of publicly available audited accounts covering a 3 year period in order to enable the Authority to undertake periodic assessments of the Contractor's financial standing for assurance purposes.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Insolvency and Change of Control**

**H1.1** The Authority may terminate the Contract with immediate effect by notice 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;
- (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);
- (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;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (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;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

- (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 Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor 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;
  - (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
  - (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;
  - (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;
  - (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;
  - (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
  - (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
  - (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.
- H1.3 The Contractor shall notify the Authority 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 Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:
- (a) being notified that a Change of Control has occurred; or
  - (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,
- but shall not be permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
  - (i) 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, its creditors;
  - (ii) a petition is presented for his bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction

H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;
- (c) an application 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 within Part II of the Insolvency Act 1986;
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;

- (e) 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 within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (h) a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

## **H2 Termination on Default**

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

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the opinion of the Authority, capable of remedy;
- (c) The Default is a result of cumulative breaches that could be deemed as a Material Breach; or
- (d) the Default is a Material Breach.

H2.2 If, 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 Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

- H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such 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 Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

### **H3 Non Default Termination or Change of Government Policy**

- H3.1 The Authority may terminate the Contract at any time by giving 30 days' notice to the Contractor.
- H3.2 The Authority may terminate the Contract by giving to the Contractor at least 3 Month's notice in writing where there is a change in government policy or a change in Law which means that, in the opinion of the Authority acting reasonably, the Services are no longer required or are no longer affordable to the Authority.

### **H4 Termination under the Regulations**

- H4.1 The Authority 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 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.

### **H5 Consequences of Expiry or Termination**

- H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Services the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.
- H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments 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 Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.
- H5.3 If the Authority terminates the Contract under clause H3, the Authority shall pay to the Contractor a reasonable proportion of the Price representing the Services



supplied by the Contractor prior to and up to the effective date of termination and in accordance with the Contract but where the payment has yet to be made by the Authority, including reasonable and mitigated resource expenses which have been directly incurred and committed but cannot be reasonably cancelled or re-allocated..

**H5.4 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 Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection Act Compliance), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E7 (Security), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

**H6 Disruption**

- H6.1 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 Authority, its employees or any other contractor employed by the Authority.
- H6.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.
- H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

**H7 Recovery upon Termination**

- H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:

- (a) immediately return to the Authority 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 Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
- (c) immediately vacate any Authority Premises occupied by the Contractor;
- (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
- (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.

H7.2 Alternatively, on termination of the Contract for any reason, the Contractor shall at the written request of the Authority and at the Contractor's cost:

- (a) carry out the destruction of any of the Confidential Information, Personal Data and IP Materials ;
- (b) using a method of secure destruction to be specified by the Authority and in accordance with Good Industry Practice; and
- (c) provide a certificate of secure destruction to the Authority.

H7.3 If the Contractor does not comply with clauses H7.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority 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.

H7.4 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H7.1(d) and (e) 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.

## **H8 Retendering and Handover**

H8.1 Within 21 days of being requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H8.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.
- H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.
- H8.6 If access is required to the Contractor's Premises for the purposes of clause H7.5, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H8.8 Within 10 Working Days of being requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **H9 Exit Management**

- H9.1 The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of the provision of the Services to a replacement contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.
- H9.2 Within ninety (90) days of the Commencement Date, the Contractor shall provide a draft Exit Management Strategy to (to be appended to Schedule 10) and within ten (10) Business Days of provision of such Exit Management Strategy, 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 Authority 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 H6 and H7. If the Parties are unable to agree the contents of the Exit Management Strategy within a 20 Business Day period, either Party may refer the dispute for resolution in accordance with clause I2. The Exit Management Strategy as agreed or determined shall be the Exit Management Strategy.

H9.3 The Contractor shall keep the Exit Management Strategy under continuous review and include any proposed updates to the Exit Management Strategy in each Monthly Contract Management Meeting.

H9.4 In addition, within ten (10) days after service 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 is compatible with any mobilisation plan of any replacement contractor or the Authority (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 Authority for review and approval. The Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Management Strategy.

H9.5 During the final six (6) months prior to the expiry of the Contract or following the service of a Termination Notice, and in either case for a reasonable period thereafter, the Contractor shall co-operate fully with the transfer of the provision of Services (or any part of the Services) to the Authority or any replacement contractor, and the Contractor shall:

- (a) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the replacement contractor and/or the completion of any work in progress;
- (b) implement the Exit Management Strategy;
- (c) liaise with the Authority and/or any replacement contractor, and provide reasonable assistance and advice concerning the provision of the Services and their transfer to the Authority or to such replacement contractor

and in all instances, shall be in accordance with timescales reasonably stipulated by the Authority.

## **H10 Exit Procedures**

H10.1 Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Authority and any

such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

H10.2 The following commercial approach shall apply to the transfer of the Services if the Contractor:

- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
- (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 3 or forming the basis for the Price.

H10.3 When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.

H10.4 Within one Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

## **H11 Knowledge Retention**

H11.1 The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

# **I DISPUTES AND LAW**

## **I1 Governing Law and Jurisdiction**

I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **I2 Dispute Resolution**

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working

Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Finance Director (or equivalent) of the Contractor and the Finance, Commercial and Infrastructure Director of the Authority.

- 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 12.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 12.5 unless: (a) the Authority 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. If 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 opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the 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 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) The Authority 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 12.7;
- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority 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 12.7; and
- (c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.


12.7 If any arbitration proceedings are commenced pursuant to clause 12.6,

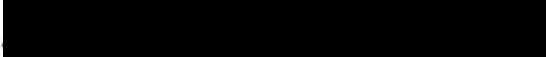
- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the "Arbitration Notice") stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(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;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.



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

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

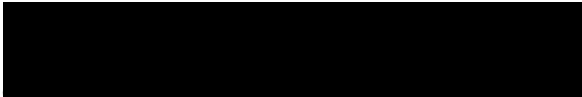
Signature ..... 

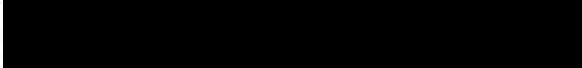
Name .... 


Position .. 

**SIGNED** for and on behalf of **MARKET & OPINION RESEARCH INTERNATIONAL t/a IPSOS MORI**

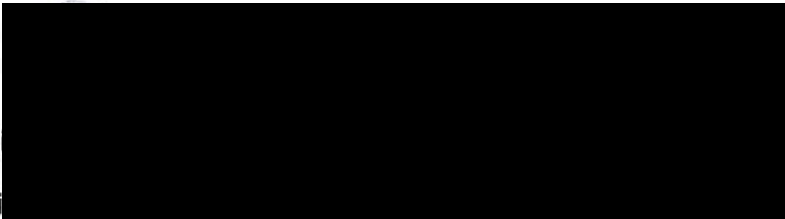
**ACTING BY:**

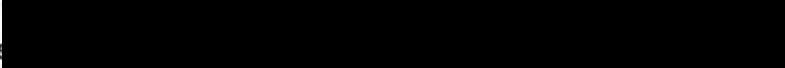
Signature ..... 

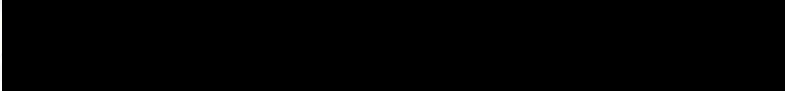
Name ..... 

Position ..... 

A DIRECTOR,

Signature of Witness ..... 

Name of Witness ..... 

Position: ..... 

# SCHEDULE 1 - SPECIFICATION

## Statement of Requirements for Lot 2 (Co-ordination centre for mixed methods)

### 1. Background

The Care Quality Commission (CQC) is the independent regulator of health and social care in England. Our purpose is to make sure health and social care services provide people with safe, effective, compassionate, high quality care and to encourage care services to improve. To deliver this we monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety, and we publish what we find, including performance ratings, to help people make care choices.

CQC's corporate strategy '[Shaping the Future: CQC's strategy for 2016 – 2021](#)' sets out the organisation's aim of transforming the way that we use knowledge and information to deliver the purpose stated above.

This includes that:

- we are seeing changes to technology that has made it easier for people to leave instant feedback about services, and new tools to analyse data across the health and care system. As a result we will do more to improve how we use and capture the views and experiences of people as part of an intelligence-driven approach to regulation.
- we will better use information from the public to help us spot problems quickly, so we can prevent poor care and abuse happening to others in the future, and to celebrate improvements.

CQC collects, analyses and uses a range of intelligence that can inform us about people's experiences of care. Part of that information comes from people who have recently used specific NHS services and are asked about their experiences as part of a NHS Patient Survey Programme delivered by CQC (see definitions below regarding national survey). The programme is designed to capture the views of representative samples of patients in a systematic way from all eligible NHS trusts in England. Each survey contains a set of questions that is designed and tested to provide insight into people's experiences and to highlight areas where individual providers could improve how they provide services.

The programme currently includes annual surveys of adult inpatients and community mental health services. CQC also undertakes three acute surveys on a biennial schedule: maternity services, emergency department services and children's and young people's inpatient and day case services. Information on all of these surveys is available on the two websites stated below.

Typically, the surveys are sent to a sample of between 850 – 1,250 patients, who meet specific eligibility criteria, per provider. The sample is drawn from people who have experienced care in a specified month, or months, and on average between 25% and 50% of eligible patients respond.

The results of these surveys, including local and national reports, are published on CQC's own [website](#) and [NHS Surveys](#) along with the guidance and tools used to deliver the survey.

## 2. Strategic Direction

The strategic direction for the NHS Patient Survey Programme for the period covered by this procurement process (as approved by CQC's Board in October 2017) sets out CQC's proposals to develop the programme in three main ways:

- create a digital method of survey delivery utilising mobile phones and potentially email addresses. The digital solution will be part of a mixed methods approach to surveys which will reduce the costs of running the programme for trusts and allow us to, potentially, increase frequency and sample sizes with minimal cost impact
- support CQC's next phase approach (see, for example, the consultation response for the first wave on our [website](#)) for regulating providers where CQC has already inspected and rated every provider by potentially allowing CQC to increase the frequency of surveys and sample sizes
- review opportunities for collecting people's views on the quality of new care models as they emerge or on the quality of care in local areas and health systems.

For the purposes of this procurement, CQC defines the following terms as:

- **Co-ordination centre:** CQC is seeking to appoint two Co-ordination Centre services (this may be provided by one bidder) to act as expert partners in the development and delivery of CQC's NHS Patient Survey Programme. These are the Co-ordination Centre for Existing Methods (Lot 1) and the Co-ordination Centre for Mixed Methods (Lot 2). The Co-ordination Centres will work with the Commissioning Authority, as a partner, developing innovation and improvement, as well as ensuring the delivery of surveys through, for example, the development of guidance documentation, sampling checks and analysis. Lot 1, sections 4, 5 and 6 define the services of the Co-ordination Centre for Existing Methods and Lot 2, sections 4, 5 and 6 define the services of the Co-ordination Centre for Mixed Methods. This document refers to these as the 'Co-ordination Centre' throughout as Approved Contractors will be expected to work with both Co-ordination Centres to deliver its work. Further details, including how the Co-ordination Centres will work together are outlined in section 5 below.
- **Approved contractor:** CQC is seeking to appoint a number of Approved Contractors to work directly, on contract, with providers registered with CQC, CQC or other Commissioning Authorities to deliver surveys and survey-related projects. The Approved Contractor will ensure that providers are able to undertake national surveys and ensuring that Commissioners are able to complete survey-related products such as pilots, surveys or other specific work.

