

HEALTHCARE COMMISSION (CHAI)

AND

**COLLEGE RESEARCH AND TRAINING UNIT (CRU),
ROYAL COLLEGE OF PSYCHIATRISTS**

CONTRACT REFERENCE: HC IA CA 008

AUDIT OF VIOLENCE IN MENTAL HEALTH SETTINGS

Version: 18 January 2006

**Statement of Agreement –
Contract HC IA CA 008**

AUDIT OF VIOLENCE IN MENTAL HEALTH SETTINGS

- I. This Agreement is made the 1st January 2006 between –
- The Commission for Healthcare Audit and Inspection (CHAI),**
- Finsbury Tower, 103-105 Bunhill Row, London EC1Y 8TG (The Healthcare Commission / The Client,) and –
- The College Research and Training Unit,** Royal College of Psychiatrists, whose registered address is - Royal College of Psychiatrists CRU, 4th Floor Standon House, 21 Mansell Street, London, E1 8AA (“the Supplier”).
- Whereas the Client wishes to engage the Supplier to participate in a service provision, as defined in the Service Definition as defined in Section 2 of the Contract and subject to the terms and conditions in Section 2 of the Contract.
- II. This Contract sets out the agreement between the Healthcare Commission and the Supplier for the audit of violence in mental health settings. It defines the responsibilities and obligations of both parties.
- III. This Contract is valid from 01/04/06 to 30/09/07.
- IV. This Contract will be monitored against the stated performance standards and quality criteria. Project deliverables are defined in section 3.1. Any additional documents that make up part of the Agreement are referred to in section 3.1.

Signatories:

On behalf of the Supplier

..... Date:

Name:..... Title:

On behalf of the Client

..... Date:

Name: Title:

1. Project Background

- 1.1 This Contract serves to clearly identify roles, responsibilities and commitments in the relationship between the Client and the Supplier in the implementation of a national audit of violence in mental health settings.
- 1.2 The majority of English and Welsh mental health trusts participated in the 2003-5 phase of the audit. However, trusts did not include every ward. Most of the wards that participated catered for working age adults. The results for the few old age mental health wards that participated suggest that there are particular problems in this setting. Levels of experienced and witnessed violence appear to be higher than in most other settings and staffing skills, levels, training and support do not seem to reflect the need. Levels of expressed concern amongst staff, service users, and visitors were also high. This finding is consistent with the Healthcare Commission's records of complaints about old age mental health wards.
- 1.3 A fourth wave of the National Audit of Violence, as covered by this contract, will:
- include every English NHS specialist mental health provider that manages psychiatric wards;
 - target wards that did not participate in wave 3 - each trust will be asked to enrol three such wards;
 - ensure that each trust involved at least one old age mental health ward;
 - invite participation from non-NHS providers that manage wards that provide care for NHS patients;
 - provide the Healthcare Commission with audit data to support its thematic review of acute psychiatric inpatient services planned for 2007.

2. Conditions of Contract

2.1 Interpretation

- 2.1.1 In the Contract the following definitions shall apply:

The Client shall have the meaning given in paragraph I of page 2 of the Contract.

Contract means the agreement concluded between the Client and the Supplier, including all specifications, IT infrastructure, methodology, plans, and other documents incorporated or referred to therein.

Contract Period means the period specified in Clause 2.3.2.

Background Intellectual Property means all Intellectual Property owned by a party, except Foreground Intellectual Property.

Foreground Intellectual Property means all Intellectual Property created or arising as a result of this Agreement.

Intellectual Property Rights means patents, trademarks, copyrights, rights to extract information from a database, design rights and all rights or forms of protection of a similar nature or having equivalent or the similar effect to any of

them which may subsist anywhere in the world, whether or not any of them are registered and including applications for registration of any of them and including Know How.

Know How means all technical and other information which is not in the public domain, including but not limited to information comprising or relating to concepts, discoveries, data, designs, formulae, ideas, inventions, methods, models, procedures, designs for experiments and tests and result of experimentation and testing, processes, specifications and techniques, laboratory records, clinical data, manufacturing data and information contained in submissions to regulatory authorities.

Material means all tangible and intangible items, including texts, data or any other information disclosed or stored in physical or electronic form.

Project means the audit of the quality of continence care services delivered to older people with urinary and faecal incontinence to be carried out by the Supplier pursuant to this Contract.

The Supplier shall have the meaning given in paragraph 1 of page 2 of the Contract.

The Contract Price means the price exclusive of value added tax that is payable to the Supplier by the Client under the Contract for the full and proper performance by the Supplier of its part of the Contract.

The Service Definition means the specification of the Services set out in Section 3 of the Contract.

The Services means the services and the goods that the Supplier is required to supply under the Contract as more particularly detailed in the Service Definition.

Personal Data has the same meaning as in section 1(3) of the Data Protection Act 1998.

2.1.2 Unless the context otherwise requires it, reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument.

2.1.3 The heading to these conditions shall not affect their interpretation.

2.1.4 Nothing in this Agreement shall constitute or be deemed to constitute a partnership or other form of joint venture between the parties or constitute or be deemed to constitute either party the agent or employee of the other for any purpose whatsoever.

