

DATED 27TH August 2015

AGREEMENT FOR THE PROVISION OF INSPECTION ANALYSIS SERVICES

between

(1) CARE QUALITY COMMISSION

and

(2) METHODS ANALYTICS

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THIS AGREEMENT is dated 7th August 2015

PARTIES

- (1) CARE QUALITY COMMISSION of Finsbury Tower 103-105 Bunhill Row London EC1Y 8TG ("**Authority**").
- (2) Methods Analytics incorporated and registered in England and Wales with company number 08698156 whose registered office is at 16 St Martins le Grand, St Pauls, London EC1A 4EN ("**Supplier**").

BACKGROUND

WHEREAS

- A. The Authority is the independent regulator of health and social care in England as and has a duty under section 2 of Schedule 1 of Health and Social Care Act 2008 to make arrangements to ensure that its functions are exercised, effectively, efficiently and economically.
- B. The Authority sought proposals for the provision of Inspection Analysis Services by means of a public tender exercise.
- C. The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Achieved KPIs: means in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 3);

Agreement: means the agreement concluded between the Authority and the Supplier comprising these Conditions, the Specification, the Tender Documents and schedules attached herein;

Agreement Period: means a period of two years, commencing on the Commencement Date;

Associated Company: means any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company;

Authorised Representatives: means the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 4;

Authority Assets: means any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services;

Authority's Premises: means the premises which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this agreement;

Bribery Act: means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

Catastrophic Failure means;

- (a) a failure by the Supplier for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster and/or;
- (b) any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority;

Change: means any change to this agreement including to any of the Services;

Change Control Note: means the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure;

Change Control Procedure: means the procedure for changing this agreement, as set out in Schedule 6;

Charges: means the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 2;

Commencement Date: means 7TH August 2015

Commercially Sensitive Information: comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;

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

Crown Body: means any department, office or agency of the Crown;

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998;

Data Protection Legislation: means the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

Default Notice: is defined in clause 5.2;

Directive: means the Safeguarding of Employees Directive (2001/23/EC (as amended, re-enacted or extended from time to time));

Disaster: means an event defined as a disaster in the Disaster Recovery Plan;

Disaster Recovery Plan: the Disaster Recovery Plan at the date of this agreement being set out in Schedule 5;

Dispute Resolution Procedure: the procedure set out in clause 19;

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

FOIA: means the Freedom of Information Act 2000, and any subordinate legislation made under the 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: shall include an event referred to in Condition 32 of these Conditions;

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;

Health and Safety Policy: means the health and safety policy of the Authority as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;

Information: has the meaning given under section 84 of FOIA;

Insolvency Event: where:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply];
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party];
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Supplier 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 other party's assets and such attachment or process is not discharged within [14] days;

- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);
- (i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (j) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites;

KPIs: the key performance indicators set out in Schedule 3;

Key Personnel: those personnel identified in 4 for the roles attributed to such personnel, as modified pursuant to clause 12;

Law: 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

Management Reports: the reports to be prepared and presented by the Supplier in accordance with clause 6 and Schedule 4 to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs;

"Minor Variation"

means a variation to the Specification which:

- (a) adds Services which are within the scope of the Agreement;
- (b) can be implemented without a significant adverse financial effect on the Supplier or the Authority;
- (c) is unlikely to have a significant business and operational impact on the effective delivery of the Services;
- (d) will not cause either party to have to take significant action to maintain their ability to effectively deliver their functions outside of this Agreement; or
- (e) results from a change in legislation or to any of the Authority's policies which requires a change to the Services or any part of the Services;

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services;

Payment Plan: the plan for payment of the Charges as set out in Schedule 2;

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998;

Prohibited Act: the following constitute Prohibited Acts:

- (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 this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; and
- (d) any activity, practice or conduct which would constitute one of the offences listed under *clause 1.1(c)*, if such activity, practice or conduct had been carried out in the UK.

Regulations: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time);

Relevant Transfer: a relevant transfer for the purposes of TUPE;

Remediation Notice: a notice served by the Authority in accordance with clause 29.1(a);

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier;

Replacement Supplier: any third party supplier of Replacement Services appointed by the Authority from time to time;

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs;

Schedule: means a schedule to this Agreement;

Services: the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in the Specification appended hereto in Schedule 1;

Service Credits: the sums attributable to a Service Failure as specified in Schedule 3.

Service Failure: a failure by the Supplier to provide the Services in accordance with any Target KPI;

Specification: means the specification set out in the Tender Documents relating to the provision of the Services appended hereto in Schedule 1;

Supplier Party: the Supplier's agents and contractors, including each Sub-Contractor;

Supplier's Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time;

Supplier's Tender: the tender submitted by the Supplier and other associated documentation set out in Schedule 1;

Sub-Contract: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party;

Sub-Contractor: the contractors or suppliers that enter into a Sub-Contract with the Supplier;

Target KPI: the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in Schedule 3;

Tender Document: shall include the documents contained herein and/or annexed hereto and contained in Schedule 1, including the following:

- these Conditions of Contract,
- the Specification,
- the Pricing Submissions as completed by the Service Provider, and
- the Tender Documentation submitted by the Service Provider;

Term: the period of the Agreement Period as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms;

Termination Date: the date of expiry or termination of this agreement;

Transfer Date: means the date of transfer of employment of any of the Transferring Employees to either the Authority or a replacement supplier;

Transferring Employee(s): means an employee of any person (including the Supplier) whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out the agreement between the Authority and the Supplier, a contract of employment with someone other than the Supplier;

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

"Variation Order"

means a notice requiring a Minor Variation served by the Authority in accordance with clause 19

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)[and that person's legal and personal representatives, successors and permitted assigns].
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.

- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) schedules to this agreement.

COMMENCEMENT AND DURATION

2. AGREEMENT TERM

This agreement shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE TERM

- 3.1 The Authority may extend this agreement beyond the Term by a further period. If the Authority wishes to extend this agreement, it shall give the Supplier at least 3 months' written notice of such intention before the expiry of the Term or Extension Period.
- 3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 33 shall apply.

4. DUE DILIGENCE AND SUPPLIER'S WARRANTY

- 4.1 The Supplier acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
 - (b) it has received all information requested by it from the Authority pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
 - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.1(b);
 - (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date;
 - (e) it is of sound financial standing and the Supplier is not aware of any circumstances (other than such circumstances as expressly disclosed in writing by the Supplier to the Authority) which may adversely affect any financial standing in the future;
 - (f) it has made arrangements to ensure that it will have sufficient working capital, skilled personnel equipment, machinery and other resources available to it in order to carry out the Services in accordance with the Specification and this Agreement;

- (g) it will perform all of the Services in accordance with the Specification with due skill, care and diligence within the time stated in the Specification, which times shall be of the essence;
- (h) it has full power and authority to enter into this Agreement and thereafter to perform the Services; and
- (i) it has entered into this agreement in reliance on its own due diligence.

4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.3 The Supplier:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.

4.4 The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4.5 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

5. SUPPLY OF SERVICES

5.1 The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of the Specification, Tender Documents (to the extent that the same is not inconsistent with the Specification and this Agreement) and this Agreement.

5.2 In the event that the Supplier does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

5.3 The Supplier shall perform the Services:

5.3.1 with the utmost good faith;

5.3.2 in accordance with Good Industry Practice;

5.3.3 in accordance with the Authority's guidelines;

5.3.4 in accordance with instructions issued to the Supplier by the Authority's Authorised Representative(as identified in Schedule 4) under or in connection with the Agreement;

5.3.5 in accordance with all relevant Law; and

5.3.6 in an efficient, professional and courteous manner which shall preserve, promote and enhance shall not prejudice the reputation and interests of the Authority.