## 3. Definitions

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

For the purposes of this procurement, CQC defines 'national survey' as:

A data collection of the self-reported experiences of those who use 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.

For the purposes of this procurement, CQC defines the following terms as:

- on-going development: small scale changes to maintain the quality and relevance of an existing survey. 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.
  - amend or tighten processes to ensure consistency and effectiveness across all aspects of the survey cycle.
- 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 process following a pilot of an alternate approach within the health or social care area being reviewed.
  - change the layout, content or method of production for benchmark reports that compare the results of providers and identifies performance that is statistically different.
  - 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.

#### **4. Co-ordination Centre for Mixed Methods**

CQC is seeking to appoint a Contractor to deliver a Co-ordination Centre service and to act as an expert partner in the development and delivery of CQC's NHS Patient Survey Programme. This agreement will be in place for three years and will include a range of work

outlined below.

The Co-ordination Centre works, on contract, directly with CQC and other commissioners to deliver and continuously improve the national surveys and survey products.

- Advise on and transform the existing programme from a paper-based method to a mixed methods solution in line with CQC's strategic direction for the programme.
- work with commissioners to deliver surveys and survey products including, for example, undertaking development work and pilots, providing expertise on methods and processes, analysing data, and producing outputs.
- support, and work with, the Approved Contractors to deliver surveys locally, for example through the development of guidance, webinars and central checks on samples.

The requirements for the Co-ordination Centre are set out in Sections 4, 5, and 6 below. This includes current expectations, a known timetable and detailed requirements.

In some cases the Co-ordination Centre may be used by other organisations and bodies to commission national surveys. For the purposes of this procurement, CQC defines 'Commissioner' at two levels:

- **Nationally:** This includes CQC, other arm's length bodies of the Government including NHS England, the Department of Health and Social Care and other bodies and organisations agreed by CQC.

For details of organisations that this may include please see the [.GOV.UK website](https://www.gov.uk).

- **Locally:** This includes providers registered with CQC. For details of the services regulated by CQC please see [our website](#).

As this is a Call-Off contract agreement (which is intended to operate in a similar manner to a single supplier Framework Agreement, whereby work requirements can be "called-off" as and when required by a Commissioner), CQC does not guarantee any work either from providers of services or other commissioners through this contract and requirements may be called-off as and when required by commissioners.

CQC will select the Tenderer that provides the most economically advantageous tender to be its preferred supplier. This will be based on the evaluation criteria outlined in Section B below.

## **5. Anticipated Volumes of Work & Cost Envelope**

We would expect the Co-ordination Centre for Mixed Methods will work, on contract, with providers of services and commissioning authorities to deliver national surveys and survey-related work. The Co-ordination Centre will be supported by CQC, the Co-ordination Centre for Mixed Methods or Commissioning Authorities to deliver programmes of work as needed.

It is expected that, in line with CQC's strategy for the NHS Patient Survey Programme that, surveys will be paper based initially as development work is completed which will allow us to adopt a mixed methods approach. We expect that all surveys will be digital by November 2021 with only a small proportion of paper-based questionnaires being collected where

electronic methods are not appropriate.

The Co-ordination Centre for Existing Methods will ensure the continued delivery of the paper-based survey programme and the Co-ordination Centre for Mixed Methods will take forward a mixed methods approach to delivering national surveys and associated work. CQC expects that, over the period of this contract, the Co-ordination Centre for Mixed Methods will increasingly deliver work packages as CQC implements its strategic direction for the programme to support digital surveys. Work volumes supported by the Co-ordination Centre for Existing Methods will decrease over time accordingly.

However, where the delivery of a digital approach is not possible, or CQC does not go forward with this programme for any other reason, the Co-ordination Centre for Existing Methods will continue to develop, improve and deliver the existing paper-based system.

The expectations below are based on volumes for the last year of the contract. It is expected that CQC will increase commission work to reach the levels listed below (expected minimum, likely mid-point, and potential maximum) over the duration of the contract as outlined above. It is expected that all surveys will be mixed methods by the end of the contract.

#### **Contract Duration**

Anticipated Start Date	End Date	Extension (If Applicable)
01 December 2018	30 November 2021	Further extension of up to 12 months (to 30 November 2022)

#### **Cost Envelope**

The anticipated cost envelope of the programme for the next three years will be £1.067m per annum.

This is split between both the Co-ordination Centre for Existing Methods (Lot 1) and the Co-ordination Centre for Mixed Methods (Lot 2) with costs allocated to Lot 1 being higher in year one than subsequent years as CQC implements its strategy for the programme.

As this contract will operate on a "call-off" basis (i.e. work requirements will be called off as and when required) CQC does not guarantee any work either from providers of services or other commissioners through this contract and requirements may be called-off as and when required by commissioners.

CQC are commissioning work packages in this way specifically to allow us to respond to changing demands within our survey programme particularly as we implement our strategy. This is different from commissioning a three year programme of work which is known and fixed.

Our current expectations about the programmes of work, each year across both Lots 1 and 2, are as follows:



- Expected minimum:

- Development and delivery of a mixed methods approach for **two** annual national surveys: adult inpatient and community mental health. In each case the surveys will be subject to on-going development and delivery of the survey.
- Development and delivery of a mixed methods approach for **three** surveys on a biennial rotation every **two** years: maternity, emergency department, and children and young people's inpatient and day case.
- **One** pilot alongside, or separate to, each survey to allow CQC to maximise response rates and representativeness, improve our products and tools, or develop the programme in line with our strategy.
- Development and delivery of website capable of supporting a push to web strategy and can allow us to distribute electronic surveys. The website should also act as an archive and support the needs of CQC's stakeholders.
- Development and delivery of a detailed development report that identifies how CQC can implement a mixed methods approach in line with the strategy outlined above.
- Development of electronic questionnaires that are suitable for purpose and can be completed on a range of electronic devices.

The number of surveys and pilots listed are expected to be at this level for the last year of this agreement as CQC implements its strategy for the programme. Work levels will increase over time to reach this point across the period covered by the agreement.

- Likely mid-point:

- Development and delivery of a mixed methods approach for **three** annual national surveys: adult inpatient, community mental health and maternity services. In each case the surveys will be subject to on-going development and delivery of the survey.
- Development and delivery of a mixed methods approach for **two** surveys on a biennial rotation every **two** years: emergency department, and children and young people's inpatient and day case.
- The substantial review of **one** of the five surveys listed above, each year, prior to its delivery
- **Two or three** pilots alongside, or separate to, each survey to allow CQC to improve response rates, improve our products and tools, or develop the programme in line with our strategy.
- A specific piece of analysis, annually, to produce, for example, long-term trend data, CCG or other geographical analysis, or similar.
- Development and delivery of website capable of supporting a push to web strategy and can allow us to distribute electronic surveys. The website should also act as an archive and support the needs of CQC's stakeholders.



- Development and delivery of a detailed development report that identifies how CQC can implement a mixed methods approach in line with the strategy outlined above.
- Development of electronic questionnaires that are suitable for purpose and can be completed on a range of electronic devices.

The number of surveys and pilots listed are expected to be at this level for the last year of this agreement as CQC implements its strategy for the programme. Work levels will increase over time to reach this point across the period covered by the agreement.

- Potential maximum:

- Development and delivery of a mixed methods approach for three annual national surveys: adult inpatient, community mental health and maternity services. In each case the surveys will be subject to on-going development and delivery of the survey.
- Development and delivery of a mixed methods approach for two surveys on a biennial rotation every two years: emergency department, and children and young people's inpatient and day case.
- The substantial review of one of the five surveys listed above, each year, prior to its delivery
- Four pilots alongside, or separate to, each survey to allow CQC to improve response rates, improve our products and tools, or develop the programme in line with our strategy.
- A specific piece of analysis, annually, to produce, for example, long-term trend data, CCG or other geographical analysis, or similar.
- Development and delivery of a mixed methods approach for one new survey commissioned by CQC on a biennial rotation every two years, for example an outpatients survey.
- The substantive review of one operating tool, each year, including for example benchmark reports, outliers programmes or similar.
- Development and delivery of website capable of supporting a push to web strategy and can allow us to distribute electronic surveys. The website should also act as an archive and support the needs of CQC's stakeholders.
- Development and delivery of a detailed development report that identifies how CQC can implement a mixed methods approach in line with the strategy outlined above.
- Development of electronic questionnaires that are suitable for purpose and can be completed on a range of electronic devices.
- One survey requested by another commissioner, for example NHS England.

The number of surveys and pilots listed are expected to be at this level for the last year of this agreement as CQC implements its strategy for the programme. Work levels will

increase over time to reach this point across the period covered by the agreement.

As we implement our strategy the potential maximum may include shorter surveys with all five existing surveys being undertaken annually.

It is expected that, in line with CQC's strategy for the NHS Patient Survey Programme that, surveys will be paper based initially as development work is completed allowing us to adopt a mixed methods approach. We expect that all surveys will be digital by November 2021 with only a small proportion of paper-based questionnaires being collected where electronic methods are not appropriate.

All works detailed within the expected minimum, likely mid-point, and potential maximum will include the delivery of digital and paper questionnaires and the tools and methods for their dissemination, collection, cleaning and analysis. Sample information, including email addresses and mobile telephone numbers, will also need to be collected as needed to support this strategy.

The existing programme is predominately delivered across NHS organisations. However, this may expand to include providers within the Independent health and social care sectors as required.

The table below provides an indicative outline of the NHS Patient Survey Programme typically operates, as outlined in the 'Expected Minimum' programme of work above:

**Table 1: Expected Minimum Programme of Work**

<b>Survey</b>	<b>Questionnaire Development</b>	<b>Fieldwork</b>	<b>Reporting</b>
Acute inpatient survey (annual)	January to May	September to January	May
Community Mental Health Survey (annual)	August to December	March to June	September
Children and Young People's Inpatient and Day Case (biennial)	April to September	February to June	October
Maternity Survey (biennial)	October to February	April to August	December
Emergency Department Survey (biennial)	February to July	October to March	August

Please note that whilst the timescales listed above are likely to be maintained to ensure the comparability of data, they may be subject to review and change particularly as questionnaires, methods and tools are reviewed during the implementation of our strategy.

**As this contract will operate on a "Call-Off" basis, CQC does not guarantee any work either from providers of other commissioners through this contract and requirements may be called-off as and when required by commissioners**

## 6. Detailed Requirements

Commissioners will use the contract to commission services for a range of surveys. Commissioners may also use the contract to commission parts of a full survey process or specific pilots work as needed. The work packages outlined below detail the various types of work that Commissioners may want to procure through the contract and provides an example of what that may look like. The six work packages are:

- Development and delivery of a new national survey website to display results
- Development of a mixed methods survey approach
- Development of an online data collection service
- On-going development and delivery of a mixed methods survey
- Substantive review and delivery of a mixed methods survey
- Development and delivery of a new mixed methods national survey
- Delivery, following a substantive review of a reporting tool
- Piloting approaches to develop improvements
- Undertake specific analysis as required.

Tenderers are asked to provide a breakdown of costs for the following example work packages listed below, which are likely to be commissioned by Commissioners:

**Work package 1: Development and delivery of a new national survey website to display results**

This work package is considered within the expected minimum outlined above.