2.2 Variation of conditions

2.2.1 The Services shall be supplied solely in accordance with the Contract. All other contractual terms which in any way add to, vary or contradict the contract upon which the Supplier may seek to rely or otherwise impose on the Client shall be excluded and shall not form part of the Contract (whether or not such other contractual terms post-date the Contract) unless the Client has specifically agreed in writing to be bound by any of such other contractual terms.

No later version shall be binding unless it has been agreed in writing and signed by an authorised representative of the Client.

2.2.2 The Client reserves the right to audit the work of the Supplier to verify that the ongoing work is being carried out in accordance with the Contract.

2.3 Performance

2.3.1 The Supplier shall carry out the Services to the satisfaction of the Client in accordance with the Service Definition and the performance indicators notified to the Supplier by the Client.

2.3.2 The Contract shall commence on 1st April 2006 and, subject to earlier termination in accordance with its provisions, shall expire on 30th September 2007.

2.4 Staff

2.4.1 The Supplier must ensure that sufficient staff are available to keep the project working to the timetable as set out in this Contract in section 3.1.

2.4.2 The Supplier must employ for the purposes of this Contract only such persons as are careful, skilled and experienced in the duties required of them and must ensure that every such person is properly and sufficiently trained and instructed and carries out the Services with regard to:

- the task that person has to perform
- all relevant provisions of the Contract
- all relevant rules, policies, procedures and standards of the Client
- fire risks and fire precautions
- the requirements of the Health and Safety at Work Act 1974 and other relevant legislation and codes of practice.

2.4.3 The Supplier shall in all the circumstances fully indemnify the Client in respect of any claim against it made by any of the Supplier's staff and in respect of any costs, expense, liability, loss or damage arising from such a claim, unless such a claim is due to negligence on the part of the Client or its employees.

2.4.3 The Client may instruct the Supplier to remove from work in connection with the Services any staff where the Client considers this is necessary on the grounds of public interest or patient care and the Supplier shall immediately comply with the instruction and provide substitute staff as soon as it is reasonably practicable.

2.4.5 By reason of The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), the provisions of Section (2) and paragraph (b) of Section (3) of the Rehabilitation of Offenders Act 1974, do not apply to persons whose employment is concerned with the provision of health services and which would enable such persons to have access to patients in the course of their normal duties and accordingly, the Supplier shall question any person proposed to be employed or seeking to be employed or engaged by it in and about the provision of the Services and who may reasonably be expected in the course of such employment to have access to patients concerning his or her previous convictions for offences of any description, and shall not without prior written approval of the Client employ or engage any such person who discloses any previous conviction or convictions in the provision of the Services.

2.4.6 The Supplier shall obtain satisfactory Criminal Records Bureau checks on all staff prior to the earlier of their appointment to any post involved in the provision of the Services or their undertaking any work in connection with the Services, where such staff may reasonably be expected in the course of such employment to have access to patients.

2.5 Termination

2.5.1 The Client reserves the right to terminate this Contract should the Supplier be unable or unwilling for any reason to continue with the provision of the Services or if in the reasonable opinion of the Client the Supplier is consistently failing to achieve an acceptable standard in relation to the Client (as defined by the achievement of the Project deliverables outlined in paragraph 3.1 of the Service Definition). The Supplier will be given reasonable opportunity to make good any failure in quality, or failure to meet timescales, before termination of the contract, as defined in section 2.5.2. If the Supplier consistently fails to meet the quality or timescales as set out in paragraph 3.1, the Client, in agreement with the Supplier, may choose to suspend payment until such time as the Supplier has met the requirement, rather than terminate the contract. Costs in the interim period will be met by the Supplier.

2.5.2 Either party may at any time and from time to time by notice in writing terminate this Contract without liability for any damage, loss or expenses arising as a result of or in connection with such termination if:

- either party materially breaches the Contract and if:
 - a) the breach is capable of remedy and the defaulting party shall have failed to remedy the breach within 30 (thirty) days of written notice being sent to the defaulting party specifying the breach and requiring its remedy; or
 - b) the breach is not capable of remedy; or
- Force Majeure, as defined in Clause 2.24 exists for more than 4 months; or
- Any provision of this Contract (other than as previously specified in the preceding provisions of the Contract surrounding termination) expressly entitles the Client or the Supplier to terminate this Contract.

2.5.3 In addition to its rights under any other provision of the Contract the Client may terminate the Contract at any time by giving the Supplier six weeks written notice. Upon the expiration of the notice the Contract shall terminate without prejudice to the rights of the parties accrued to the date of termination.