5.4 The Supplier shall ensure that files, books and records are kept for a period of 6 years after expiry of the Agreement Period in respect of the provision of the Services to the extent:

5.4.1 required by the Agreement, the Specification and/or law;

5.4.2 required to record details of any and all monies collected on behalf of the Authority; and

5.4.3 otherwise reasonably required ensuring the Service is provided in a proper and timely fashion.

5.5 The Supplier may be required to provide each year to the Authority a copy of its audited accounts within three months of the relevant accounting reference date subsequent to those provided in accordance with any tender requirements.

5.6 The Supplier shall (when requested by the Authority) procure the execution and delivery to the Authority of the Guarantee, substantially in the form set out in Schedule 8 as a condition precedent to payment under this Agreement.

6. KPIs

6.1 Where any Service is stated in Schedule 1 to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.

6.2 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Schedule 3.

6.3 The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 16.

7. SERVICE STANDARDS

Without prejudice to clause 6, the Supplier shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with [the best practice prevailing in the analytical industry from time to time];
- (b) in accordance with all Applicable Laws.

8. COMPLIANCE

8.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

8.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

- 8.3 The Supplier shall perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Authority Premises.
- 8.4 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 Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 8.5 The Supplier acknowledges that the Authority has a general duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity in carrying out its functions. The Supplier shall be considered to have the same obligations under the Equality Act 2010 when providing the Services under this Agreement.
- 8.6 Without limiting the general obligation set out in clause 5, the Supplier shall (and shall procure that the Supplier's Personnel shall):
- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law including (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise) including but not limited to the Equality Act 2010;
 - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (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;
 - (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);
 - (c) indemnify the Authority in respect of any costs and legal expenses incurred in defending any action brought by the Equality and Human Rights Commission and/or any third party against the Authority for

non-compliance with the Act and/or any Codes of Practice as a result of the breach of this clause 8.6 by the Supplier; and

- (d) shall inform the Authority as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Supplier under the Equality legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising therefrom, and shall provide the Authorised Officer with such further information and documentation as may be required in relation thereto.

8.7 The Supplier shall at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

9. AUTHORITY'S PREMISES AND ASSETS

9.1 The Authority shall, subject to clause 8 and clause provide the Supplier (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Supplier reasonably requires for the purposes only of properly providing the Services.

9.2 Subject to the requirements of clause 33 and the Exit Management Plan, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority's Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.

9.3 The Supplier shall ensure that:

- (a) where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same;
- (b) only those of the Supplier's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;
- (c) any Authority Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not

removed from Authority Premises unless expressly permitted under this agreement or by the Authority's Authorised Representative.

- 9.4 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
- 9.5 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.

10. DISASTER RECOVERY

- 10.1 The Supplier shall comply at all times with the relevant provisions of the Disaster Recovery Plan.
- 10.2 Following the declaration of a Disaster in respect of any of the Services, the Supplier 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.

To the extent that the Supplier complies fully with the provisions of this clause 10 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Supplier), 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 clause 6 but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.]

CHARGES AND PAYMENT

11. PAYMENT

- 11.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Supplier in accordance with the Payment Plan.
- 11.2 The Supplier shall invoice the Authority for payment of the Charges at the end of each calendar month in accordance with the Payment Plan. All invoices shall be directed to the Authority's Authorised Representative. Any such invoices shall take into account any Service Credits which have been accrued in the previous period.
- 11.3 The Authority shall pay the Charges which have become payable in accordance with Schedule 2 within 30 days of receipt of an undisputed invoice from the Supplier.
- 11.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 19. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.
- 11.5 In the event that at any time undisputed Charges have been overdue for payment for a period of 60 days or more, the Authority will have committed a Termination Payment Default.
- 11.6 Subject to clause 11.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 29.4 for failure to pay undisputed charges.
- 11.7 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority 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

Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

- 11.8 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for 6 years from the end of the Contract Year to which the records relate.
- 11.9 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 11.10 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Authority.
- 11.11 If The Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to *clause 11.10* it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.
- 11.12 The Supplier shall make any payments due to the without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 11.13 The Supplier shall pay all subcontractors any sums due no later than a period of 30 days from the date on which the Supplier has determined that the invoice is valid and undisputed. Where the Contractor fails to comply with this clause 11.12 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of this clause 11.12 after a reasonable time has passed.
- 11.14 The Charges as described in Schedule 2 shall be fixed for the Term and including any period of extension.

STAFF

12. KEY PERSONNEL

- 12.1 Each party shall appoint the persons named as such in Schedule 6 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 12.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
 - (d) the person resigns from their employment with the Supplier; or
 - (e) the Supplier obtains the prior written consent of the Authority.
- 12.3 The Supplier shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 14 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 12.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 14 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.
- 12.5 The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be

unsatisfactory for any reason which has a material impact on such person's responsibilities.

12.6 If the Supplier replaces the Key Personnel as a consequence of this clause 12, the cost of effecting such replacement shall be borne by the Supplier.

13. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

13.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.

13.2 The Authority may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.

13.3 The Supplier shall replace any of the Supplier's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

13.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

13.5 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or

management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

14. SECURITY

- 14.1 The Supplier and the Authority shall each comply with their respective obligations under the Data Protection Act 1998 and other applicable statutory provisions or provision of any European directive in respect of data and records containing personal information.
- 14.2 The Supplier shall ensure that all data in relation to the Services is securely stored and managed through effective policies, procedures and training. This will include but will not be limited to ensuring all data is password protected, challenging unknown individuals in its premises and ensuring all paper files are securely stored in a locked location out of hours.
- 14.3 The Supplier shall ensure that the Authority's data in relation to named individuals or employees is never left in an unattended vehicle and that the Authority's data on mobile devices (e.g. laptop, blackberry, USB memory sticks) is encrypted and adopt appropriate passwords.
- 14.4 The Supplier shall not transmit, or exchange data by any other means, unless previously agreed with the Authority and ensure that the Authority's data is not held longer than required and disposed of properly and securely.
- 14.5 The Supplier shall comply with all security requirements of the Client while on the Premises, and shall ensure that all Personnel comply with such requirements.

15. TUPE

- 15.1 The Authority makes no assurances as to the effect of the Directive and Regulations on this Agreement. The Supplier accepts and undertakes that when it tendered for (and entered into) this Agreement it has taken into consideration the provisions of the Directive and Regulations and has considered the application or otherwise of those provisions to this Agreement and has taken the appropriate action required under the Directive and Regulations.
- 15.2 Upon notice of termination of the Agreement for whatever reason or four months prior to the expiry of the Term, the Supplier shall, at its own cost and within seven (7) days of demand by the Authority, supply all such information as requested by the Authority, including without limitation:

- 15.2.1 the number of personnel, including supervisory, administrative and agency personnel, engaged by the Supplier and any sub-contractor employed in the provision of the Services;
 - 15.2.2 the terms and conditions of employment of those personnel; and
 - 16.2.3 any other information in relation to those personnel as may properly be required by the Authority under this Condition 16.
- 15.3 On termination of the Agreement for whatever reason or expiry of the Term, the Supplier shall discharge all wages salaries and honoraria (excluding accrued holiday remuneration (if any) of the Transferring Employees and all other costs and expenses relating to the Transferring Employees for the period from and including the Transfer Date) and will pay over all deductions properly made therefrom to the relevant authority (including but not limited to taxation and national insurance).
- 15.4 The Supplier shall at its own costs undertake all liability for and shall fully indemnify the Authority against:
- 15.4.1 all losses, claims, damages and costs which may be brought against the Authority as a consequence of the Supplier's failure to consider fully the application of the Directive and Regulations to this Agreement and/or have taken the appropriate action required under the Directive and Regulations and arising from the letting this Agreement; and
 - 15.4.2 all reasonable costs, expenses, damages, compensation, fines and other liabilities in connection with any claim arising from a cause of action occurring on or subsequent to the Transfer Date by all or any of the Transferring Employees as a result of their employment with the Supplier.
- 15.5 Prior to the termination or expiry of this Agreement (or any part of it) for whatever reason, the Supplier shall comply with any applicable provisions of the Regulations and the Directive including (but not limited to) the requirements with regard to consultation of affected employees pursuant to Directive Article 7 and Regulation 13 of the Regulations in respect of any transfer of an undertaking arising at the end of the Term or on any earlier termination of the Agreement (or any part of it) for whatever reason. The Supplier shall indemnify and hold harmless the Authority against all claims whatsoever and howsoever arising which may at any time arise out of the failure on the part of the Supplier to comply with the requirements of this Condition 16.5.