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

CQC currently has a website that provides results and details of the survey programme including survey materials and technical information. The website should allow users to:

- interrogate the data intuitively
- benchmark different providers of services
- see publications and survey guidance materials.

We would also seek to undertake the collection of questionnaire returns through this website so that electronic questionnaires can be automatically loaded and compiled through this site.

### **Project Timetable**

1. The development of a detailed timetable setting out all of the delivery and development stages for a complete cycle.

### **User needs assessment**

1. Undertake a user needs assessment using a mix of focus groups, face-to-face interviews, and telephone interviews. For the purposes of costing please assume two focus groups for members of the public and the target population for surveys, two focus groups for trusts and other stakeholders and two further groups for other national stakeholders.
2. Report on the methodology undertaken to complete the user needs assessment and the results and recommendations made. The report should highlight the methodology used, the recommendations and any options along with their associated risks, benefits and costs.

#### **Web design proposal**

3. Capture the needs of CQC for any proposed website including products to be retained, products to be included, functionality, branding, and capability. For the purposes of costing please assume six interviews with CQC staff.

#### **Test, Launch, and Maintenance strategy report**

4. Produce a report that outlines plans, recommendations, options and costs for:
  - Maintenance of the existing website while development occurs.
  - Ongoing user evaluation of the new website to ensure it meets future needs as they are defined.
  - A trending strategy to support the website is high in the results of searches to increase the public profile of the site.
  - Offline plans to identify and mitigate any risks to periods where all or parts of the website are offline.
  - Performance assessment plans.
  - Data protection plans including relevant data protection legislation.
  - Secure access plans for select user groups.
5. Produce a web testing plan that will be enacted for prototypes and final website versions.

#### **Prototypes, testing and launch**

6. Build a prototype website documenting the method of construction in sufficient detail such that a competent website programmer may easily read and understand how the site was constructed and how it may be altered in future iterations.
7. Undertake Alpha, Beta, with End-to-end testing according to the methodology agreed upon. The results of this testing should be fully detailed within a testing report. The results of this testing should be sufficient to trigger any major or minor improvements that are needed within this iteration of the prototype.
8. Undertake Alpha, Beta, with End-to-end testing according to the methodology agreed upon for an enhanced prototype website. Where issues are identified they should be logged and resolved at this stage as agreed. The results of this testing should be fully detailed within a testing report.
9. Publicly launch and follow the Test, Launch, and Maintenance strategy.

As an example please see the following websites.

[www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG)

<http://www.cqc.org.uk/publications/surveys/surveys>

#### **Work package 2: Development of a mixed methods survey approach**

This work package is considered within the expected minimum outlined above.

### **Work package 2: Development of a mixed methods survey approach**

CQC currently undertakes and publishes five surveys using a paper based methodology which it intends to adapt to a mixed methods approach in line with the strategy stated above.

#### **Development Report**

1. A full development report detailing the outcome of the review. The report should highlight recommendations and any options along with their associated risks, benefits and costs. This report should include the findings, and recommendations from, a review of:
  - the methods, tools, guidance and website that we currently use and if, and how, they can be adapted.
  - the process currently employed to conduct the surveys and how that could be adapted to support a push to web.
  - any potential improvements to the methodology that could specifically support maximising response rates and increasing representativeness, reduce the time taken at stages across the survey programme, improvements in quality and a reduction of risks to both quality and confidentiality.
  - the views of key stakeholders (assume 2 internal to CQC and 5 national stakeholders external to CQC and a set of 5 relevant providers) and the views of the Survey Advisory Group.
  - the impact of any developments in good practice in managing and delivering surveys
2. Publish the development report on [www.NHSSURVEYS.ORG](http://www.nhssurveys.org) outlining the approach agreed.

As an example please see the adult inpatient survey 2016 on the following websites.

<http://www.nhssurveys.org/surveys/935>

<http://www.cqc.org.uk/publications/surveys/adult-inpatient-survey-2016>

### **Work package 3: Development of an online data collection service**

This work package is considered within the expected minimum outlined above.

#### **Work package 3: Development of an online data collection service**

CQC undertakes a range of pilots to improve response rates across its surveys. For the purposes of the work package please assume that the pilot is to reduce the existing Inpatient Survey such that it can be completed in approximately 10 - 15 minutes. This work package will cover the development of the electronic version and any necessary amendments to a paper based version along with establishing the collection process.

#### **Development Report**

1. A full development report detailing the outcome of the review. The report should highlight recommendations and any options along with their associated risks, benefits and costs. This report should include the findings, and recommendations from, a review of:



- the questionnaire content to consider whether any new questions are needed, and which may be removed. This should include the performance of existing questions over time, including assessment of ceiling or floor effects, item non response and correlation analysis. It should also include a review of which questions are used as part of national reporting by the Department of Health and Social Care and others and should be retained.
- how the survey can be delivered so that it can be completed on a wide range of devices including phone, tablet and laptop.
- the impact of any developments in good practice in managing and delivering surveys
- the views of key stakeholders and the views of the Survey Advisory Group.
- any potential improvements to the methodology for the survey to deliver greater efficiency and innovation along with reduction of risks to the survey including breaches in confidentiality.

2. Publish the development report on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) outlining the approach agreed.

#### **Questionnaire redevelopment**

3. Review and make changes to the existing questionnaire in line with the findings of the development report.
4. Attend, develop materials (including paper and electronic versions of the questionnaire) and present as necessary for Advisory Group meetings to support the development of any survey. It is anticipated there would be approximately 2-3 meetings for this survey.
5. Secure approvals to run the pilot including national Research Ethics Committee and Section 251 approvals.
6. Cognitively test the full questionnaire, in electronic and paper format, with 18 recent patients and recommend question improvements on the basis of feedback. Recruitment for testing should strive to ensure a mix of demographic characteristics such as age, gender, ethnicity and disability, be undertaken in more than one geographic location and where possible have experience of the issues relating to any new questions being tested.

#### **Pilot**

7. Establish an online platform to undertake the pilot
8. Recruit 10 trusts to participate in the pilot, separate to the main questionnaire, with a total sample of 10,000 people to be sent the questionnaire.
9. Produce any supporting materials necessary for trust and patient participation and support trusts throughout the pilot to enable success
10. Check trust samples to ensure pilot guidance has been adhered to
11. A weekly fieldwork monitoring sheet which accurately reflects the current response levels of the pilot compared to the main survey.
12. Analysis of the response, including representativeness and consideration of cost benefits compared with the main questionnaire and a report on the success of the pilot generated. It will also be necessary to explore para-data to include within the evaluation.
13. Publish the results of the pilot on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG).

#### **Work package 4: On-going development and delivery of a mixed methods survey**

This work package is considered within the expected minimum outlined above.

#### **Work package 4: On-going development and delivery of a mixed methods survey**

CQC publishes the adult inpatient survey each year (see link below). For the purposes of the case study please assume that this survey would cover 149 acute and acute specialist trusts and sample size of 1,250 inpatients per provider.

##### **Survey Timetable**

1. The development of a detailed timetable setting out all of the delivery and development stages for complete cycle.

##### **Redevelopment work**

2. A review of the existing survey to identify where and how improvements can be made and the production of a development report summarising work. This includes, for example, learning from (a) undertaking the previous surveys, (b) performance of questions over time, (c) output from an advisory group meeting, (d) changes to methods from a review of any pilot work in the previous survey (e) developments in good practice in designing and delivering surveys, (f) ideas for any potential process improvements.
3. Cognitively test the full questionnaire with 18 recent patients and recommend question improvements on the basis of feedback. Recruitment for testing should strive to ensure a mix of demographic characteristics such as age, gender, ethnicity and disability, be undertaken in more than one geographic location and where possible have experience of the issues relating to any new questions being tested. There will be three telephone meetings with CQC (after each round) of approx.1 hour.

##### **Survey Implementation**

4. The development, delivery and quality assurance of all methods, tools and processes to advise and advertise the undertaking of surveys to providers of care and the users of services. For example the preparation of any leaflets or flyers required to advertise a survey, timely news bulletins communicating forthcoming events and briefing events for contractors and trusts.
5. The development, delivery and quality assurance of all methods, tools and supporting materials for implementing the survey, including questionnaires (electronic and paper), covering letters and necessary electronic communications, multi-language sheets, data entry sheets, sample declaration forms, and instruction manuals, ensuring timely publication and improvements that may be incorporated based on previous experience/ feedback.
6. The development, delivery and quality assurance of all methods, tools and processes to monitor progress and support Approved Contractor and in-house providers in undertaking their duties locally. For example the production of model service contracts, data protection declaration, weekly monitoring spreadsheets and FAQs for patients who have received a questionnaire.
7. A review of all questionnaire templates prior to field work commencing (for in-house trusts and contractors).
8. The development and submission of applications for necessary ethical and Section 251 approvals.
9. A review of information security and the confidentiality of data arrangements to ensure that they are in line with national requirements. Ensure guidance, communication and processes enable all survey participants to adhere to these requirements and suggest improvements wherever possible to minimise data breaches.



### **Survey fieldwork**

10. Sample checking of all trust samples, to ensure they are correct.
11. Support to approved contractors and trusts in delivering the survey. This would include support, potentially, loading samples to an online tool, providing an Advice Centre Helpline, and contractor and trust briefings. A log of helpline monitoring/ queries should be completed.
12. A weekly fieldwork monitoring sheet which accurately reflects the current response levels of the survey and distinguishes between different response modes
13. The follow up and documentation of any issues arising during sampling/ fieldwork that might impact on trust response rates, data quality or adherence to national approvals secured for the programme (such as deviation from the methods set out for ethical approval).
14. The coordination of the collection of data from all contractors and trusts at close of fieldwork.
15. Collection of relevant para-data to support on-going improvement to methods and processes.

### **Analysis and reporting**

16. An analysis plan setting out analysis requirements for agreement with CQC and an analysis timetable.
17. The cleaning and analysis of all quantitative data collected to support the generation of benchmark data and reports for individual providers and national summaries of performance.
18. Quality assurance of all data collected and analysis undertaken produced in line with CQC and Survey Team protocol. This will include detailed assurance about the QA undertaken by your organisation of this data e.g. checklists showing checks conducted, and by whom.
19. Analysis of all qualitative data collected to identify any serious concerns or safeguarding issues.
20. Generation of England-level results for use by CQC to write the Statistical Release, including trend analysis.
21. Multivariate analysis, at a national level, using variables to review performance by specific sub-groups (such as age, gender, long term conditions etc.)
22. Generation of all reporting outputs for individual providers, to include a benchmark data spreadsheet (this will also be the open data for publication, containing all trusts' results) and individual PDF reports. Unweighted percentage results for direct dissemination to trusts are also required.
23. Production of data for CQC Insight, including providing adjusted z scores, in addition to the benchmark data spreadsheet described above.
24. Production of an outlier report to identify trusts whose performance is significantly different across the survey at a national level.
25. Generation of two publishable data sets from the results of the survey (in ODS format): (a) England level percentage data for current and previous survey years and scored results for each question by provider (b) Scored results for each question by Trust.
26. Publication of local level results (PDF benchmark reports as above) from the survey on the dedicated website [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) along with the tools and guidance used in the delivery of each survey on the agreed publication date for the survey.
27. A 'Quality and Methodology' document that is suitable for a statistically competent audience. This document will include applicable and creditable explanations of the data limitations due to variability, bias and other errors and the impact of these on the use of the statistics. This would include an assessment of all error contributing to total survey error. This document will accompany a sampling errors report and the development report. It may link to these

documents rather than repeating information. It will be important to ensure this document sets out decisions made about any trust errors and the impact they will have (or not have) on results.