2.6. Consequences of Termination

2.6.1 In the event of termination in accordance with Clauses 2.5.1 or 2.5.2 no financial compensation whatsoever shall be payable to the Supplier

2.6.2 In the event that the Client terminates this Contract pursuant to Clause 2.5.3, it shall indemnify the Supplier from and against all and any actual direct loss unavoidably incurred wholly by reason or in consequence of the termination provided that the Supplier takes all immediate and reasonable steps to:

- a) cancel all capital and recurring cost commitments;

- b) terminate all contracts with sub-contractors on the best possible terms;
 - c) reduce labour and equipment costs through redeployment as appropriate.
- 2.6.3 However, the Client will not pay any sum which, when taken together with any sums paid or due or becoming due to the Supplier under this Contract, will exceed such total sums as would have been payable under this Contract if the Supplier had fulfilled its obligations under this Contract. The Client shall not be responsible for any indirect or consequential loss or damage including loss of profit, loss of use, business, contracts, revenues or anticipated savings whether arising from tort, breach of contract or otherwise.
- 2.6.4 Termination of this Agreement, however caused, shall not:
- a) release either party from any duty or obligation of confidence which falls on it, its servants, agents, employees or former employees under this Contract or under the general law governing confidential information;
 - b) prejudice or affect any rights, action or remedy which shall have accrued before termination or shall accrue thereafter to any party.

2.7 Default by Supplier

- 2.7.1 Without prejudice to any other right or remedy, if the Supplier does not provide the services in accordance with the Service Definition or at the times specified in the Contract the Client may:
- require the Supplier to remedy the default within 3 days by providing or providing again (as the case may be) without further charge to the Client such part of the Services to the Service Definition
 - without terminating the whole of the Contract terminate the Contract in respect of part of the Services only and thereafter provide or procure the provision of such part of the Services itself
 - itself provide or procure the provision of the Services until it is satisfied that the Supplier is able to carry out the services in accordance with the Contract
 - terminate the Contract in accordance with Clause 2.6.
- 2.7.2 All or any of the remedies in Clause 2.7.1 may be exercised by the Client in respect of any default by the Supplier.

2.8 Price and payment

- 2.8.1 The Contract Price for the Services shall be net, i.e. after the deduction of all agreed discounts.
- 2.8.2 An invoice shall be rendered on the Supplier's own invoice form to the Client at the intervals as stated in the payment schedule set out in paragraph 4.3 of Section 4 and clearly marked with the Client's contract reference number and Client purchase order number
- 2.8.3 Invoices shall show the period and the amount of the Services for which payment is claimed together with the agreed charging rates and any other details the Client may determine as being part of the Service Definition.

- 2.8.4 The Client shall pay the Contract Price to the Supplier, by BACS (Bank Account Clearing System) if the Client so chooses, within 30 days of the receipt of the services or a valid invoice, whichever is later.
- 2.8.5 Whenever under the Contract any sum of money shall be recoverable from or payable by the Supplier the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under the Contract or under any other contract with the Client.

2.9 Indemnity and insurance

- 2.9.1 The Supplier shall indemnify the Client against any liability, costs, expenses, losses, claims or proceedings whatsoever arising under any statute or at common law or for breach of contract in respect of:
- (a) any damage to property, real or personal, including any infringement of third party Intellectual Property Rights; and
 - (b) any injury to persons, including injury resulting in death,
- arising out of or in the course of or in connection with or in respect of the provision of the Services, the Project, or any act, omission or default of the Supplier, its staff, agents or sub-contractors except in so far as such damage or injury shall be due to any act or neglect of the Client.
- 2.9.2 Any liability incurred by the Supplier under the Contract shall be limited to the portion of the contract price received by the Supplier at the date the liability incurred, or where covered by an appropriate insurance policy, such liability shall not exceed the single incident limit specified in that policy.
- 2.9.3 Neither party shall be responsible to the other party for any indirect or consequential loss or damage including loss of profit, loss of use, business, contracts, revenues or anticipated savings whether arising from tort, breach of contract or otherwise.
- 2.9.4 The Supplier shall promptly notify the Client if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of Intellectual Property Rights which might affect the Project.
- 2.9.5 The Supplier shall insure fully against its liability under Clause 2.9.1 and the Contract generally [in such sum as the Client may reasonably require].
- 2.9.6 Where possible, the Supplier shall note the interest of the Client on the policy of insurance referred to in Clause 2.9.3.
- 2.9.7 A reasonable time following a written request from the Client to do so, the Supplier shall produce to the Client evidence of compliance with Clauses 2.9.5 and 2.9.6.

2.11 Discrimination

- 2.11.1 The Supplier shall not unlawfully discriminate within the meaning of the Disability Discrimination Act 1995, the Sex Discrimination Act 1975 or the Race Relations Act 1976 or any enactment relating to discrimination in employment and shall at all times act in accordance with the Race Relations (Amendment) Act 2000 and take all reasonable steps to secure the observance of this condition by all its staff sub-contractors or agents employed in the performance of the Contract.