15.6 The Supplier authorises the Authority to use all the information provided pursuant to Condition 16.2 for the purposes of its business or for use in retendering the Services. The Authority shall treat such information as confidential to itself and its advisors, save as required by law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Services in succession to the Supplier.

15.7 The Supplier shall not during the final twelve (12) months of the Term or during the final twelve months of any extension to this Agreement:

- a) undertake a reorganisation of staff employed in the performance of this Agreement or working methods other than in accordance with a scheme that has been submitted to and approved in writing by the Authority;
- b) award any pay rise which exceeds the annual rate of inflation without first having obtained the written consent of the Authority;
- c) agree or implement any alteration to the terms and conditions on which staff are employed on the Agreement without first having obtained the written consent of the Authority; or
- d) increase or decrease the number of employees employed in connection with the Services other than as discussed and agreed with the Authority.

15.8 Until handover of the Services to a new supplier following expiry or termination of this Agreement, the Supplier shall provide sufficient personnel to fulfil its obligations under this Agreement. Failure to comply with this Condition 16.8 shall be deemed a material breach of Agreement by the Supplier. Without prejudice to any other remedies available to the Authority, the Supplier shall indemnify the Authority against any liability or costs incurred arising from failure to comply with this Condition 16.8.

CONTRACT MANAGEMENT

16. REPORTING AND MEETINGS

- 16.1 The Supplier shall provide the management reports in the form and at the intervals set out in Schedule 4.
- 16.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 4 and the Supplier shall, at each meeting, present its previously circulated Management Reports and Financial Reports in the format set out in that Schedule.

17. MONITORING

- 17.1 The Authority may monitor the performance of the Services by the Supplier.
- 17.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 17.1 at no additional charge to the Authority.

18. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 18.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 18.2 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Authority's Authorised Representative quarterly on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
 - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.

- 18.3 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 18.2 shall be addressed by the parties using the Change Control Procedure.
- 18.4 The Authority may not require a Minor Variation (other than Minor Variations arising out of a change in Law):
- 18.4.1 which requires the Services to be performed in a way that infringes any Legislation or is inconsistent with Good Industry Practice;
 - 18.4.2 which would materially change the nature of any of the Services already being provided by the Supplier to the Authority;
 - 18.4.3 would extend the scope of the contract considerably;
 - 18.4.4 change the economic balance of the contract if favour of the Supplier which was not provided for;
 - 18.4.5 which it would materially and adversely affect the health and safety of any person;
 - 18.4.6 which would require the Supplier to implement the Minor Variation in the Services in an unreasonable period of time; or
 - 18.4.7 implementation of which the Authority does not have the legal power or capacity to require.
 - 18.4.8 Each Variation Order shall contain details of the Minor Variation proposed, a timetable for its implementation and details of the likely impact on the Services.
 - 18.4.9 The Supplier's Authorised Representative will be responsible for reviewing and agreeing Variation Orders.
- 18.5 Subject to clause 19.6 below, a Minor Variation will be considered to be approved by both Parties once the Variation Order requesting it has been signed by or on behalf of both parties by their respective Authorised Representatives.
- 18.6 Each party will use its reasonable endeavours to procure that its Representative expedites its review and agreement of Variation Orders. The

Supplier shall only be entitled to object to a proposed Minor Variation on the following grounds:

18.6.1 that it does not constitute a Minor Variation;

18.6.2 that it falls within one of the categories of Minor Change set out in clause 19.4 above.

18.7 Where the Authority proposes a variation to this Agreement which is not a Minor Variation, or the Supplier proposes any variation to this Agreement, such variation shall not be effective or binding unless recorded in writing and signed by a duly authorised representative of both parties.

19. DISPUTE RESOLUTION

19.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's senior officers and the Supplier's senior officers who shall attempt in good faith to resolve it; and
- (c) if the Authority's senior officers and the Supplier's senior officers are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

19.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under *clause 44* which clause shall apply at all times.

20. SUB-CONTRACTING AND ASSIGNMENT

- 20.1 Subject to clause 20.3, the Supplier shall not assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of The Authority, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority.
- 20.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
- (a) procure that the Sub-Contractor enter into a Collateral Warranty in favour of the Authority in the form appended hereto in Schedule 9.
 - (b) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (c) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
 - (d) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
- 20.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

LIABILITY

21. INDEMNITIES

The Supplier shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its Representatives (excluding any Supplier's Personnel).

22. LIMITATION OF LIABILITY

22.1 Subject to *clause 22.3*, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

22.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

22.3 [Subject to *clause 22.4*, the Supplier's total aggregate liability:

(a) is unlimited in respect of:

- (i) the indemnities in *clause 22*;
- (ii) any breach of *clause 32*; and
- (iii) the Supplier's wilful default.

(b) in respect of Service Credits, is limited, in each Contract Year, to 100% of the Charges that are payable by the Authority in the applicable Contract Year; and

(c) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed, 100% of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.

22.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

23. INSURANCE

23.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £10,000,000.00 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000.00 in relation to any one claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000.00 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, 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 Supplier.

23.2 The Supplier 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 Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

23.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

23.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

23.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

24. INFORMATION

FREEDOM OF INFORMATION

THE SUPPLIER ACKNOWLEDGES THAT THE AUTHORITY IS SUBJECT TO THE REQUIREMENTS OF THE FOIA AND THE EIRS. THE SUPPLIER SHALL:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

24.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

25. DATA PROTECTION

25.1 The Supplier shall (and shall procure that any of its Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

25.2 Notwithstanding the general obligation in clause 25.1, where the Supplier is processing Personal Data as a Data Processor for the Authority, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;
- (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 25.2; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

25.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

25.4 Any drawings, specifications or other data completed or provided in connection with this Contract shall become or, as the case may be, remain the property of the Authority and cannot be used for any other purpose other than discharging the service, unless confirmed by the authority in writing.

26. CONFIDENTIALITY

26.1 Subject to clause 26.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to third party and only use such confidential information in connection with the performance of the Agreement and (in accordance with the provision of the Non-Disclosure Agreement appended hereto in Schedule 10) of any matters relating hereto.

26.2 Clause 26.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 24.2 shall apply to any disclosures required under the FOIA or the EIRs;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 26.1;
- (d) by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 19;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

- (g) by the Authority to any other department, office or agency of the Government; and
- (h) by the Authority relating to this agreement and in respect of which the Supplier has given its prior written consent to disclosure.