28. A report on learning about process and methodology generated from the undertaking of the survey. This report will document issues that occurred, why they occurred, how they were addressed, the results, and whether this lesson is to be taken forward in to the next iteration.
29. A robust audit trail for the survey, including a record of all communications with trusts and contractors, decisions around issues with trust participation in the survey/ deviation from methodology and other errors, and a data log which would include: text from an annotated syntax file used for cleaning and analysis, details of any removal of cases (preferably alongside an annotated syntax file) and details of where data is missing for trusts, at question level (where suppressed or error) as well as trusts excluded from the dataset.
30. Publication of materials supporting survey development, implementation and reporting on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG)

As an example please see the adult inpatient survey 2016 on the following websites.

<http://www.nhssurveys.org/surveys/935>

<http://www.cqc.org.uk/publications/surveys/adult-inpatient-survey-2016>

#### **Work package 5: Substantive review and delivery of a mixed methods survey**

This work package is considered within the likely mid-point outlined above.

#### **Work package 5: Substantive review and delivery of a mixed methods survey**

CQC publishes the adult inpatient survey each year (see link below). For the purposes of the case study please assume that this survey would cover 149 acute and acute specialist trusts and sample size of 1,250 inpatients per provider.

##### **Survey Timetable**

1. The development of a detailed timetable setting out all of the delivery and development stages for complete cycle.

##### **Development Report**

2. A full development report detailing the outcome of a feasibility study. The report should highlight recommendations and any options along with their associated risks, benefits and costs. This report should include the findings from points 6, 7 and 8, and recommendations from, a review of:
3. wider changes to the inpatient care landscape including a review of any changes in provision, types of providers and the policy affecting the delivery of such care.
4. sampling for the survey including whether the size and coverage of the sample should be changed (for example to include private providers or new care models).
5. the questionnaire content to consider whether any new questions are needed, and if any may be removed. This should include the performance of existing questions over time, including assessment of ceiling or floor effects, item non response and correlation analysis.
6. the impact of any developments in good practice in managing and delivering surveys
7. the views of key stakeholders (assume 5 internal to CQC and 5 external to CQC) and

- the views of the Survey Advisory Group.
8. any potential improvements to the methodology for the survey to deliver greater efficiency and innovation along with reduction of risks to the survey including breaches in confidentiality.
  9. Publish the development report on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) outlining the approach agreed.

### **Sampling Pilot**

10. A sampling pilot undertaken on all 149 providers. This will require the development of piloting guidance to support the extraction and check of samples by trusts and a review by the Co-ordination Centre of the pilot samples.
11. Publish the report on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) outlining the approach agreed.

### **Questionnaire redevelopment**

12. Review and make changes to the existing questionnaire in line with the findings of the development report.
13. Attend, develop materials and present as necessary for Advisory Group meetings to support the development of any survey. It is anticipated there would be approximately 2-3 meetings for this survey.
14. Cognitively test the full questionnaire with 18 recent patients and recommend question improvements on the basis of feedback. Recruitment for testing should strive to ensure a mix of demographic characteristics such as age, gender, ethnicity and disability, be undertaken over more than one geographic location and where possible have experience of the issues relating to any new questions being tested. There will be three telephone meetings with CQC (after each round) of approx.1 hour.

### **Survey Implementation**

15. The development and delivery of all methods, tools and processes to advise and advertise the undertaking of surveys to providers of care and the users of services. For example the preparation of any leaflets or flyers required to advertise a survey, timely news bulletins communicating forthcoming events and briefing events for contractors and trusts.
16. The design and delivery of all methods, tools and supporting materials for implementing the survey, including a questionnaire (see above), covering letters, multi-language sheet, data entry sheets, sample declaration forms, and instruction manuals, ensuring timely publication, improvements that may be incorporated based on previous experience/ feedback, and pilot work materials.
17. The development and delivery of all methods, tools and processes to monitor progress and support Approved Contractors and in-house providers in undertaking their duties locally. For example the production of model service contracts, data protection declaration, weekly monitoring spreadsheets and FAQs for patients who have received a questionnaire.
18. A review of all questionnaire templates prior to field work commencing (for in-house trusts and contractors).
19. The development and submission of applications for necessary ethical and Section 251 approvals.
20. A review of information security and the confidentiality of data arrangements to ensure that they are in line with national requirements. Ensure guidance, communication and processes enable all survey participants to adhere to these requirements and suggest improvements wherever possible to minimise data breaches.



### **Survey fieldwork**

21. Sample checking of all trust samples, to ensure they are correct.
22. Support to approved contractors and trusts in delivering the survey. This would include support, potentially, loading samples to an online tool, providing an Advice Centre Helpline, and contractor and trust briefings. A log of helpline monitoring/ queries should be completed.
23. A weekly fieldwork monitoring sheet which accurately reflects the current response levels of the survey and distinguishes between different response modes.
24. The follow up and documentation of any issues arising during sampling/ fieldwork that might impact on trust response rates, data quality or adherence to national approvals secured for the programme (such as deviation from the methods set out for ethical approval).
25. The coordination of the collection of data from all contractors and trusts at close of fieldwork.
26. Collection of relevant para-data to support on-going improvement to methods and processes.

### **Analysis and reporting**

27. An analysis plan setting out analysis requirements for agreement with CQC and an analysis timetable.
28. The cleaning and analysis of all quantitative data collected to support the generation of benchmark data and reports for individual providers and national summaries of performance.
29. Quality assurance of all data collected and analysis undertaken produced in line with CQC and Survey Team protocol. This will include detailed assurance about the QA undertake by your organisation of this data e.g. checklists showing checks conducted, and by whom.
30. Analysis of all qualitative data collected to identify any serious concerns or safeguarding issues.
31. Generation of England-level results for use by CQC to write the Statistical Release, including trend analysis.
32. Multivariate analysis, at a national level, using variables to review performance by specific sub-groups (such as age, gender, long term conditions etc.)
33. Generation of all reporting outputs for individual providers, to include a benchmark data spreadsheet (this will also be the open data for publication, containing all trusts' results) and individual PDF reports. Unweighted percentage results for direct dissemination to trusts are also required.
34. Production of data for CQC Insight, including providing adjusted z scores, in addition to the benchmark data spreadsheet described above.
35. Production of an outlier report to identify trusts whose performance is significantly different across the survey at a national level.
36. Generation of two publishable data sets from the results of the survey (in ODS format):  
(a) England level percentage data for current and previous survey years and scored results for each question by provider  
(b) Scored results for each question by Trust.
37. Publication of local level results from the survey on the dedicated website [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) along with the tools and guidance used in the delivery of each survey on the agreed publication date for the survey.
38. A 'Quality and Methodology' document that is suitable for a statistically competent audience. This document will include applicable and creditable explanations of the data limitations due to variability, bias and other errors and the impact of these on the use of

the statistics. This would include an assessment of all error contributing to total survey error. This document will accompany a sampling errors report and the development report. It may link to these documents rather than repeating information. It will be important to ensure this document sets out decisions made about any trust errors and the impact they will have (or not have) on results.

39. A report on learning about process and methodology generated from the undertaking of the survey. This report will document issues which occurred, why they occurred, how they were addressed, the results, and whether this lesson is to be taken forward in to the next iteration.
40. A robust audit trail for the survey, including a record of all communications with trusts and contractors, decisions around issues with trust participation in the survey/ deviation from methodology and other errors, and a data log which would include: text from an annotated syntax file used for cleaning and analysis, details of any removal of cases (preferably alongside an annotated syntax file) and details of where data is missing for trusts, at question level (where suppressed or error) as well as trusts excluded from the dataset.
41. Publication of materials supporting survey development, implementation and reporting on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG)

As an example please see the adult inpatient survey 2016 on the following websites.

<http://www.nhssurveys.org/surveys/935>

<http://www.cqc.org.uk/publications/surveys/adult-inpatient-survey-2016>

#### **Work package 6: Development and delivery of a new mixed methods national survey**

This work package is considered within the potential maximum outlined above.

#### **Work package 6: Development and Delivery of a new national survey**

For the purposes of the work package please assume that the new survey would require a feasibility report to identify how a survey could be delivered.

##### **Survey Timetable**

1. The development of a detailed timetable setting out all of the delivery and development stages for complete cycle.

##### **Feasibility study**

2. A full development report detailing the outcome of a feasibility study. The report should highlight recommendations and any options along with their associated risks, benefits and costs. This report should include the findings, and recommendations from, a review of:
  - possible sample populations including a desk review and a series of interviews (assume 5 internal to CQC and 5 external to CQC).
  - potential sampling frames that could be used including where the sample could be drawn from and its size and structure.
  - any legal and information governance issues that may impact on CQC's ability to draw and use the sample.
  - how a possible questionnaire could be developed and any specific adjustments that

- might be needed for the population group identified.
  - how the survey can be delivered so that it can be completed on a wide range of devices including phone, tablet and laptop.
  - the appropriate mode of delivery for the survey including methods that would maximise potential response rates and minimise non response bias.
  - if, and how, data can be analysed and reports generated that compares performance between providers of services. The review should include any limitations, risks and benefits of specific analysis methods.
  - financing options for the survey and an estimate of likely costs of delivering the survey.
3. Publish the feasibility report on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) outlining the approach agreed.

### **Sampling Pilot**

4. A sampling pilot undertaken on all 149 providers. This will require the development of piloting guidance to support the extraction and check of samples by trusts and a review by the Co-ordination Centre of the pilot samples.
5. Publish the report on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) outlining the approach agreed.

### **Questionnaire Development**

6. Develop a questionnaire in line with the findings of the development report.
7. Attend, develop materials (including paper and electronic versions of the questionnaire) and present as necessary for Advisory Group meetings to support the development of any survey. It is anticipated there would be approximately 2-3 meetings for this survey.
8. Cognitively test the full questionnaire, in electronic and paper format, with 18 recent patients and recommend question improvements on the basis of feedback. Recruitment for testing should strive to ensure a mix of demographic characteristics such as age, gender, ethnicity and disability, and where possible have experience of the issues relating to any new questions being tested. Ideally testing would take place over more than one geographic location.

### **Survey Implementation**

9. The development, delivery and quality assurance of all methods, tools and processes to advise and advertise the undertaking of surveys to providers of care and the users of services. For example the preparation of any leaflets or flyers required to advertise a survey, timely news bulletins communicating forthcoming events and briefing events for contractors and trusts.
10. The development, delivery and quality assurance of all methods, tools and supporting materials for implementing the survey, including questionnaires (see above), covering letters, multi-language sheets, data entry sheets, sample declaration forms, and instruction manuals, ensuring timely publication, improvements that may be incorporated based on previous experience/ feedback, and pilot work materials.
11. The development, delivery and quality assurance of all methods, tools and processes to monitor progress and support Approved Contractor and in-house providers in undertaking their duties locally. For example the production of model service contracts, data protection declaration, weekly monitoring spreadsheets and FAQs for patients who have received a questionnaire.
12. A review of all questionnaire templates prior to field work commencing (for in-house trusts and contractors).