2.11.2 Without prejudice to the generality of Clause 2.11.1 above, the Supplier shall:

- in respect of all persons employed or seeking to be employed by the Supplier (whether in and about the provision of the Services or otherwise) comply with each and every one of the provisions of law which prohibit discrimination on the grounds of disability, sex, colour, race, ethnic or national origin or religion;
- ensure that the Client is not placed in breach of the said provisions of law by any of the Supplier's acts or omission or those of any person employed or engaged by the Supplier or of any sub-contractor or agent of the Supplier; and
- ensure that where the Supplier or the Client are subject to an investigation or other matter in relation to being in contravention or possible contravention of any of the said provisions of law the Supplier shall, free of charge, provide to the Client such information as the Client may request within the timescales given by the Client, attend meetings, provide access to relevant data and information and generally co-operate fully with the Client and any investigation taking place.

2.12 Severability

2.12.1 If any provision of the Contract is or becomes illegal, void or invalid, that shall not affect the legality and validity of its other provisions.

2.13 Waiver

2.13.1 The failure of either party to seek redress for breaches or to insist on strict performance of any provision of the Contract or the failure of either party to exercise any right or remedy to which it is entitled under the Contract shall not constitute a waiver thereof and shall not cause a diminution of the obligations under the Contract

2.13.2 No waiver of any provision of the Contract shall be effective unless it is agreed to by both parties in writing

2.13.3 No waiver of any default shall constitute a waiver of any subsequent default.

2.14 Accrued rights and remedies

2.14.1 Neither the expiration nor the termination of the Contract shall prejudice or affect any right action or remedy which shall have accrued or shall thereafter accrue either to the Client or to the Supplier.

2.15 Variation of services

2.15.1 The Client may at any time vary or add to the Service Definition in accordance with the Contract and no such variation or addition shall affect the continuation of the Contract.

2.15.2 The Client shall give the Supplier written notice of any variation or addition. The notice shall give details of the variation or addition. The variation will be discussed at the next project review meeting scheduled to be held between the Client and the Supplier, and a revised project plan will be mutually agreed. Adjustments to the deliverables, timetable and costs will be agreed as required and made part of the contract terms.

2.16 Transfer, sub-contracting and assignment etc.

- 2.16.1 The Supplier shall not assign, transfer or novate the whole or any part of the Contract or sub-contract the supply of any Services without the previous consent in writing of the Client.
- 2.16.2 This Contract does not in any way entitle a person who is not a party to this Contract (including without limitation any employee, officer, agent, representative or sub-contractor of the parties) to enforce any term of this Agreement which expressly or by implication confers a benefit on that person pursuant to the Contracts (Rights of Third Parties) Act 1999 without the prior written agreement of the parties.

2.17 Intellectual Property

- 2.17.1 The Contract Price shall include all payments made or to be made to any third party in respect of Intellectual Property Rights used for the purpose of performing the Contract.
- 2.17.2 The Supplier shall indemnify the Client against any costs or claims arising from any infringement of any Intellectual Property Rights.
- 2.17.3 All Background Intellectual Property in any Material shall remain vested in the party absolutely.
- 2.17.4 All Foreground Intellectual Property in any Material shall vest absolutely in the Client. This includes the audit design and data collection forms, and the algorithms, analysis rules and screen designs of any computer systems developed as part of the Contract.
- 2.17.5 The Client grants to the Supplier a sole non-transferable perpetual royalty free licence to use all Intellectual Property created as a result of this Agreement for non-commercial uses, provided that the Supplier shall notify the Client of its intentions, seeking permission from the Client to use any such material, and whose permission shall not be unreasonably withheld.

2.18 Information governance, information security and records management

- 2.18.1 The Supplier acknowledges that the Client is subject to the Freedom of Information Act 2000 (FOIA). Therefore, the information contained in this Contract and generated pursuant to it, which is held by the Supplier on behalf of the Client, will also be subject to the FOIA. Such information shall be deemed to be held on behalf of the Client. The Supplier will promptly supply to the Client, on written request, such information to enable the Client to respond to requests for information made under the FOIA. The Supplier acknowledges that the Client will make the final decision on disclosure of information under the Act. The Supplier will provide all reasonable cooperation to the Client to enable it to comply with its obligations under FOIA.
- 2.18.2 If the Supplier is a public authority, requests for information made to the Supplier under the FOIA for national clinical audit data shall be transferred¹ to the Client within one working day. All other requests made to the Supplier under the Act must be processed

¹ In accordance with section III of the code of practice published by the Department for Constitutional Affairs on the discharge of public authorities' functions under part I of the Freedom of Information Act 2000 – see Clause 2.18.4

by the Supplier in accordance with the Act. The Supplier shall consult with the Client at the earliest possible opportunity before responding to any requests it receives under the Act, and in any event allow the Client at least five working days to respond. The final decision on disclosure of this information under the Act will be made by the Supplier (in accordance with the Act).