26.3 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority's employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

27. AUDIT

27.1 During the Term and for a period of 6 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services [at the level of detail agreed in 2 (Payment)];
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Supplier's compliance with the DPA, the FOIA, in accordance with clause 25 (Data Protection) and clause 0 (Freedom of Information) and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) to carry out an 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;
- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

27.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 27 more than twice in any calendar year.

27.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

27.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- (c) access to the Supplier's Personnel.

27.5 The Authority shall endeavour to (but is not obliged to) provide at least 10 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.

27.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

27.7 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 30 days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 30 days.

28. INTELLECTUAL PROPERTY

28.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

28.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

TERMINATION

29. TERMINATION FOR BREACH

29.1 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:

- (a) if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 29.1 if the Supplier has failed to remedy such breach to the satisfaction of the Authority within 25 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
- (b) if a breach or series of breaches of KPIs totalling 3 points (as determined in accordance with Schedule 3) or more is made over two consecutive months;
- (c) if a Catastrophic Failure has occurred;
- (d) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.

29.2 The Authority may terminate this agreement in accordance with the provisions of clause 29 and *clause 32*.

29.3 If this agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

29.4 The Supplier may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

30. TERMINATION ON NOTICE

30.1 Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time by giving 3 months' written notice to the Supplier.

30.2 The Authority on reasonable notice can terminate the Agreement if;

30.2.1 the Agreement has been subject to a substantial modification which would require a new procurement exercise under Regulation 72(9) of the Public Contracts Regulations 2015

30.2.2 the Supplier at the time of the contract award, has committed an offence under Regulation 57 (1) and (2) of the Public Contract Regulations 2015.

30.2.3 the contract should not have been awarded in view of a serious infringement of the obligations under the Treaty of the European Union and the Public Contract Regulations 2015 that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union. Clause 34. will apply to this clause 31.2.

31. FORCE MAJEURE

31.1 If a Force Majeure event arises on or following the date of this Agreement (irrespective of the fact that this Agreement may then be conditional) which directly causes the Supplier to be materially unable to comply with any of its obligations hereunder, the Supplier and the Authority may agree such terms as are appropriate for the continued performance of the Agreement. If no such terms are agreed within one month of the commencement of the said event, and such event is continuing or its consequence remains such that the Supplier is materially unable to comply with its obligations, the Parties hereby agree that the Agreement shall thereupon terminate, subject to the provisions

of Condition 31 (Termination). Failure by the Supplier to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract

31.2 The events which are to be classified as Force Majeure events shall include each of the following:

- 31.3
- a) war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
 - b) nuclear, chemical or biological contamination of the Supplier's property arising from any of the events at (a) above;
 - c) riot, flood or earthquake; or
 - d) any circumstances beyond the reasonable control of either of the parties.

31.4 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

31.5 The Supplier cannot claim relief if the Force Majeure Event is attributable to the Supplier's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

31.6 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.

31.7 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event

and to facilitate the continued performance of this agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

31.8 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 this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

31.9 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than one month.

32. PREVENTION OF BRIBERY

32.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, 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.

32.2 The Supplier shall not during the term of this agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

32.3 The Supplier shall during the term of this agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are

adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

- (b) keep appropriate records of its compliance with its obligations under *clause 32.3(a)* and make such records available to the Authority on request.

32.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of *clause 32.1* and/or *clause 32.2*, or has reason to believe that it has or any of the Supplier's Personnel 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 this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

32.5 If the Supplier makes a notification to the Authority pursuant to *clause 32.4*, the Supplier 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 in accordance with *clause 27*.

32.6 If the Supplier is in Default under *clause 32.1* and/or *clause 32.2*, the Authority may by notice:

- (a) require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default; or
- (b) immediately terminate this agreement.

32.7 Any notice served by the Authority under *clause 32.6* 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 elected to take (including, where relevant, the date on which this agreement shall terminate).

33. CONSEQUENCES OF TERMINATION

- 33.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.
- 33.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier's [Authorised Representative or Chief Executive Officer] shall certify full compliance with this clause.
- 33.3 The provisions of clause 6.3 (provision of records), clause 21 (Indemnities), clause 23 (Insurance), clause 24 (Freedom of Information), clause 25 (Data Protection), clause 27 (Audit), clause 29 (Termination for Breach) and this clause 33 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

34. INFORMATION ON RETENDERING

If requested to do so by the Authority the Supplier shall provide to the Authority at no additional charge any and all relevant information in its possession to permit the Authority to prepare the necessary documentation in respect of any tendering of the Services. The information required shall be sufficient to enable the Authority to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise.

35. CONFLICTS OF INTERESTS

- 35.1 In undertaking the Services, the Supplier shall at all times act in the best interests of the Authority and shall at no time subordinate or otherwise undermine the Authority's interests to the advantage of its own interests or those of any third party.
- 35.2 The Supplier shall immediately notify the Authority in writing upon becoming aware of any actual or potential conflict of interest between the interests of

the Authority and itself or any other client or prospective client and will take all necessary steps to remove or avoid the cause of such conflict of interest to the satisfaction of the Authority.

36. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

37. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

38. SEVERABILITY

38.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

38.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

39. PARTNERSHIP OR AGENCY

39.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

39.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

40. THIRD PARTY RIGHTS

Unless expressly stated nothing in this Agreement or any agreement referred to herein will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties to this Agreement.
Publicity

40.1 The Supplier shall not and shall procure that any member of the Supplier's Personnel or Sub-Contractor shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

40.2 The Supplier shall not and shall procure that any member of the Supplier's Personnel or Sub-Contractor shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Agreement without the prior written approval of the Authority.

41. NOTICES

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

41.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- (c) if sent by fax, at 9.00 am on the next Working Day after transmission.

41.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall include e-mail.

42. ENTIRE AGREEMENT

42.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

42.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

43. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

44. GOVERNING LAW

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

45. JURISDICTION

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

This agreement has been entered into on the date stated at the beginning of it.

SIGNED for and on behalf of

SIGNED for and on behalf

Care Quality Commission

Methods Analytics



Position CHIEF EXECUTIVE. Position MANAGING DIRECTOR

Schedule 1

Specification

THE REQUIREMENT

The services required and estimated volumes are outlined below.

INDEPENDENT HEALTHCARE REQUIREMENTS

Background to Independent Healthcare provider type, current data sources and templates

In designing our approach to regulating independent providers of health care, we have aligned as many elements as possible with that for NHS services. This is so that we treat providers equally when they deliver similar types of services, but at the same time, we ensure that we have tailored our approach to each sector and type of service where there are differences that need to be taken into account. These differences primarily manifest themselves in the types of providers we regulate, and the type and amount of intelligence available to us to do so.

When describing the types of provider in relation to this procurement, CQC refers to healthcare providers that are private, voluntary or not-for-profit organisations and individuals, which are not owned or managed by the NHS. They may provide healthcare services that are contracted by the NHS, paid for by individual patients or through healthcare insurance schemes, or a mix of these funding arrangements.

This contract covers independent providers of acute, mental health, community health, and substance misuse services, and the supplier will undertake analytical support for the inspection of each of these services. These inspections require a different level of analytical support based on both the amount of available intelligence for the provider type, and also the size and complexity of the individual provider.

Independent acute providers are sub-categorised into: hospitals, single specialty services, and non-hospital acute services. Each of these sub-categories require a different level of analytical support, ranging from one analyst-day for a typical single specialty service, to ten analyst-days for a typical independent acute hospital. Typical mental health and community health inspections take between five and ten analyst-days, and substance misuse service inspections a day.