13. A review of guidance and manuals with Approved Contractors to ensure quality.
14. The development and submission of applications for necessary ethical and Section 251 approvals.
15. A review of information security and the confidentiality of data arrangements to ensure that they are in line with national requirements. Ensure guidance, communication and processes enable all survey participants to adhere to these requirements and suggest improvements wherever possible to minimise data breaches.

### **Survey fieldwork**

16. Sample checking of all trust samples, to ensure they are correct.
17. Support to approved contractors and trusts in delivering the survey. This would include support, potentially, loading samples to an online tool, providing an Advice Centre Helpline, and contractor and trust briefings. A log of helpline monitoring/ queries should be completed.
18. A weekly fieldwork monitoring sheet which accurately reflects the current response levels of the survey, and distinguishes between different response mode
19. The follow up and documentation of any issues arising during sampling/ fieldwork that might impact on trust response rates, data quality or adherence to national approvals secured for the programme (such as deviation from the methods set out for ethical approval).
20. The coordination of the collection of data from all contractors and trusts at close of fieldwork.
21. Collection of relevant para-data to support on-going improvement to methods and processes.

### **Analysis and reporting**

22. An analysis plan setting out analysis requirements for agreement with CQC and an analysis timetable.
23. The cleaning and analysis of all quantitative data collected to support the generation of benchmark data and reports for individual providers and national summaries of performance.
24. Quality assurance of all data collected and analysis undertaken produced in line with CQC and Survey Team protocol.
25. Analysis of all qualitative data collected to identify any serious concerns or safeguarding issues.
26. Generation of England-level results for use by CQC to write the Statistical Release.
27. Multivariate analysis, at a national level, using variables to review performance by specific sub-groups (such as age, gender, long term conditions etc.)
28. Generation of all reporting outputs for individual providers, to include a benchmark data spreadsheet (this will also be the open data for publication, containing all trusts' results) and individual PDF reports. Unweighted percentage results for direct dissemination to trusts are also required.
29. Production of data for CQC Insight, including providing adjusted z scores, in addition to the benchmark data spreadsheet described above.
30. Production of an outlier report to identify trusts whose performance is significantly different across the survey at a national level.
31. Generation of two publishable data sets from the results of the survey (in ODS format):  
(a) England level percentage data and scored results for each question by provider (b) Scored results for each question by trust.
32. Publication of local level results from the survey on the dedicated website [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) along with the tools and guidance used in the delivery of



each survey on the agreed publication date for the survey.

33. A 'Quality and Methodology' document that is suitable for a statistically competent audience. This document will include applicable and creditable explanations of the data limitations due to variability, bias and other errors and the impact of these on the use of the statistics. This would include an assessment of all error contributing to total survey error. This document will accompany a sampling errors report and the development report. It may link to these documents rather than repeating information. It will be important to ensure this document sets out decisions made about any trust errors and the impact they will have (or not have) on results.
34. A report on learning about process and methodology generated from the undertaking of the survey. This report will document issues which occurred, why they occurred, how they were addressed, the results, and whether this lesson is to be taken forward in to the next iteration.
35. A robust audit trail for the survey, including a record of all communications with trusts and contractors, decisions around issues with trust participation in the survey/ deviation from methodology and other errors, and a data log which would include: text from an annotated syntax file used for cleaning and analysis, details of any removal of cases (preferably alongside an annotated syntax file) and details of where data is missing for trusts, at question level (where suppressed or error) as well as trusts excluded from the dataset.
36. Publication of materials supporting survey development, implementation and reporting on [www.NHSSURVEYS.ORG](http://www.nhssurveys.org)

As an example please see the adult inpatient survey 2016 on the following websites.

<http://www.nhssurveys.org/surveys/935>

<http://www.cqc.org.uk/publications/surveys/adult-inpatient-survey-2016>

**Work package 7: Delivery, following a substantive review of a reporting tool**

This work package is considered within the potential maximum outlined above.

#### **Work package 7: Delivery, following a substantive review of a reporting tool**

CQC publishes a series of benchmark reports for each survey (see links below). For the purposes of the case study please assume that the review of these is for the Inpatient Survey that covers 149 acute and acute specialist trusts and that each receives its own benchmark report.

#### **Development Report**

1. A full development report detailing the outcome of an options appraisal study. The report should identify and assess options along with their associated risks, benefits and costs and result in recommendations for a redeveloped tool. This report should include the findings, and recommendations from, a review of:
  - the analysis methodology and how this can be improved to better support the use of the data.
  - any potential improvements to the methodology for the production and delivery of the reports provide greater efficiency, impact innovation along with reduction of risks to the survey.
  - any potential improvements to the product including any text, its layout, graphs and

charts.

- options to develop an online benchmark tool and the functionality that could be developed to support that.
- the views of key stakeholders and the views of the Survey Advisory Group.

2. Publish the development report on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) outlining the approach agreed.

#### **Pilot Reports**

3. A new set of reports for 149 acute and acute specialist trusts based on the agreed recommendations of the development report.
4. Undertake quality assurance of all analysis conducted and outputs produced in line with CQC and Survey Team protocol.
5. These reports should be tested with stakeholders and any final, appropriate, comments included.

As an example please see the adult inpatient survey 2016 on the following websites.

<http://www.nhssurveys.org/surveys/1089>

#### **Work package 8: Piloting approaches to develop improvements**

This work package is considered within the expected minimum outlined above.

#### **Work package 8: Piloting approaches to develop improvements**

CQC publishes the children and young people's inpatient and day case survey every two years (see link below). In line with the strategy outlined previously, this survey will also transition from paper based to mixed methods. For the purposes of the work package please assume that the pilot is to trial push to web with all eligible subgroups of the children and young people's inpatient and day case survey.

#### **Development report**

1. A full development report detailing the outcome of the review. The report should highlight recommendations and any options along with their associated risks, benefits and costs. This report should include the findings, and recommendations from, a review of:
  - the impact of any developments in good practice in managing and delivering surveys specific to the target population
  - the views of key stakeholders and the views of the Survey Advisory Group.
  - any potential improvements to the methodology for the survey to deliver greater efficiency and innovation along with reduction of risks to the survey including breaches in confidentiality.
  - any additional governance and approval considerations associated with the target population
2. Publish the development report on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) outlining the approach agreed.

### **Questionnaire redevelopment**

3. Review and make changes to the existing questionnaires in line with the findings of the development report.
4. Cognitively test the full questionnaire with 18 recent patients and recommend question improvements on the basis of feedback. Recruitment for testing should strive to ensure a mix of demographic characteristics such as age, gender, ethnicity and disability, and where possible have experience of the issues relating to any new questions being tested.

### **Pilot implementation**

5. Recruit 10 trusts to participate in the pilot, separate to the main questionnaire, with a sample of 600 people to be sent the questionnaire(s).
6. The design and delivery of all methods, tools and supporting materials for implementing the pilot, including a questionnaire (see above).
7. A weekly fieldwork monitoring sheet which accurately reflects the current response levels of the pilot compared to the main survey.
8. The development and submission of applications for necessary ethical and Section 251 approvals.

### **Analysis**

9. Analysis of all data collected and a report on the success of the pilot generated.
10. Quality assurance of all analysis undertaken, in line with CQC and Survey team protocol.
11. Publish the results of the pilot on [www.NHSSURVEYS.ORG](http://www.nhssurveys.org).  
<http://www.cqc.org.uk/publications/surveys/children-young-peoples-survey-2016>  
<http://www.nhssurveys.org/surveys/953>

**Work package 9: Undertake specific analysis as required.**

This work package is considered within the Likely mid-point outlined above.

### **Work package 9: Undertake specific analysis as required.**

CQC publishes the adult inpatient survey each year (see link below). For the purposes of the case study please assume that this survey would cover 149 acute and acute specialist trusts and sample size of 1,250 inpatients per provider. Furthermore, each trust has on average three hospital sites and there is a need to provide additional benchmark results at this more granular level.

The analysis being costed for this work package will advise CQC of variations in performance between medical and surgical patients both of which are drawn in the sample.

### **Development Report**

1. A full development report detailing the outcome of the review. The report should highlight recommendations and any options along with their associated risks, benefits and costs. This report should include the findings, and recommendations from, a review of:

- Existing methodology used to produce trust-level benchmark results and the appropriateness of adopting a similar methodology site-level analysis
  - Suppression thresholds required to ensure statistical robustness and respondent confidentiality
  - Weighting methodology required
  - Alternative analytical approaches to that current used within trust-level results which may provide greater value
  - Any additional analytical considerations
2. Publish the development report on [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG) outlining the approach agreed.

### Analysis and reporting

3. The analysis of all quantitative data using the agreed methodology recommended within the development report
4. Quality assurance of all analysis undertaken, in line with CQC and Survey Team protocol.
5. Generation of a publishable benchmark data set with results from this additional analysis
6. Production of data for CQC Insight, including providing adjusted z scores, in addition to the benchmark data set described above.
7. Publication of local level results from the survey on the dedicated website [www.NHSSURVEYS.ORG](http://www.NHSSURVEYS.ORG)

As an example please see the adult inpatient survey 2016 on the following websites.  
<http://www.nhssurveys.org/surveys/1092>

Please note that in addition to the above work packages, the following services may also be commissioned:

- **Feedback.** The distribution, collection, analysis and reporting of questionnaires designed to collect non-survey feedback for CQC or other commissioners.
- **Advice and thought leadership.** Specific advice and support on the methods, processes and tools for collecting feedback from people who use services separate from the NHS Patient Survey Programme. This would include advice on the collection of feedback using web and other tools, general survey and questionnaire methods or similar processes.

## 7. Milestone Payments

At the start of any package of work a timetable detailing payments for that package will be agreed between CQC and the Contractor. It is expected that CQC will agree payment points within each work package typically based on: completion of any scoping and development; submission of any ethics and section 251 of the National Health Service Act 2006 documentation, completion of field work or data collection, and publication or completion of agreed outputs. These points may vary depending on the specification for any work package.

Payments will be conditional on the completion of all agreed milestones under a payment point as set out in the specification and the achievement of the key performance indicators set out in section 11. Where milestones under a payment point are in two financial years, CQC will agree a payment based on the completion of all agreed milestones, as set out in the specification, as at 31 March and the achievement of the key performance indicators set out in section 11.



The exact value and date of all payment milestones will be agreed by CQC at the time of commissioning any work package.

## **8. Authority Responsibilities**

CQC's Survey Team will:

- appoint a Service/Contract Manager to manage the contract and act as a primary contact for all contractual matters.
- set the strategic direction for the NHS Patient Survey Programme and will set individual requirements for the number of work packages.
- set the specifications for work packages and agree the timescales and costs relevant to each package.
- provide an identified contact for each work package.
- develop and communicate any quality assurance requirements to ensure that all tools and services are delivered to a high standard.

Where commissioners other than CQC use the Co-ordination Centre similar responsibilities will be delivered by the commissioning organisation.