- 2.18.3 When disclosure of information under the FOIA is required of the Supplier, the Supplier shall carry out a level of work that is reasonably covered by the costs as set out in section 4 of this Contract as part of their obligation under this Contract. Otherwise, a variation must be agreed as set out in sections 2.2 and 2.15.
- 2.18.4 The Supplier will issue a policy on FOIA that will guide the actions of the Client and the Supplier. In addition, the Supplier shall where reasonable within the terms and costs of this Contract follow the two codes of practice pertinent to the FOIA published by the Department for Constitutional Affairs. These are namely:
- code of practice on the discharge of public authorities' functions under part I of the FOIA: www.foi.gov.uk/codepafunc.htm; and
 - code of practice on the management of records: www.foi.gov.uk/codemanrec.htm
- 2.18.5 The Supplier shall at all times process² all personal data³ in accordance with the Data Protection Act 1998 (DPA) and confidential personal information⁴ in accordance with the Health and Social Care (Community Health and Standards) Act 2003 without prejudice to those requirements, the Supplier shall at all times ensure that any processing of personal data and/or confidential personal information shall take place only in accordance with this Contract or with the prior written authorisation of the Client. Any information obtained in confidence will also be subject to the common law duty of confidentiality. The Supplier shall also undertake to treat such information in accordance with all other relevant law, not specifically mentioned in the Clause, which may be enacted from time to time
- 2.18.6 Information shall be used in accordance with guidance and regulations that may be issued by all relevant bodies concerned from time to time, or in accordance with instructions or advice issued by the Client from time to time. In particular, the Supplier shall comply with the NHS Confidentiality Code of Practice (including the Caldicott guidance issued by the Department of Health) and the Healthcare Commission's code of practice on confidential personal information⁵, issued pursuant to section 140 of the Health and Social Care (Community Health and Standards) Act 2003. Where it is necessary, each participating NHS trust must notify Caldicott Guardians of the involvement of their NHS Trust.
- 2.18.7 The Supplier must make sure that its work pursuant to this Contract is covered by its notification to the Information Commissioner under the DPA. The Supplier warrants that where it is acting in a capacity as data controller, it will comply with any obligations imposed by the DPA and indemnify the Client against any expense, liability, loss, claim or proceedings whatsoever arising out of or in the course of or caused by the Supplier, its employees or agents as a consequence of such obligations or any failure to work in accordance with them, how so ever caused.

² Defined in section 1(1) of the Data Protection Act 1998

³ Defined in section 1(1) of the Data Protection Act 1998

⁴ Defined in section 136 of the Health and Social Care (Community Health and Standards) Act 2003

⁵ The Supplier's attention is drawn to section 136 of the Health and Social Care (Community Health and Standards) Act 2003, which makes it an offence to knowingly or recklessly disclose confidential personal information in violation of the code of practice on confidential personal information

- 2.18.8 The Supplier shall agree with the Patient Information Advisory Group (PIAG) and with the Client the need for each personal identifier in the national clinical audit dataset and/or database to be processed. A personal identifier is defined as a field (or category of information) that will or may contain personal data (see Clause 2.18.5). For the avoidance of doubt, this includes codes and numbers that relate to people, for example the NHS number and other patient numbers.
- 2.18.9 The Supplier shall ensure that their sub-contractors, servants, suppliers, agents or any other person in the control of the Supplier shall adhere to the Clauses in sections 2.18 of this Contract.
- 2.18.10 Each Party shall at all times keep confidential (and to procure that its employees and agents shall keep confidential) any confidential information which it or they may acquire in relation to the business and affairs of the other Party to this Agreement and shall not use or disclose such information except with the written consent of that other Party which shall not be unreasonably withheld; in accordance with the order of a court of competent jurisdiction; or as is otherwise lawful.
- 2.18.11 The commercial and financial terms of this Contract shall be deemed confidential information under Clause 2.18.10. Unless Clause 2.18.2 applies, during the project Period, and prior to the publication of the full results, the Supplier shall not without the prior written consent of the Client release, or otherwise make available to third parties, information relating to this Contract or the audit projects. Discussions between the Supplier and recognised professional and patient groups concerning the audit project, at the Supplier's discretion, are excluded from this Clause.
- 2.18.12 The Client reserves the right to have access to and to use the interpreted, validated results compiled during the course of the project. Such use will follow discussion with the governance group established by the Supplier that includes representation of the clinicians that collect and provide the data. The data shall be provided by the Supplier in such a way that patients remain anonymous. The Client shall respect existing guidance on anonymising data. The Supplier shall implement policies on anonymising when issued from time to time by the Client. Changes will be subject to the provisions under sections 2.2 and 2.15 of this agreement.
- 2.18.13 No information, which would lead to the identification of an individual, shall be included in any publications or reports without the prior agreement in writing of the individual concerned. No mention shall be made of individual officers of the Client, nor shall information be included which might lead to their identification, without the prior agreement in writing of the Client.
- 2.18.14 All requests for access to data produced under this Contract, that are over and above the normal distribution, feedback and use of findings that are the purpose of the project as set out in the Contract (and the Specification produced by the Supplier in which the contract is based), must be forwarded to the Client's authorised contact. No data or information will be released for publication without the express authorisation (in writing) of the Client, which shall not be unreasonably withheld.
- 2.18.15 The Supplier shall at his own expense, indemnify and hold harmless the Crown (and the Crown may directly enforce this Clause, notwithstanding anything contained in Clause 2.16.2), the Client, its employees, servants, agents, suppliers and sub-contractors, in respect of any loss, damage liability or distress to that person by the loss, unauthorised destruction or disclosure of any personal data by the Supplier, sub-contractor, servant, agent, supplier or other person within the control of the Supplier.