The data sources used in the production of data packs for inspections of independent health providers include:

- The Department of Health
- NHS England
- National Patient Safety Agency
- HSCIC
- Data requested directly from the provider
- Data already held by CQC about the provider

Standard/Core analytical services required

The standard requirement for this contract is to provide analytical support for all CQC inspections of independent providers of acute, mental health, substance misuse, and community health services from July 2015 to the end of the 2016/17. This support will take the form of:

- Distributing a standardised pre-inspection information request for each provider
- Designing improvements to the PIR over the course of the contract (in collaboration with CQC)
- Analysing the pre-inspection information supplied directly by the provider being inspected
- Providing a standardised data pack within a specific timeframe before inspection
- Fielding factual accuracy queries from the provider as a result of them being given access to a draft version of the data pack
- Agreeing with the inspection leaders any bespoke analysis required before the on-site inspection days
- Communicating the key messages from the analysis of the available intelligence to the inspection team. This communication takes place over an online meeting, and sets out the implications for the inspection of the results of the analysis
- Providing analytical support during the on-site period (provided remotely as standard, but with the potential for on-site support by prior agreement)
- Providing responses to analytical queries during the post-inspection report writing phase

As CQC's approach to inspecting independent providers of care and the analytical support required to do so develops and evolves, it is expected that the successful supplier will flex the analytical model to ensure that inspections are provided with the support needed. Any changes to the model will be discussed with the successful supplier prior to implementation and in the spirit of co-production. Indeed, we expect that the successful supplier will identify and recommend improvements to the analytical support model.

Bespoke analytical services required

Part of the standard analytical service requirement above is to agree with the inspection leaders on any bespoke analysis required. For example, this could take the form of conducting some specific analysis on a new document received from the provider being inspected, or providing some deeper analysis on a particular theme if it is to be a specific focus of the inspection.

Whilst bespoke analysis could be required for any inspection, it is anticipated that only a minority of inspections will need analysis conducting above and beyond the standard requirement.

Overall management of this sector

The successful supplier will project manage the delivery of the analytical support for this sector. This will include:

- Liaising with the CQC team responsible for setting the future schedule of inspections
- Planning the work required to undertake the analytical support for each of the inspections on this schedule. These plans will be produced in advance of each quarter and will be subject to approval by CQC
- Liaising with the inspection team to agree any bespoke work needed
- Allocating sufficient resources to perform the work required, including contingency arrangements in the event of unexpected circumstances (for example, staff illness)
- Ensuring that products are produced to quality, including arranging for the appropriate level of quality assurance checks to be completed before delivery
- Tracking the progress of the analytical work to ensure that the agreed deadlines are met
- Tracking and reporting on risks to delivery
- Producing weekly reports on progress, risks and issues (and extra-ordinary reports when requested by CQC)
- Collating improvement and development ideas for the delivery of the analytical support

Schedule of Inspections

The supplier will manage and oversee all inspection analysis activity for independent healthcare providers from September 2015 to August 2017. That is:

1. Inspections of all independent acute services, for the period September 2015 to August 2017
2. Inspections of all independent mental health services, for the period September 2015 to August 2017.
3. Inspections of all independent substance misuse services, for the period September 2015 to August 2017.
4. Inspections of all independent community health services for the period September 2015 to August 2017.

Contract Volumes

The volumes below are estimated on the number of inspections required across the different sectors and provider types (i.e. independent or NHS). The amount of support required will vary dependent upon the size and complexity of the location being inspected.

The estimated volumes are:

- approx. 400 inspections of independent acute hospital services
- approx. 610 inspections of acute single specialty services
- approx. 170 inspections of independent mental health services
- approx. 105 inspections of independent health community services

- approx. 280 inspections of substance misuse service

NHS TRUST INSPECTION REQUIREMENTS

Background to NHS provider type and current data sources

CQC will undertake the overall management of analytical support for inspections of NHS acute trusts. CQC will however require a support on a minimal number of inspections through each quarter in 2015/16 in order to deliver our commitment to complete a comprehensive ratings inspection of all NHS acute trusts by the end of March 2016.

Where the Provider Analytics (Hospitals) team identify that support is required the supplier will be required to undertake specific elements of the core/standard and bespoke requirements for inspections.

The data sources used in the production of data packs for inspections of independent health providers include:

- The Department of Health
- NHS England
- Hospital Episodes Statistics
- NHS Staff, inpatient, and A&E surveys
- Audits (such as ICNARC, NCDAAH, and the National Neonatal Audit Programme)
- National Patient Safety Agency
- Health and Social Care Information Centre
- Data requested directly from the provider
- Data already held by CQC about the provider

Standard/Core analytical services required

Whilst CQC will be responsible for the overall management of the NHS acute inspections, the supplier will be required to provide support to a minimal number of inspections during 2015/16. The supplier may be asked to undertake the entire inspection analysis process or potential elements of that process.

Bespoke analytical services required

CQC will also require a minimal amount of bespoke analysis during 2015/16 in support of NHS acute inspections. This could be required either pre-inspection, during inspection or post-inspection. It is anticipated that the supplier will conduct interpretative analysis on one or more sections of the data packs provided to the inspection team before the inspection starts. CQC may also require that the supplier

provide some of the analytical support during the on-site period, and the post-inspection report-writing phase.

Overall management of this sector

The overall management of the analytical support for NHS acute inspections will be conducted by CQC. Where there is a requirement for support to NHS acute inspections, CQC will advise the supplier in advance of the quarter in which the inspection falls of the services required.

The supplier will be required to work alongside CQC analytical team in ensuring the services are provided to the required standard and the agreed timelines.

Schedule of Inspections

We anticipate requiring analytical support for up to approximately 10 NHS inspections per quarter, in financial quarters 2 to 4 of 2015/16.

AUTHORITY RESPONSIBILITIES

CQC will provide the framework and quality standards for the provision of analytical support for each type of inspection, including content, data pack design, and communication. CQC will also provide a framework for the evaluation of the effectiveness of the delivery of analytical services. CQC's Senior Responsible Officer for this contract will be the Director of Intelligence.

CONTRACTOR RESPONSIBILITIES

The supplier will:

- Provide CQC with a main point of contact to act as CQC's Account Manager.
- Produce plans in respect of quality and timeliness for delivery of inspection support for each quarter in advance of the start of that quarter, and put in place processes to monitor performance against those plans
- Provide a weekly report on progress, including the status of each inspection being worked on, the planning for upcoming inspections, and any risks to delivery or quality
- Provide extra-ordinary reports on delivery and progress as required by CQC's contract manager
- Attend project meetings and problem solving sessions as required by CQC's contract manager. It is envisioned that these will be weekly initially with the assumption that they will move to a lesser frequency as the project moves to a business as usual state
- Perform quality assurance on all aspects of delivery, and report to the PAH management team on the same
- Undertake day to day management of the contractor resources and delivery
- Identify opportunities for continuous improvement to the quality and efficiency of the delivery of the service

- Contribute to the analysis of CQC's delivery of its inspection and ratings programmes (focussing on the analytical services provided)
- Treat all data and information passed to it as being classified as 'official sensitive' and put in place sufficiently secure processes to handle them accordingly. As such tenders must include:
 - An overview of the tenderer's security standards, procedures and policy;
 - Evidence of the tenderer's certification to ISO27001 (or similar equivalent standards) and any other security related certifications such as PCI DSS (or similar equivalent).
 - Confirmation of the scope of, any outstanding recommendations from, penetration testing or IT health checks carried out by an independent 3rd party security company.
- Process commercially sensitive data with appropriate degrees of protective security
- Put in place appropriate measures to protect against any conflict of interests
- Ensure a plan for business continuity is maintained in respect of supporting IH inspections.
- The supplier will also be required to:
 - Receive data pertaining to each inspection (for example, an individual PIR) via FTP.
 - Store all data and analysis for the life of the contract for each inspection
 - Provide CQC with secure access (via FTP) to any data collected and any analysis undertaken through the life of the contract on request
 - Provide CQC with all data and analysis files at the end of the contract life-span via FTP, structured and grouped by inspection
 - Delete and electronically shred all data and analysis at the end of the contract (after supplying to CQC as above), and provide written confirmation to CQC of the same.