## **9. Contractor Responsibilities**

The Contractor must:

- appoint a lead per survey to act as the main point of contact for that survey.
- appoint a person to manage the contract with CQC and act as the main point of contact for any queries in relation to the management or monitoring of the contract. This will include performance against any key performance indicators as set out below.
- attend a contract review meeting with the Authority's Service/Contract Manager at least quarterly. This will be a high level meeting to discuss contract management, finance and progress as set out below.
- appoint a person to chair, and provide a written note as needed from, operational delivery meetings and performance review meetings as outlined below.
- appoint a person to agree a monthly update on costs and invoicing based on the packages of work that have been delivered.
- provide the secretariat for an appropriate steering group established by CQC to support the development and delivery of any survey.
- undertake evaluation and quality assurance on its work to provide CQC with sufficient assurance that its work meets required quality standards and learns from experience.
- Maintain an up to date IG tool kit to a standard set by CQC or the Confidentiality Advisory Group ("CAG"). Where scores fall below 100% an action plan must be submitted to CQC detailing how scores will be improved before the next assessment. The Co-ordination Centre must also be listed on the Data protection register for the

purposes of research and adhere to all conditions and agreements made between the CAG and CQC.

- deliver all of its work in a timely manner and in line with any guidance supplied by the commissioner or the Co-ordination Centre.
- work in close partnership with the Co-ordination Centre for Existing Methods attending any meetings as needed to support this.

The Contractor must be able to demonstrate compliance with the General Data Protection Regulation which will become effective from 25 May 2018. The Contractor is expected to:

- maintain records of data processing activities and ensure information relating to the fair processing of data is available in a clear, concise and understandable way. Privacy Notices should include mention of surveys undertaken for the NPSP, to include detail on how data is held, used, stored and retained as set out in the legislation, and summarised by the [Information Commissioners Office guide to the GDPR](#).
- have appropriate governance measures in place to support compliance with GDPR. This can include having data protection policies, data protection impact assessments, codes of conducts and a Data Protection Officer in order to clearly document and account for how data is processed.
- have appropriate technical and organisational measures in place to ensure the security of data storage and processing, that data is not accessed unlawfully, and is protected against accidental loss or destruction.

CQC reserves the right to audit the Contractor on its adherence with these requirements at any time.

## **10. Contract Management and Monitoring**

The key personnel involved in the management of this contract will be as follows:

- **Authority Service/Contract Manager:** This role will be undertaken by the Authority's Survey's Manager. They will manage the contract on a day-to-day basis, and also chair the contract review meeting outlined below. The Authority Service/Contract Manager will also act as the first point of escalation for risks and issues in performance against the KPIs listed below and demonstrating value for money from the contract. The Authority Service/Contract Manager will work with the Authority's Head of Function who is accountable for the survey programme as required as a secondary stage of escalation.
- **Authority Senior Responsible Officer:** The Authority's Director of Intelligence will be the Senior Responsible Officer (SRO) for this contract. They will be the senior supplier and relationship manager for the Authority and the final point of escalation for service related issues.
- **Authority Commercial Contracts Lead:** The Authority's Senior Commercial Contracts Lead will be the primary contact for any commercial matters or contractual issues/disputes.

The Contractor will be expected to attend the following meetings:

Meeting Title & Frequency	Purpose
<b>Operational Delivery Meeting (weekly)</b>	<p>To discuss and review the day-to-day delivery of work packages including:</p> <ul style="list-style-type: none"> <li>• progress against plan(s)</li> <li>• risks and issues along with mitigating actions</li> <li>• complaints, feedback and corrective actions undertaken</li> <li>• planned progress for the following week</li> </ul> <p>This meeting should be attended, as a minimum, by the Authority's Research and Survey Officers who are working directly on the delivery of each survey and the appropriate staff from the Contractor. It can be held by Skype or similar.</p>
<b>Performance Review Meeting (fortnightly)</b>	<p>To discuss and review the delivery of the programme including the escalation of any:</p> <ul style="list-style-type: none"> <li>• progress against plan(s)</li> <li>• risks and issues along with mitigating actions</li> <li>• complaints, feedback and corrective actions undertaken</li> <li>• planned progress for the following two weeks</li> </ul> <p>To discuss and review the delivery and development of the programme including any:</p> <ul style="list-style-type: none"> <li>• potential improvements, opportunities and innovation</li> <li>• activity required in the next fortnight and any emerging challenges.</li> </ul> <p>This meeting should be attended, as a minimum, by the Authority's Analyst Team Leaders who are responsible for the delivery of the surveys and the appropriate staff from the Contractor.</p>
<b>Contract Review Meeting (quarterly)</b>	<p>To discuss and review the delivery of the programme including the escalation of any:</p> <ul style="list-style-type: none"> <li>• matters escalated from performance review meetings including any risks and issues, complaints and feedback, and a</li> </ul> <p>To discuss and review the delivery and development of the programme including:</p> <ul style="list-style-type: none"> <li>• review spend figures (quarterly and year to date)</li> <li>• review overall performance against the contract, including compliance and achievement of KPIs, and actions needed</li> <li>• review of any continuing risks and issues and any actions identified in previous quarterly meetings</li> <li>• potential improvements, opportunities and innovation.</li> </ul> <p>This meeting should be attended, as a minimum, by the Authority's Service/Contract Manager, the Authority's Commercial Contracts Lead (if required) and an appropriate lead from the Contractor.</p>



## 11. Key Performance Indicators

No	Key Performance Indicator	Threshold
1	<b>Delivery of Survey and Feedback outputs</b> The Contractor is required to deliver good quality survey outputs for each of the defined work packages, in line with CQC's guidance, instructions or commissioning notes for any work package.	100% Critical KPI
2	<b>Resource mobilisation in line with survey programme requirements profile</b> The Contractor is required to ensure that there are sufficient personnel and other resources to deliver the work packages on time and to the quality standards required.	95% Critical KPI
3	<b>Attendance at Meetings</b> The Contractor is required to attend all planned Operational Delivery (as outlined in Contractor Responsibilities), Performance Review and Annual Review meetings, unless otherwise agreed with the Authority.	97% Critical KPI
4	<b>Availability of Contractor</b> The Contractor will be contactable to the Authority between the hours of 9am to 5pm Monday to Friday (excluding Bank Holidays)  The Contractor is required to respond to all general queries within 24 hours.  Simple queries should be resolved within 48 hours.  Complex queries should be resolved within 5 days.	95% Critical KPI   95% Non-critical KPI   95% Non-critical KPI   95% Non-critical KPI
5	<b>Security Requirements</b> Services will be delivered in accordance with information security, data protection, GDPR, any confidentiality requirements including those agreed with the Confidential Advisory Group (CAG). The Co-ordination Centre will advise CQC where any such breach occurs.	100% Critical KPI
6	<b>Delivery Timescales</b> Services will be delivered in accordance with agreed timelines and any change is raised and agreed by a member of CQC's Survey Team.	95% Critical KPI

7	<b>Evaluation and learning</b>  Evaluation and learning will be completed at the end of each delivered package, and any identified improvements flagged along with an action plan for development.	95% Non-critical KPI
8	<b>Quality of Expertise</b>  The Contractor is to ensure that individuals providing support to the survey programme are those stated in the response or an equivalently qualified individual where the stated personnel have left.	100% Critical KPI
9	<b><u>Quality Assurance Framework</u></b>  The Contractor is required to deliver survey and feedback outputs in line with the approved quality standards. This must include that all work will be quality assured and suitable assurance provided to CQC identifying what checks are in place and how and when they have been undertaken and by who.	100% Critical KPI

## 12. Management Information

As a minimum, the Contractor will be expected to provide the following Management Information. A template will be developed by CQC, with approved contractors, to facilitate its collection. All commercially sensitive information will be treated confidentially by CQC and will not be used for any purpose other than the national survey programme or shared with any other organisation.

Name of Report	Description
Financial Report <i>annual collection</i>	A report highlighting your activity of events within the survey programme.
Key Performance Indicators <i>quarterly collection</i>	Provide a report showing compliance with Key Performance Indicators, breaking results down to show compliance against each indicator for each survey commissioned.

The Authority reserve the right to request additional Management Information reports and the Contractor is asked to detail any other Management Information reports they believe would be beneficial to the Authority.

## 13. Skills and Knowledge Transfer

The Contractor must provide CQC, and any other commissioner, with the following information as part of the transfer of skills and knowledge derived from undertaking national surveys and collecting feedback:

- all survey products and associated materials.

- a log all decisions and actions, within an agreed template, undertaken in delivering agreed packages of work to provide a clear audit trail. The audit trail should be sufficient to allow CQC to respond to any queries made about the work and to use it in the planning, development and delivery of future work to identify learning and risks and issues. This audit trail should also be sufficient for CQC to identify any sampling errors, breaches of confidentiality raised, and limitations within the data.
- the full data set derived from any work package. The dataset must be delivered in a format that is clear and would allow CQC to either analyse the data further, publish it as needed, and complies with all confidentiality and ethical requirements set out by CQC or the Confidentiality Advisory Group.
- clear syntax files and a comprehensive written description of any analyses undertaken.
- the results of evaluation, lessons learned or other review of a work package on completion of that work package.

All project specific intellectual property rights means Intellectual Property Rights in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this contract will be retained by CQC.

#### 14. Additional Information

The Contractor must ensure that its work and outputs are quality assured to a standard equivalent to [CQC's Assurance Framework](#). The framework requires that data producers make appropriate plans for quality assurance, undertake an agreed review of the quality of its outputs, complete analytical sign off and organisational sign off before it is delivered.

CQC expects that learning and feedback from the quality assurance process is undertaken. The Contractor must be able to demonstrate their quality assurance processes and be able to assure CQC that this process is robust and applied in all cases.

The Contractor must ensure that their work supports the delivery of all requirements set out in the UK Statistics Authority's [Code of Practice for Official Statistics](#). It is expected that the Contractor will provide all necessary support and work to ensure that official statistics are compliant with the code.

All Approved Contractors will also be expected to ensure adherence to the HM Government Supplier Code of Conduct. For more information please visit:  
<https://www.gov.uk/government/publications/supplier-code-of-conduct>

## SCHEDULE 2 – TENDER RESPONSE

EVALUATION QUESTION 01 – STRATEGIC VISION	WEIGHTING
Please describe your organisation's vision for supporting the NHS Patient Survey Programme	5%
<i>Evaluation intention - This criterion seeks to establish the Tenderer's vision for the delivery and development of national surveys.</i>	
<b>RESPONSE:</b>	

Due to a confluence of factors, it is ideal timing for the Care Quality Commission (CQC) to review your NHS Patient Survey Programme. With all NHS trusts now having been inspected, CQC is implementing its next phase of regulation in a targeted approach that – alongside inspecting all new services – uses intelligence to direct where regulation needs to focus. The survey programme provides data that is central to that intelligence, helping to pinpoint where there may be issues with quality. It therefore needs to evolve to further support this targeted approach.

This comes at a time when the collection and use of feedback from patients has become more widely embedded in the NHS through the CQC survey programme and other mechanisms such as the Friends and Family Test. The NHS is becoming more accustomed to working with these data to improve services, again meaning that enhancements to the survey programme can have a particular impact at this time.

The digitisation of the NHS and proliferation of new technologies also provide opportunities, both for CQC to generate intelligence to direct its regulation and for trusts to improve services based on patient feedback. CQC is looking to take advantage of this to strengthen your survey programme, with the potential to move towards a mixed methods approach. This may reduce costs (thereby providing the opportunity to increase sample sizes and the frequency of surveys) and shorten the timings of the surveys so the data is more current, as well as being in keeping with a paperless NHS and the general trend towards digital feedback within the population as a whole.