Information security

2.18.16 This clause applies where the Contract, as set out in sections 1 and 3, and the Specification for the project, allow for the collection and holding of patient identifiable data. Such data are as defined by the Patient Information Advisory Group (PIAG) and the project will require approval by PIAG in order to meet the requirements of the Health and Social Security Act 2003:

- The Supplier shall at all times be responsible for ensuring that data (including data in any electronic format) received centrally is stored securely. The Supplier shall take appropriate measures to ensure the security of such data and guard against unauthorised access thereto or disclosure thereof or loss or destruction while in its custody. The Supplier, when acting as data processor, warrants to the Client that it has:
 - Put in place appropriate technical and organisational measures against processing of personal data and against unauthorised, accidental or unlawful access to the personal data (having regard to the state of technological development and the costs of implementing any such measures) as well as reasonable security programmes and procedures for the purpose of ensuring that only authorised persons have access to the personal data processing equipment to be used to process the personal data, and that any persons whom it authorises to have access to the personal data shall respect and maintain all due confidentiality;
 - A level of security programmes and procedures which reflect:
 - i. the level of damage that might be suffered by a data subject (within the meaning of the DPA) to whom the personal data relates as a result of unauthorised or unlawful possession of the personal data or the loss or destruction of or damage to the personal data;
 - ii. the state of technological developments and the cost of implementing such programmes and procedures;
 - As required by the DPA such security programmes and procedures which specifically address the nature of any sensitive personal data⁶. Without prejudice to the above clause the Supplier will comply with the remainder of the clauses in this section 1.2.

2.18.19 The Client and Supplier shall agree a security policy setting out management commitment to information security within the Supplier's organisation. The policy should incorporate the best practice methods described in the most recent version of British Standard BS7799, Information Technology – Code of Practice for Information Security Management. Responsibility for the organisation's security policy must be clearly placed on a particular person or department. The Supplier shall ensure that responsibility to be fulfilled to a level that is reasonably covered by the costs as set out in section 4 of this Contract as part of their obligation under this Contract. Otherwise, a variation must be agreed as set out in sections 2.2 and 2.15. The Supplier shall implement model policies on security when issued from time to time by the Client. Changes will be subject to the provisions under Clause 2.15 of this agreement.

2.18.20 Access to any buildings or rooms within the Supplier's organisation must be controlled. Casual passers-by should not be able to read information off screens or documents.

2.18.21 Confidential information (including confidential personal information) transferred between Healthcare Commission and the Supplier in electronic form must be password

⁶ Defined in section 2 of the Data Protection Act 1998

protected as a minimum and sent on media by recorded post, never by email. Passwords must be known only to authorised people and changed regularly. Passwords will be conveyed by telephone only.

- 2.18.22 The Supplier's computer systems must be password protected. Passwords must give access only to that data which an employee has a proper need to access and not to all levels of the system. These requirements may be superseded within the lifetime of the Contract by the Healthcare Commission policies mentioned above.
- 2.18.23 The Supplier must have a satisfactory procedure for erasing media (such as tapes and disks) securely before they are reused or new data written over old. Printed material must be disposed of securely, for example by shredding. This will be agreed with the Client.
- 2.18.24 The Supplier must ensure that a satisfactory procedure is in place covering the temporary removal of confidential information (including confidential personal information) from the Supplier premises. Security measures must be in place for individual staff members in such circumstances. Confidential personal information must not be taken home for staff to work on.
- 2.18.25 The Supplier must take reasonable precautions against burglary, fire or natural disaster. Data must be reasonably protected against corruption by viruses or other forms of intrusion.
- 2.18.26 The Supplier system must be capable of producing back up copies. Back-up copies of all data must be stored separately from live files.
- 2.18.27 Proper weight must be given to the discretion and integrity of staff when they are being considered for employment or promotion or for a move to an area where they will have access to personal data. Staff must be aware of their responsibilities and given training to ensure their knowledge is up to date.
- 2.18.28 Disciplinary rules and procedures should take account of the requirements of this section of the Contract. In the case of an employee of the Supplier being found to be unreliable the Client requires his or her access to personal data is withdrawn immediately.
- 2.18.29 Data must only be accessed for business purposes and not for their own private purposes. Staff must be made aware of this.
- 2.18.30 Any breaches of security must be properly investigated and remedied, particularly when damage or distress could be caused to an individual. The Supplier is required to notify the Client immediately should such a breach occur as some investigations and reviews are so high profile that the Client's communications department would need to be aware of any potential issues.

Records management

- 2.18.31 The Client and Supplier shall agree on the period of retention and manner of disposal for data held in relation to the Contract, and the Client will confirm its requirements to the Supplier in writing.