SKILLS AND KNOWLEDGE TRANSFER

The supplier must ensure that any learning and any development opportunities are documented and communicated to CQC. This must not be restricted to the end of the contract period, but instead must occur via the quarterly programme reports.

Areas for development should include (but not be limited to):

- Improvements to the data pack production process, including the pre-inspection intelligence requested from each provider
- Improvements to the intelligence contained in the data pack, with specific attention to qualitative intelligence
- Improvements to the provision of ad hoc analysis, including how the analysis is conducted and how best to respond to requests

SCHEDULE 2 CHARGES AND PAYMENT

Core Analytical Services in Independent Healthcare Inspections

	Independent Healthcare - 0 to 500 inspections	Independent Healthcare - 501 to 1000 inspections	Independent Healthcare - 1001 to 1500 inspections	Independent Healthcare - 1501 to 2000 inspections	Independent Healthcare - 2001 to 2500 inspections	Independent Healthcare - 2501 + inspections
Activity	£ (excluding VAT)	£ (excluding VAT)	£ (excluding VAT)	£ (excluding VAT)	£ (excluding VAT)	£ (excluding VAT)
Pre-Inspection Analytical Services						
During Inspection Analytical Services						
Post Inspection Analytical Services						
Any additional costs (please specify)						
Total Cost (excluding VAT) £	£428,857	£372,970	£372,970	£372,970	£372,970	£372,970

Core Analytical Services in NHS Trust Inspections

	NHS Trust Inspections - 0 to 15 inspections	NHS Trust Inspections - 16 to 30 inspections	NHS Trust Inspections - 31 to 45 inspections	NHS Trust Inspections - 46+ inspections
Activity	£ (excluding VAT)	(excluding VAT)	(excluding VAT)	(excluding VAT)
Pre-Inspection Analytical Services				
During Inspection Analytical Services				
Post Inspection Analytical Services				
Any additional costs (please specify)				
Total Cost (excluding VAT) £	£117,765	£75,900	£75,900	£75,900

Management Fee

all elements of the management fee	£ (excluding VAT) per month	£ (excluding VAT) per annum
Project management		£
Weekly Web conference		£
Quarterly planning with CQC		£
Resource Management		£

Analytical Day Rates

Description of Role/Grade	Day Rate £ (excluding VAT)
Director	
Manager	
Senior Analyst	
Analyst	
Senior Developer	
Junior Developer	
Data Administrator	
Project Support	

Schedule 3 Performance regime

Part 1: Key Performance Indicators (“KPIs”)

The Supplier will be expected to deliver services in line with the Key Performance Indicator’s (KPI’s) outlined below. These are the minimum key performance indicators which will be used to measure the success of this Contract.

The KPI’s are categorised as critical and non-critical and the supplier will be expected to report on meeting these on a monthly basis.

CQC reserves the right to use the performance data associated with this as a means to measure the Supplier’s performance against the Agreement and these will be used to determine the appropriate remedy applicable under the Agreement.

Performance will be score on a points system, with a failure to meet a Critical KPI (equating 3 points) and Non-Critical (equating 1 point). If a breach totalling 3 points or more is made over two consecutive months then the Supplier will be in breach of the terms of Agreement and a remedy or remedies under the Agreement may be applied. A Breach can be made up of either one Critical breach or a series of non-critical breaches or a combination of both critical and non-critical breaches.

The Supplier shall be paid on a per inspection basis with retention of 5% of monthly invoice value to be paid in the following month upon successful performance against KPIs. Therefore, if they fall under a breach of KPIs relevant to an inspection the Authority will withhold this payment in accordance with Clause 12 of the Agreement, until the issue has been resolved or alternatively the breach/es may instigate other penalties within the Agreement including termination for breach.

These will be determined via a mechanism of “requires action” and or “contract action notices”.

All reports showing adherence to Key Performance Indicators and Management Information is to be sent to the Authority’s Contract/Service Manager.

No.	Key Performance Indicator	Category	Target
1	<p>Attendance of meeting by Methods Analytics</p> <p>Denominator: Total number of meetings required to be attended</p> <p>Exceptions:</p> <ul style="list-style-type: none"> 1) CQC Cancellation of meeting 2) Major transport disruptions i.e. strikes; for face to face only 3) Unavailability of key members for short notice meetings i.e. <48 hours’ notice 	Critical	97%

2	<p>Phone calls responded to within 1 hour</p> <p>Numerator: Number of phone calls responded to within 1 hour</p> <p>Denominator: Total number of phone calls</p> <p>Exceptions: 1) Network Outages (mobiles will be used for mitigation)</p> <p>2) Where call is not answered within 1hr window</p> <p>Notes: Time start is logged as the call arrival time + time taken on call. End time is logged as time Methods Analytics make and outgoing call to the client.</p>	Critical	95%
3	<p>Emails responded to within 1 hour</p> <p>Numerator: Number of emails responded to within 1 hour</p> <p>Denominator: Total number of emails</p> <p>Exceptions: 1) Emails sent out of the hours of 09:00 – 17:00 (response will be by 10:00 the following or same day)</p> <p>Notes: Time starts when email arrives in inbox, and ends with the recorded time in sent items.</p>	Critical	95%
4	<p>Proportion of general queries Methods Analytics resolved within 24 hours</p> <p>Numerator: Number of general queries resolved to within 24 hours</p> <p>Denominator: Total number of general queries</p> <p>Exceptions: Where the CQC contract manager agrees that a resolution could not have been achieved within 24 hours</p> <p>Notes: Query can arrive by email or via a telephone call where start time will be logged. 'General' query will mean anything not directly relating to an individual PIR or Data Pack.</p>	Non Critical	95%
5	<p>Proportion of simple queries resolved by Methods Analytics within 48 hours</p> <p>Numerator: Number of simple queries resolved within 48 hours</p> <p>Denominator: Total number of simple queries</p> <p>Exceptions: 1) Queries arriving out of hours – clock will start at 09:00 on the following working day.</p> <p>2) Where the CQC contract manager agrees that a resolution could</p>	Non Critical	95%

	<p>not have been achieved within 48 hours</p> <p>Notes: Complexity of each query will be agreed with the client in response to a call or email to set expectations. However, simple queries will usually relate to issues such as changing a colour, font, or data value in a data pack, or questions of clarification on analysis conducted</p>		
6	<p>Proportion of complex queries resolved by Methods Analytics within 5 days</p> <p>Numerator: Number of complex queries resolved within 5 days</p> <p>Denominator: Total number of complex queries</p> <p>Exceptions: 1) Queries arriving out of hours – clock will start at 09:00 on the following working day.</p> <p>2) Where the CQC contract manager agrees that a resolution could not have been achieved within 5 days</p> <p>Notes: Complexity of each query will be agreed with the client in response to a call or email to set expectations. However, complex queries will usually relate to issues such as adding new data streams to a data pack, or providing summary analysis or reports across inspection activity.</p>	Non Critical	95%
7	<p>Proportion of acute provider PIRs where Methods Analytics has informed NCSC 12 weeks prior to inspection</p> <p>Numerator: Number of acute provider PIRs where Methods Analytics have instructed the NCSC to send out a PIR 12 weeks prior to inspection.</p> <p>Denominator: Total number of acute provider inspections</p> <p>Exceptions: 1) Request not sent by NCSC after two notifications by Methods Analytics</p> <p>2) CQC delay in providing quarterly schedule</p> <p>3) Inspection planned within 12 weeks of inspection start date</p> <p>4) CQC contract managers confirms that the focus of the inspection had not been agreed within 12 weeks before the inspection start date</p> <p>5) CQC direction that a PIR is not required for an inspection</p>	Critical	98%
8	<p>Proportion of independent community, mental health, and substance misuse service PIRs where Methods Analytics has informed NCSC 20 weeks prior to inspection</p> <p>Denominator: Total number of Independent community, mental health, and substance misuse service inspections</p> <p>Exceptions: 1) Request not sent by NCSC after two notifications by</p>	Critical	98%