Alongside these opportunities, CQC faces a challenge in terms of how to regulate more complex health systems such as the new care models. Although not yet legislated for, there is a high degree of consensus that working together more within health economies is the right way forward for the NHS and is likely to continue. This raises questions for how CQC will regulate these systems.

As noted, these factors mean that the timing is right to further consider how to enhance the NHS Patient Survey Programme. In order to support CQC in achieving your vision, our vision for developing and delivering the survey programme is to:

- **Place the patient at the heart of the survey programme:** The survey programme is ultimately intended to ensure that patients have access to safe, effective, compassionate and high quality services and to improve services for patients. While this has implications for how the survey can be utilised (covered in more detail

below), it is also important that the survey programme itself reflects this patient focus. We will do this by carefully considering the survey design and implementation, for example through ensuring the surveys are accessible to patients (as we have done for the GP Patient Survey (GPPS) previously). Our vision also includes the development of a new public-facing website which can be easily used by patients to compare trusts, giving them better access to the survey results.

- **Make the survey programme fit for purpose for the future:** The very principle of moving the survey programme to a mixed methods approach is making it fit for purpose for the future, utilising technology and reflecting the aim for the NHS to be paperless by 2020. However, one of the strengths of the survey programme is the time series which allows the tracking of changes in patients' experiences of services. While the move to a mixed methods approach may lead to a necessary break in the time series, we should make every effort to ensure that the changes we make last into the future, to protect trends as far as possible. Our vision is therefore to be future-focused when developing and delivering the survey programme, by testing our ideas, approaches and implementation against where we need to get to in the future and considering as far as possible how these requirements may change in the future. This future focus ranges from, for example, ensuring that the survey questionnaires are device agnostic, to reflecting on how the surveys may work in a future health economy comprising new care models such as Integrated Care Systems (ICSs).
- **Maximise the gains of moving the survey programme to a mixed methods approach:** As already noted, there are a number of benefits to moving the survey programme to mixed methods. Our vision is that – given the investment in making this change and the impact on the time series – the changes to the survey programme need to maximise the potential benefits, for example by allowing an increase in sample size and reducing the amount of time between a patient's experience and the final data and report being provided.
- **Make use of the latest innovations and methodological thinking:** The development of a mixed methods approach does not need to start with a blank sheet of paper. Instead, to make it as effective as possible, our vision is for it to benefit from the latest survey literature and experiments, which we are very familiar with and have contributed to through multiple projects. This does not just apply to methodological thinking, it also refers to operational solutions, for example around how the data is published in a range of different formats. This means we can build on the best of what already exists, both methodologically and operationally.
- **Ensure it fits with your regulatory programme to maximise its value to CQC:** Given that you intend to continue using the NHS Patient Survey Programme as part of a suite of data sources that flag potential risk in services and therefore help target your inspections, our vision is to develop the programme to be as robust as possible. This includes, for example, robustness in sampling procedures, maximising response rates, data processing and weighting. It also involves ensuring that any risks to robustness are flagged and fully discussed – as with any survey programme there will be trade-offs when designing the approach and it is important to acknowledge the impact of these trade-offs on the robustness of the data so that informed decisions can be made. There are other ways in which we envision enhancing your regulatory programme, for example by reviewing the timings of the surveys to be more frequent (annual) and to be delivered more quickly so the data is more current.

- **Maximise how the survey can be used by trusts locally to improve the quality of care:** As part of your aim to improve care for patients, it is vital that survey results can be used locally to drive service improvements. Our vision here relates partly to again ensuring the survey is robust so that comparisons between trusts can be made, and to narrowing the timings so that the findings are more current when they are released. Another key part of our vision is around the outputs, with reports designed to help trusts understand and absorb the data easily so they can subsequently make improvements, supplemented by the analysis tool on the website enabling those who want to, to undertake more in-depth analysis.

This vision has the following implications for how we will work with you to support the NHS Patient Survey Programme:

- Our approach will be **grounded in understanding the requirements of CQC and your stakeholders**. Through having discussions about your – and your stakeholders’ – requirements, we will be able to develop a survey programme that can ultimately help to improve care and treatment for patients. Everything we do in designing and delivering the survey programme will be tested against this principle of how it will help to target regulation and ultimately to improve services.
- We will be a **proactive partner**, working with you to develop a leading survey programme that harnesses technology and can be used effectively by multiple stakeholders to deliver an impact for patients. To achieve this, we anticipate developing a partnership with you that is based on a strong understanding of your vision for the survey programme and its aims. Through this understanding, combined with our methodological and operational knowledge, we will work as your partner to bring new and innovative ideas to the table for discussion and to proactively make suggestions for improving the survey programme. We envisage a partnership of constructive challenge so that we can collectively deliver robust and impactful surveys, always considering your vision and potential further changes in the sector.
- In retaining a focus on what we are ultimately trying to achieve with the survey programme, **we will be committed to continuously improving it**. On the one hand, this commitment to continuous improvement reflects our ambition for a leading survey programme and we will work hard to innovate and achieve this. On the other hand, continuous improvement is also about marginal gains and looking at the smaller changes that will enhance the survey programme. Our commitment here builds on CQC’s tradition of continuous improvement, which we have demonstrated ourselves through GPPS. For example, in order to maximise its usefulness, we are currently reviewing GPPS and how it might need to evolve to reflect changes in the provision of primary care. We also undertake a series of smaller scale innovations for incremental improvements, such as our work to improve the accessibility of the survey.
- In line with this, we will also put measures in place to enable us to **collectively reflect on our progress against our aims, and to enable you to feed back on our performance as the contract progresses**. We note your requirement for fortnightly performance review meetings and contract review meetings at least quarterly; these will ensure that we keep our wider strategic aims at the centre of what we do, and ensure that we are able to support the NHS Patient Survey Programme effectively by listening and responding to your feedback.



- Through our comprehensive quality assurance processes and our project management procedures, we will **get the basics right** when delivering the survey programme. This will give you reassurance – and the time – to focus on the more strategic questions of what you want the survey programme to look like and how to maximise its use.

By working with you in this way, we are confident that we will be able to effectively deliver our vision for the design and development of the survey programme, thus supporting the programme to achieve its potential. Given its unique nature and the robust, comparable data that it can produce, we are excited about the prospect of further enhancing the NHS Patient Surveys so that they can make even more of an impact for patients.

EVALUATION QUESTION 02 – DEVELOPMENT AND DELIVERY OF SURVEYS VIA MIXED METHODS	WEIGHTING
Please describe (with specific reference to the requirement and the outcomes expected) how your organisation intends to both develop and deliver the NHS Patient Survey Programme via mixed methods	20%
<i>Evaluation intention - This criterion seeks to establish that the Tenderer has the experience and expertise needed to deliver and develop the NHS Patient Survey Programme via mixed methods. Evaluation of this criterion will include an assessment of how your organisation intends to deliver and develop the national survey programme. This should outline your approach to ensuring ongoing delivery, improvements and innovation to the programme.</i>	
<b>RESPONSE:</b>	

## Introduction

As discussed in our response to Q01, we have a clear vision for the future of the NHS Patient Survey Programme. In our response here to Q02 we outline our approach to developing and delivering the surveys via mixed methods to ensure that they support and enhance your work further.

In drafting our response we have considered the end-to-end process and have broken it down into its component parts. The first four sections of our response focus primarily on moving existing surveys over to a mixed methods approach:

- Scoping and planning;
- Development (and piloting) of the approach;
- Implementation of the surveys via mixed methods; and
- Ongoing development and review of the surveys.

Then we move on to discuss our approach to developing a completely new survey; of course, once this has taken place, the cycle of piloting, implementation and ongoing development will kick in again. Where there is crossover between the sections, we have tried to reference the relevant section to ensure completeness without repetition.



Our aim in discussing each of these activities is to demonstrate our approach to undertaking the Co-ordination Centre role drawing on our expertise, rather than address all nine Work Packages referred to in the ITT. We would be happy to provide further detail on any aspect of our proposal.

## **1. Scoping and planning**

In transforming the Patient Survey Programme to a mixed methods approach, there will be a number of decisions to make and implications to work through and manage. While we envisage working closely with you to support you in your planning, we recognise this support could take a number of forms. For example, we understand that you do not yet have a set timeline or approach agreed for the transition to a mixed methods solution; therefore we could play a useful role in supporting you in making these decisions. On the other hand, you may not need our input into decisions about the timeline, but there may be a role for us in advising you on how best to manage the transition, once the timeline is in place. Regardless, we recognise that there will be a number of factors that will play a role, which we discuss briefly here:

- Crucially, the surveys will need to continue to inform your regulatory functions, so it will be necessary for us to understand the policy context for each survey and ensure that any methodological changes are planned around these requirements. We can play a useful role in facilitating discussions with internal stakeholders about the transition, either to help you set priorities for which surveys move over and when, or in developing a full understanding of the policy implications of moving the surveys over to a mixed method approach.
- We understand that an audit of the availability of email addresses and mobile phones is already underway. The results from this will inform the decision about feasibility and timelines for the transition. For example, we might expect that a higher proportion of patients for the Children's and Young People or Maternity surveys have email addresses, making these surveys more suitable to an earlier move to an online approach.
- Some of the question sets are better suited to an online approach, while some questionnaires will need to undergo more significant amendments to make them suitable (see section 2.2). This is also likely to impact the timings of when these surveys move to a mixed method.
- We understand that pilots of mixed methods approaches are also already underway. The results of these pilots, e.g., the achieved response rates, will inform the design of a mixed methods approach for those surveys and more broadly for the programme, though these will need to be built upon (see section 2.1).

We will work with you upon commissioning to determine the best approach to agreeing the programme of planned changes. Our aim is to put us in a strong position to move on to the development and piloting of these surveys, discussed in the next section.

## **2. Development and piloting**

This section outlines our approach to developing and piloting a mixed methods approach using our experience gained from delivering large mixed methods surveys, our understanding of the latest evidence, our desire to apply innovation to our work, and our

commitment to producing robust data that stands up to scrutiny. We start with our analysis of the potential to transform the survey programme to a digital method of delivery, and our thoughts on how mixed methods might be used to deliver the survey programme.

## **2.1 Developing a mixed methods survey approach**

Replacing paper-based data collection with a digital method of survey delivery has the potential to deliver cost savings which could be used to increase the frequency and sample sizes of the surveys. It also has the potential of drawing into the sample some types of people who tend to be under-represented in postal surveys but are more likely to participate in a survey that utilises digital contact methods and web data collection.

However, a complete transition to a digital-only method of survey delivery is not yet feasible. Ten per cent of UK households do not have access to the internet and those living in these households are distinct in terms of socio-demographic and other characteristics.<sup>1</sup> The proportion excluded is even greater when we take into consideration people who have access to the internet but are not confident in using it or do not want to do so for the completion of surveys. Finally, digital contact details are not available for all patients. For these reasons, a digital solution for the NHS Patient Survey Programme will also need to include offline contact and data collection. For some patient groups (e.g. patients aged 85 and over), the dominant mode may continue to be offline rather which could have implications for how offline and online modes are mixed for surveys of these groups.