2.19 Insolvency

2.19.1 Either party may terminate this agreement immediately by notice if a resolution is passed, or the courts shall make an order, that the company shall be wound up (except for the purposes of amalgamation or reconstruction), or if an administrative receiver on behalf of a creditor shall be appointed, or if the courts shall make an administration order, or if circumstances shall arise that entitle the courts or a creditor to appoint an administrative receiver, or which entitle the courts to make a winding-up order or administration order or if a party to this agreement makes an arrangement with its creditors generally, or makes an application to the courts for protection from its creditors generally PROVIDED always that such termination shall not prejudice or affect any right of action or remedy that shall have accrued or shall accrue thereafter to the other party.

2.20 Law

2.20.1 The parties shall accept the exclusive jurisdiction of the English courts and agree that the Contract is to be governed and construed according to English law.

2.21 Dispute Resolution

2.21.1 The parties' authorised officers (as set out in Section 5 of the Contract) will use their reasonable endeavours to resolve any dispute, difference, or question between them with respect to any matter or thing arising from or relating to this Contract.

2.21.2 If the matter cannot be resolved by the authorised officers (as set out in Section 5 of the Contract) of both parties within 20 working days of its arising, the matter shall be referred to the Chief Executives of the respective parties.

2.21.3 If the persons to whom the dispute is referred pursuant to Clause 2.21.2 are unable to resolve it within 20 working days of its referral to them, then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. To initiate mediation the parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR asking them to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the CEDR Model Mediation Procedure will apply. Neither party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The parties will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require, and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

2.22 Third party rights

2.22.1 Notwithstanding Clause 2.16.1, at the discretion of the Client, the knowledge and findings connected with the Services provided pursuant to this Contract may be used by third parties.

2.23 Publication

2.23.1 The Supplier shall submit the final material or data deriving from any work carried out pursuant to the Contract or in connection with the Project generally to the Client before any such final material or data is published in the public domain or disclosed to any third parties.

2.24 Force Majeure

2.24.1 For the purposes of this Contract the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, interruption to electricity supply or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Such cause shall only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the party claiming Force Majeure or its servants, agents or employees.

2.24.2 It is expressly agreed that any failure or any delay by the Supplier in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any such contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that the said person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

2.24.3 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure herein.

2.25 The Transfer Regulations

2.25.1 The parties acknowledge that The Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended (hereinafter referred to as "the Transfer Regulations") may apply upon any variation of this Contract in accordance with its terms or the Supplier ceasing to provide the Services or part of the Services. In circumstances where the Transfer Regulations apply, the Supplier shall comply with its obligations under the Transfer Regulations.

2.25.2 At any time before or after the end of the Contract Period (howsoever arising), the Supplier shall within 14 days of a written request by the Client provide such information relating to the Supplier's staff employed in the Services or a part of the Services and their terms and conditions of employment as may be reasonably requested by the Client so as to facilitate any variation of this Contract in accordance with its terms or the engagement by the Client of a new service provider (including the provision of such information to a prospective or new service provider) and compliance with the Transfer Regulations. The Supplier shall indemnify the Client against any claim made against the Client at any time by any person in respect of any liability incurred by the Trust arising

from any deficiency or inaccuracies in information which the Supplier provides pursuant to this Clause 2.25.2

The Supplier shall indemnify and keep indemnified in full the Client against all claims, costs, damages, expenses, payments and liabilities whatsoever arising in respect of, or in connection with, any person currently or previously employed or engaged by the Supplier in connection with the provision of the Services. For the avoidance of doubt, the indemnity set out in this Clause 2.25.3 shall continue to apply after the expiry or termination of this Contract without any limitation in time and, in particular but without limitation, shall continue to apply in respect of any employee of the Provider whose contract of employment transfers to the Client on any variation of this Contract in accordance with its terms or the expiry or termination of this Contract and if, on any variation of this Contract in accordance with its terms or the expiry or termination of this Contract, the contract of employment of any employee referred to in this Clause 2.25.3 shall pass to a new service provider, the Supplier shall on written request by the Client provide to the new service provider a written and binding indemnity in respect of each and every such employee in the same terms as those set out in this Clause 2.25.3 with the substitution of a reference to the new service provider for the reference to the Client.

2.25.3 The Supplier shall allow access to any premises at which the Services are provided, in the presence of a representative of the Client, to any person representing any service provider whom the Client has selected to tender for the future provision of the Services or any part thereof and, for the purpose of such access, the Client shall give the Supplier seven days' notice of a proposed visit together with a list showing the names of all the persons who shall be attending such premises.

2.25.4 The Supplier shall co-operate fully with the Client during the handover arising from the expiry or termination of this Contract and this co-operation shall extend to allowing for access to, and providing copies of, all documents, reports, summaries and other information necessary in order to achieve an effective transition to a new provider without disruption to routine, operational requirements.

2.26 Health & Safety

2.26.1 The Supplier shall meet its obligations under the Health and safety at Work Act 1974 and subsequent legislation to provide safe and healthy working conditions, including, without limitation while providing the Services on Client premises.

2.26.2 The Supplier shall and shall procure that its staff shall co-operate with the Client by taking no action which would prevent the Client from discharging its responsibilities under the Health and Safety at Work Act 1974 and subsequent legislation, including but not limited to reporting all accidents on Client premise sustained or caused by the Supplier's staff in providing the Services.