	<p>Methods Analytics</p> <p>2) CQC delay in providing quarterly schedule</p> <p>3) Inspection planned within 20 weeks of inspection start date</p> <p>4) CQC contract managers confirms that the focus of the inspection had not been agreed within 20 weeks before the inspection start date</p> <p>5) CQC direction that a PIR is not required for an inspection</p>		
9	<p>Proportion of draft data packs provided by Methods Analytics for the provider at least 4 weeks prior to the scheduled start of an inspection</p> <p>Numerator: Number of draft data packs provided to the provider at least 4 weeks prior to the scheduled start of their inspection</p> <p>Denominator: Total number of inspections</p> <p>Exceptions: 1) Reason for delay is non-provision of required data by CQC</p> <p>2) CQC directs that a data pack is not required</p> <p>3) CQC cancels an inspection</p>	Critical	98%
10	<p>Proportion of facacc issues received from the provider regarding the draft data pack that are resolved before the due date of final data pack</p> <p>Numerator: Number of facacc queries resolved</p> <p>Denominator: Number of facacc queries received</p> <p>Exceptions: 1) Provider comment does not require change to final report (no resolution possible as the provider's comment does not require a change to the content of the data pack)</p>	Critical	98%
11	<p>Proportion of final data packs provided by Methods Analytics for the provider at least 2 weeks prior to the scheduled start of an inspection</p> <p>Numerator: Number of final data packs provided to the team/provider at least 2 weeks prior to the scheduled start of the inspection</p> <p>Denominator: Total number of inspections</p> <p>Exceptions: 1) Reason for delay is non-provision of required data by CQC</p> <p>2) CQC directs that a data pack is not required</p> <p>3) CQC cancels an inspection</p>	Critical	98%

12	<p>Proportion of pre-inspection briefings given to the inspection team by Methods Analytics via an online or teleconference meeting, detailing the key messages from the pre-inspection analysis and the implications for the inspection.</p> <p>Numerator: Number of pre-inspection briefings given to inspection team via an online or teleconference meeting</p> <p>Denominator: Number of inspections</p> <p>Exceptions: 1) Inspection team not available for an online meeting</p> <p>2) Inspection team cancel or no longer require briefing.</p>	Critical	98%
13	<p>Proportion of queries responded to by Methods Analytics within a period of 48 hours both pre and post inspections.</p> <p>Numerator: Number of queries responded to within 48 hours</p> <p>Denominator: Total number of queries</p> <p>Exceptions: 1) Queries arriving out of hours – clock will start at 09:00 on the following working day</p>	Critical	97%
14	<p>Proportion of requests for clarification on existing data pack contents provided within 4 working hours by Methods Analytics</p> <p>Numerator: Number of responses provided to inspectors regarding clarification on existing data pack contents within 4 working hours.</p> <p>Denominator: Total number of requests for clarification on existing data pack contents</p> <p>Exceptions: 1) Queries arriving out of hours – clock will start from 09:00 on the following working day.</p>	Critical	98%
15	<p>Proportion of requests for additional bespoke analysis provided within 24 hours by Methods Analytics</p> <p>Numerator: Number of requests for additional bespoke analysis delivered within 24 hours</p> <p>Denominator: Total number of requests for additional bespoke analysis</p> <p>Exceptions: 1) Data not available for analysis</p> <p>2) Queries arriving out of hours – clock will start from 09:00 on the following working day.</p>	Critical	98%
16	<p>Proportion of inspections where a relevant complaint was received from the Authority Inspection Team regarding the analytical service provided</p> <p>Numerator: Number of inspections where a relevant complaint was received from the Authority Inspection Team regarding the</p>	Critical	<3%

	<p>analytical service provided for the quarter</p> <p>Denominator: Total number of inspections in the quarter</p> <p>Exceptions: 1) Upon review with CQC, it is agreed that the complaint was not in the control of Methods Analytics to prevent or have no responsibility for the complaint.</p>		
17	<p>Proportion of inspections where a relevant complaint was received from Providers regarding the analytical service provided</p> <p>Numerator: Number of inspections where a relevant complaint was received from Providers regarding the analytical service provided in the quarter</p> <p>Denominator: Total number of inspections in the quarter</p> <p>Exceptions: 1) Upon review with CQC, it is agreed that the complaint was not in the control of Methods Analytics to prevent or have no responsibility for the complaint.</p>	Critical	<3%
18	<p>Proportion of analytical outputs in line with approved quality standards</p> <p>Numerator: Number of analytical outputs in line with approved quality standards (text, chart, document standard and value errors)</p> <p>Denominator: Total number of analytical outputs</p>	Critical	98%
19	<p>Percentage of data packs for which QA has been completed</p> <p>Numerator: Number of data packs that have had a full QA completed</p> <p>Denominator: Total number of data packs</p>	Critical	100%
20	<p>Proportion of required analytical support delivered end-to-end</p> <p>Numerator: Completed data pack delivery and inspection support</p> <p>Denominator: Total number of data packs and inspection support required within quarter</p>	Critical	100%
22	<p>Spend against management fee</p> <p>The following financial information will be displayed on the management dashboard for monitoring of finances and spend against management fee</p> <p><input type="checkbox"/> Total spend to date</p> <p><input type="checkbox"/> Forecast spend next month</p> <p><input type="checkbox"/> Forecast spend next quarter</p> <p><input type="checkbox"/> Spend on management fee next month</p>	Critical	100%

	<input type="checkbox"/> Spend on management fee next quarter		
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Schedule 4 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Authority or the Supplier sees a need to change this agreement, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in clause 18.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions clause 18 shall be undertaken entirely at the expense and liability of the Supplier.

2. PROCEDURE

- 2.1 Discussion between the Authority and the Supplier concerning a Change shall result in any one of the following:
- (a) no further action being taken; or
 - (b) a request to change this agreement by the Authority; or
 - (c) a recommendation to change this agreement by the Supplier.
- 2.2 Where a written request for an amendment is received from the Authority, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Supplier shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The

Authority shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Supplier.

2.5 For each Change Control Note submitted by the Supplier the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Supplier; or
 - (iii) notify the Supplier of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this agreement.

SCHEDULE 5 – FORM OF NON DISCLOSURE AGREEMENT

NON-DISCLOSURE AGREEMENT

This AGREEMENT is made on 7TH August 2015 between:

a) The Care Quality Commission (the “Disclosing Party”) whose address is Finsbury Tower 103-105 Bunhill Row London EC1Y 8TG and

b) Methods Analytics (the “Receiving Party”) with company number 08698156 whose registered office is at 16 St Martins le Grand, St Pauls, London EC1A 4EN (“Supplier”).