The samples for most of the surveys in the Programme are drawn from the Patient Administration System (PAS), but other patient lists are used for some surveys, such as the NHS Pathways system records. These lists tend to have names and addresses for all<sup>1</sup> patients. Increasingly, (mobile) phone numbers and email addresses are being collected. This unlocks new possibilities for contacting sampled patients to take part in a survey using a mixture of mail, phone, SMS and email. Some of these methods may be more effective among groups of people who are normally under-represented in surveys (e.g. SMS contact with young people). This suggests that the contact mode could possibly be tailored for specific patient groups and surveys. We note that CQC is currently testing SMS invitation/reminders on the 2018 Community Mental Health Survey, and a combination of mail and SMS invitation/reminders on the 2018 Adult Inpatient Survey. We have also conducted testing of SMS and mail reminders alongside email contact on a web panel of the general population. While this is a good basis, we will carry out further development work to determine the optimal mix of contact modes based on available contact details and characteristics of the sample members.



We believe that the best offline mode of data collection to combine with web would be paper-based:

- The current programme has always used paper-based methods.<sup>2</sup>
- Measurement differences between paper-based and web questionnaires can be minimised because both modes are self-administered, with questions presented visually.
- Combining web with interviewer-administered modes will not deliver sufficient cost savings to allow the CQC to increase sample sizes and/or frequency of data collection.

### Maximising response

To achieve the cost savings that are needed to increase the frequency and sample sizes of the surveys, the proportion completing them online needs to be worthwhile. However, online surveys frequently suffer from lower response rates than can typically be achieved using other survey modes.<sup>3</sup> There is no silver bullet for maximising online response. Instead we need to focus on all stages of the process and the connectivity of these stages.<sup>4</sup> At Ipsos MORI, we have developed a framework which breaks down the process of gaining online response into different stages from the perspective of the respondent. At each stage, the framework highlights survey design features that are known to increase online cooperation based on evidence and best practice. The framework is also a useful tool for identifying gaps in knowledge. For example, we have already noted the potential of tailoring a mix of contact modes for specific groups but there is little evidence on how to do this. Using this framework as the basis, we will work closely with CQC to identify the most suitable methods for maximising online response and areas that need to be explored further as part of the development work for the digital method for survey delivery.

---

Figure 1 Ipsos MORI framework for maximising online response

Motivated to open the invitation and reminders	Motivated to read the invitation and reminders	Motivated to take part in the survey	Motivated to go online	Motivated to complete the questionnaire
Mode & type of contact e.g. email, envelope with letter, postcard	Easy to read; e.g. length, font, vocabulary	Clarity about the purpose of the email/letter	Clear instructions for logging into the questionnaire	Landing page looks authentic with clear instructions
Outward appearance; e.g. email subject line, logo on envelope	Appearance; e.g. important, professional	Clarity about the purpose of the survey request	Minimal effort needed to enter login details	Design for mobile; e.g. short, reduce clutter and text
Personalisation	Personalisation	Use of persuasive reasons for taking part, use of incentives	Multiple access methods; e.g. any internet-enabled device	Avoid question types that are prone to break-offs
Use multiple contact attempts <ul style="list-style-type: none"> <li>• An optimum number of reminders</li> <li>• An optimum length of time between survey invitation and reminders</li> <li>• A diverse and yet coherent package of invitation and reminders</li> </ul>				Reduce cognitive burden

Despite these efforts, the online response rates will be lower than the current paper-based response rates. Furthermore, online respondents are likely to be younger, more educated, with higher incomes and less likely to live alone.<sup>5</sup> Offering a paper questionnaire as well as a web questionnaire will reduce the risk of non-response bias as well as provide an opportunity for off-liners to take part. However, careful attention needs to be paid to exactly how and when a paper questionnaire is introduced to sample members. The proportion completing online is generally small when the choice between paper and web are offered upfront (concurrent). For example, on GPPS, 6% of all completes were online when patients were sent a paper questionnaire with login details for a web questionnaire. For most surveys, the saving in processing costs would be outweighed by the cost of developing the web questionnaire.

Alternatively, the proportion completing online can be significantly increased by withholding the paper-based questionnaire until the second or third reminder has been sent (sequential). For example, just over half of all questionnaires are completed online for the Active Lives Survey (ALS) which includes the paper questionnaire with the second reminder. Higher proportions have been reported for other studies as this will vary depending on the study population, the saliency of the survey topic, mode of contact, the number of reminders sent before the paper questionnaire, etc. Nonetheless, the final response rate for a sequential web and paper survey tends to be somewhat lower than the response rate for an equivalent paper-only survey.<sup>5</sup>

Recent research has focused on how to increase the proportion completing online in a concurrent mixed mode design and the final response rate in a sequential mixed mode design. Initial results with the mixing of contact modes and the use of incentives have been encouraging.<sup>4, 6, 7</sup> Another area of research which we believe is particularly promising is

tailored (or adaptive) design in which different contact strategies and mixed mode designs are used for different survey populations and survey situations in order to optimise the overall response rates and reduce data collection costs.

### Ensuring consistency

We recommend that a single online data collection platform is used for those surveys that use web questionnaires within a mixed method design. This will ensure measurement equivalence across trusts because all respondents will receive web questionnaires that are identical in their visual design, question wording, and functionality. It will also provide tighter control over online data quality; e.g. immediate identification of technical problems, fraud, security breaches, etc. The responsibility for sample management and communications with patients will still lie with the individual trusts and their contractors. Each sampled patient will be assigned a unique password to access the survey. We will be able to provide a solution where each trust/contractor will have access to their sample on the platform and be able to monitor their online completes in real time. Prior to each reminder print run, the trust/contractor will download their data to remove completes from the mailing sample.

### Managing the transition

In addition to careful planning and testing prior to any permanent changeover, decisions must be made on how to implement the transition from the old to the new programme. One option is to have a clean changeover. This will still allow the CQC to compare trusts with each other at any point in time but the interpretation of observed changes in the performance of trusts over time will be contestable. Nonetheless, a trust could be compared against other trusts before and after the changeover to gauge whether its performance has improved or deteriorated. Sophisticated statistical techniques may also help in quantifying the extent to which observed changes result from real population changes and the extent to which they are artefactual.<sup>8</sup>

Nonetheless, the preferred strategy is to have an overlap stage during which the new survey is implemented in parallel alongside the old survey design in order to assess, and potentially correct for, breaks in time-series. However, the cost of doing this may not be warranted for each survey and it may exceed the available budget. We will work closely with CQC to consider the most suitable option for each survey separately.

## 2.2 Developing and updating the survey questionnaire

We now move on to discuss the impact of the move to a mixed methods approach on questionnaire design and how we intend to provide a smooth and well managed transition.

It is worth noting that in developing any questionnaire content we will follow best practice principles (described in section 5). But a key aim for developing and updating the survey questionnaires to a mixed method approach will be to ensure measurement equivalence across modes (web and postal) and devices (PC, tablets, smartphone). We have considerable experience of adapting questionnaires for mixed method surveys. For example, we designed the ALS<sup>9</sup> for Sport England which was the first device-agnostic push-to-web survey in the UK. For this survey, we ensured that the web and paper-based questionnaires were designed to collect comparable data for key survey estimates, while taking advantage



of computerisation to collect more detailed information about activities in the online questionnaire.

Our approach is 'mobile-first', meaning we consider the look, feel and usability of a questionnaire on a mobile device and work from there, given this mode of delivery is the most restrictive (small screens, avoidance of the need for horizontal and vertical scrolling), and at the same time is also becoming an increasingly popular survey completion option.<sup>10</sup>

Following a review of all questionnaires, we are confident that *most* of the questions are easily transferrable and should not be prone to mode effects. Similarly, other design features such as bold, underlined or italicised text, as well as section headings and instructions, can be presented equivalently online and across all devices. There will be a need to review/consider the following, however, across all questionnaires and when we transfer each survey to mixed modes.

- **Questionnaire length:** The approximate completion time for certain questionnaires (Inpatient and Maternity) is longer than our maximum recommended length of 20 minutes for device-agnostic online questionnaires. This means that compromises may be necessary, such as cutting the content or using a modularised questionnaire design. We will work through how the data is currently being used, and work closely with you to identify priority areas.
- **A consistent approach to handling 'don't knows':** Across the questionnaires the 'don't know' option is offered at certain questions, but not others. Where a 'don't know' option is explicit on paper, it would need to be online too. However, we will need to agree on conventions where this *isn't* offered explicitly on paper – and we will provide advice around this on a question-by question / questionnaire basis.
- **Instructions for single and multi-code questions:** Some questions across the questionnaires include instructions for the number of response options the patient can choose, whilst others don't. The online scripts will need to be programmed in a way to achieve equivalence, i.e. where the paper instructs the patient, the online version will also need to. We will advise on this however, as patients can theoretically tick as many options as they desire on paper *even* where the question inexplicitly asks for just one answer; we will need to consider the impact of this on the mixed method design/data.
- **Paging versus scrolling:** Generally, a paging design is preferable to a scrolling design for online questionnaires because it is then possible to implement interactive features (e.g. questionnaire routing, text/date fills, edit checks) and it will have less missing data. Contrary to earlier beliefs, paging designs do not appear to increase break-offs and previous concerns about longer response times have diminished with the increased speed of internet connections<sup>11</sup>, hence we would recommend this approach, to be agreed by you.



The table which follows considers our own mobile-first questionnaire design principles and provides examples, where applicable, of questions which will likely need amendment.

Ipsos MORI's mobile-first questionnaire design principles	Examples in need of amendment from CQC patient survey programme
1. Remove or reduce all non-essential, non-question content; e.g. unnecessary instructions, progress bars, logos (these can be shown on the welcome and closing screens).	All questionnaires
2. Avoid exceeding 140 characters in the question's stem, including spaces.	D8 in the Maternity questionnaire
3. Standardise the question text and response options across devices and modes.	All questionnaires
4. Wherever possible, avoid using dropdowns in the online version	Does not apply to current questionnaires
5. Wherever possible, limit the number of response options to 7.	Q74 in the Inpatient questionnaire
6. Where more than 7 response options are required, consider using expandable headers in the online version.	The 'ethnicity' question across all questionnaires
7. Ensure the questionnaire is 'finger-friendly' and that the participant is not required to use touch precision that could frustrate them, and could be prone to error.	Q37 in the Community Mental Health Service User questionnaire
8. Harmonise the visual appearance of the questionnaire across devices and modes (e.g. consistent page layout).	All questionnaires
9. No more than two open-ended questions per questionnaire (ideally avoid open-ended questions).	Open questions in the Inpatient questionnaire
10. Avoid traditional grids and consider replacing with multiple questions (whilst grouping questions that are similar on the same screen/page), or using mobile-friendly grids such as progressive or collapsible grids.	Does not apply to current questionnaires
11. Restrict the use of instructions and explanations to the most essential ones in order to lower respondents' cognitive burden and to ensure that the questions can be displayed optimally on small screens.	All questionnaires

Finalising each questionnaire will be an iterative process, involving a number of tried and tested steps:

1. An initial draft checked against best practice guidelines.
2. A meeting with you and our programmers to discuss and agree on redrafting requirements and our proposed solutions.
3. Second draft incorporating changes and comments, with supporting documents for testing.
4. A programme of technical testing which includes (a) screen-by-screen inspection against specification focusing on question text, instructions, answer codes, (b) extended formal strategy to test a range of scenarios, filters and routing, range checks, text fills, and error messages; and (c) stability test of online questionnaire display and interaction across browsers, operating systems and devices. Our systematic technical tests use a testing protocol, covering the most common