WHEREAS:

The parties agree to participate in this joint Non-Disclosure Agreement (“NDA”) to allow the Receiving Party to receive certain Commercial, Financial and Technical Confidential Information from the Disclosing Party relating to the [] (“the Services”). This NDA is supplemental to the Inspection Analysis Services Agreement (“The Agreement”).

NOW IT IS HERBY AGREED AS FOLLOWS:

1. For purposes of this NDA, “Confidential Information” shall mean any and all technical and non-technical information disclosed in writing, orally or by demonstration or delivery of tangible items by the Disclosing Party to the Receiving Party, including, data, trade secret and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, product plans, designs, procurement requirements, purchasing information, manufacturing information, customer lists, product and service costs, prices and names, financial information, business and marketing plans, business opportunities, research, experimental work, development design details and specifications, and personnel information, including confidential information disclosed by third parties. Without limiting the generality of the foregoing, Confidential Information shall include all information attached hereto. Also information disclosed by the Disclosing Party must be treated as Confidential Information by the Receiving Party if such information is conspicuously designated as “Confidential” (i) in writing, if communicated in writing, or (ii) confirmed in writing within thirty (30) days of disclosure if disclosed orally, by demonstration or by delivery of tangible items; and

provided further that Confidential Information shall not include information that:

- 1.1. is now or subsequently becomes generally available to the public through no fault or breach on the part of the Receiving Party;
- 1.2. the Receiving Party had rightfully in its possession prior to disclosure to the Receiving Party by the Disclosing Party;
- 1.3. is independently acquired by the Receiving Party as a result of work carried out by or for the Receiving Party by personnel to whom no disclosure of the relevant Confidential Information has been made;
- 1.4. is received from a third party having good legal title thereto and not under any obligation of confidentiality.

2. RECEIVING PARTY'S OBLIGATIONS

- 2.1 The Receiving Party shall ensure that it rightfully obtains without confidentiality restrictions from a third party who has the right to transfer or disclose it. If the Receiving Party claims that Confidential Information received by it is subject to any of the exclusions contained in clauses 1.1 through to 1.4 above, it shall have the burden of establishing the applicability of such exclusion by clear and convincing documentary evidence.
- 2.2 The Receiving Party shall hold and maintain the Confidential Information in strictest confidence and on trust for the sole and exclusive benefit of the Disclosing Party.
- 2.3 The Receiving Party shall not, without the prior written approval of the Disclosing Party in each instance or unless otherwise expressly permitted in this Agreement, use for its own benefit, publish or otherwise disclose to others, or permit others to use for their benefit or to the detriment of the Disclosing Party, any of the Confidential Information.
- 2.4 The Receiving Party shall carefully restrict access to the Confidential Information to those of its employees who clearly need such access in order to participate on behalf of the Receiving Party in the analysis and negotiation of a business relationship or any contract or agreement, or the advisability thereof, with the Disclosing Party and who are bound by written confidentiality agreements that protect third party information.
- 2.5 The Receiving Party shall not reproduce Confidential Information, in whole or in part, except as necessary for internal use, as provided in this Agreement, nor remove, or cause to be removed, any identification affixed to Confidential Information indicating its proprietary nature.
- 2.6 The Receiving Party may disclose Confidential Information only to the extent required by law, governmental or other regulatory authority or by court order or by any other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so gives the Disclosing Party sufficient prior notice of such request for the Disclosing Party to contest such requirement or order

or to obtain confidential treatment of the Confidential Information by the government, as applicable.

3. PROPERTY RIGHTS

- 3.1 The Receiving Party will not have rights in respect of the Confidential Information other as detailed in this NDA and the Agreement.
- 3.2 The Receiving Party acknowledges that any disclosure pursuant to this NDA, the Agreement and the provision of the Services shall not confer on the Receiving Party any intellectual property or other rights.

4. RETURN OF INFORMATION AND ANNOUNCEMENTS

- 4.1 The Receiving Party will immediately at the request of the Disclosing Party:
 - 4.1.1 return all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information and all copies thereof in the possession or control of the Receiving Party or will destroy the Confidential Information;
 - 4.1.2 erase all the Disclosing Party's Confidential Information from its computer systems; and
 - 4.1.3 certify in writing to the Disclosing Party that it has complied with the requirements of this clause provided that, the Receiving Party may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority, and to the extent reasonable to permit the Receiving Party to keep evidence that it has performed its obligations under the NDA. The provisions of this NDA shall continue to apply to any documents and materials retained by the Receiving Party.
 - 4.1.4 The Receiving Party shall keep confidential all Confidential Information it receives from the Disclosing Party. In particular the Receiving Party will not disseminate any such Confidential Information amongst its employees, agents, and representatives except to the extent strictly necessary for the performance of the Services.
- 4.2 If the Receiving Party develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Disclosing Party's Confidential Information, the Receiving Party shall, at the written request of the Disclosing Party, supply to the Receiving Party information reasonably necessary to establish that its Confidential Information has not been used or disclosed in order to develop or use that product or process.
- 4.3 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction.

5. ACKNOWLEDGEMENT

- 5.1 The Disclosing Party will not be held liable for any errors or omissions for the Confidential Information nor for any loss incurred by the Receiving Party either directly or indirectly through the use of or as a result of the use of the Confidential Information.
- 5.2 The Disclosing Party does not warrant or guarantee the accuracy or completeness of any information disclosed pursuant to this Agreement. Accordingly, the Disclosing Party shall have no liability to the Receiving Party or any other entity with respect to the accuracy, completeness or non-realisation of any information, including any estimates or projections, disclosed hereunder, nor for the use of, or any reliance on, such information.
- 5.3 The term of this NDA is, provided that the Receiving Party's duty to protect the Disclosing Party's Confidential Information shall survive expiration or termination of this Agreement and shall expire six (6) years from the date of disclosure.
- 5.4 The Receiving Party understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this NDA may cause the Disclosing Party irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that the Disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as the Disclosing Party shall deem appropriate, such right of the Disclosing Party to be in addition to the remedies otherwise available to the Disclosing Party at law or in equity.

6. INDEMNITY

- 6.1 The Receiving Party shall indemnify and keep fully indemnified the Disclosing Party at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Disclosing Party arising from any breach of this NDA by the Receiving Party and from the actions or omissions of any of its employees, agents or representatives not exceeding the value of £2,000,000.00.

7. MISCELLANEOUS

- 7.1 The Receiving Party will not export outside the United Kingdom, if a United Kingdom company, or re-export, if a foreign company, any Confidential Information or direct product thereof, except as permitted by the United Kingdom export laws and regulations there under or the laws of the applicable foreign jurisdiction.
- 7.2 Except as otherwise provided herein, this Agreement and the Receiving Party's obligations hereunder shall be binding upon the representatives, assigns and successors of the Receiving Party. The Receiving Party shall not transfer the Confidential Information, or any rights or obligations

hereunder, to any third party without the prior written consent of the Disclosing Party.

- 7.3 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 7.4 This Agreement shall be governed by and construed in accordance with the laws of England.
- 7.5 Any and all remedies herein expressly conferred upon a party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law on such party, and the exercise of any one remedy shall not preclude the exercise of any other.
- 7.6 This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and may not be amended or modified except in a writing signed by each of the parties hereto

IN WITNESS of which this NDA has been duly executed by the parties:

SIGNED for and on behalf of

SIGNED for and on behalf

Care Quality Commission

Methods Analytics



Position..... **CHIEF EXECUTIVE**

Position..... **MANAGING DIRECTOR**

SCHEDULE 6 – Key Personnel

The Key Personnel involved in this contract will be:

Org	Name	Role	Responsibilities
CQC			

Supplier Contract and Account Management

Org	Name	Role	Responsibilities
GS			
GS			