3 Service Definition

3.1 SERVICE DELIVERABLES

3.1.1 The Project plan deliverables are shown below:
(Refer also to the 'Proposal for future work: 2006-7' submitted by the Supplier on 22/12/05 and agreements reached verbally between Anthony Deery of the Healthcare Commission and the Supplier)

<i>Deliverable</i>	<i>Elapse months</i>	<i>Actual dates</i>
1. Development and piloting		
1.1. Develop recruitment strategy and associated materials	1-2	Jan-Feb 2006
1.2. Recruitment mailings	1-2	Jan-Feb 2006
1.3. Establish steering group	1-2	Jan-Feb 2006
1.4. Modify audit standards and methods	1-2	Jan-Feb 2006
1.5. Finalise audit standards and methods	2-4	Feb-Apr 2006
1.6. Pilot audit data collection tools	2-4	Feb-Apr 2006
1.7. Deliver project management pack	2-4	Feb-Apr 2006
1.8. Develop and pilot methods for e-based data entry ⁷	5-7	May-July 2006
2. Implementation		
2.1. Register participants onto programme	2-4	Feb-Apr 2006
2.2. Exchange 'memorandum of understanding' between CRTU and participating organisations	2-4	Feb-Apr 2006
2.3. Complete introductory workshops	4-7	Apr-July 2006
2.4. Prepare for data collection	8-9	Aug-Sep 2006
2.5. Module 1 data collection: survey of the experiences of staff, service users and visitors to their service relating to the prevention and management of violence	10-12	Oct-Dec 2006
2.6. Target date by when >80% of eligible bodies will be submitting 'experiences' data	14	Feb 2007
2.7. Module 2 data collection: environmental audit	13-14	Jan-Feb 2007

⁷ Existing software may be suitable for staff returns in module 1. The project supplier expects to use direct entry for modules 2 and 3.

<i>Deliverable</i>	<i>Elapse months</i>	<i>Actual dates</i>
2.8. Target date by when >80% of eligible bodies will be submitting 'environmental' data	16	April 2007
2.9. Module 3 data collection: review of series of violent incidents	10-14	Oct 2006 - Feb 2007
2.10. Target date by when >80% of eligible bodies will be submitting 'incidents' data	16	April 2007
3. Analysis and reporting		
3.1. Compile and report on national contextual/benchmarking data	8-9	Aug-Sept 2006
3.2. Analyse and return Module 1 ('experiences') local reports	10-14	Oct 2006 - Feb 2007
3.3. Feedback (or an alerting summary or letter) about Module 1 to participating chief executives, medical directors and central clinical audit departments	14	Feb 2007
3.4. Prepare Module 1 ('experiences') national reports	13-14	Jan-Feb 2007
3.5. Analyse and return Module 2 ('environmental') local reports	15-16	Mar-April 2007
3.6. Feedback (or an alerting summary or letter) about Module 2 to participating chief executives, medical directors and central clinical audit departments	16	April 2007
3.7. Prepare Module 2 ('environmental') national reports	15-16	Mar-April 2007
3.8. Analyse and return Module 3 ('incidents') local reports	15-16	Mar-April 2007
3.9. Feedback (or an alerting summary or letter) about Module 3 to participating chief executives, medical directors and central clinical audit departments	16	April 2007
3.10. Prepare Module 3 ('incidents') national reports	15-16	Mar-April 2007
3.11. Facility (or a download) enabling local participants to make their own comparative analyses	14	Feb 2007
3.12. Prepare Final Report to Healthcare Commission. Separate data analyses for Wales will be included, and compared with English results. Where they differ, separate recommendations for Wales will be included. The Report will include confidence intervals and/or other appropriate statistical results to back up any recommendations made or statements about differences in performance.	20-21	Aug-Sept 2007
3.13. Draft of Final Report sent to the Healthcare Commission's Communications and Clinical Audit teams	20	end August 2007
3.14. Publication of Final report.	22	Early Oct 2007

<i>Deliverable</i>	<i>Elapse months</i>	<i>Actual dates</i>
4. Improvements for patients		
4.1. Deliver a series of regionally-based 'Feedback Events'	17-19	May-July 2007
4.2. Participants develop local action plans.	17-19	May-July 2007
4.3. Collate copies of local action plans.	20-21	Aug-Sept 2007
4.4. Sufficient data of good quality, presented in ways that provide clear and understandable information, available to the Healthcare Commission for use in its <i>Annual Health Check</i> .		See footnote ⁸

⁸ To be agreed at a later date. The closing date for data submissions for each of the three modules will be staggered. Copies of the national reports for each participating ward will be delivered to the Healthcare Commission (pending further discussions and agreement) as each set of results becomes available; this would include a list of any wards that failed to provide data. Module 3 is designed to be reflective, hence the information that is gathered relates to 'action plans' rather than the incidents themselves. The project supplier is consulting with major players in the field as to whether this should change.

4. Financial Arrangements

4.1 FUNDING

The Client shall fund the services described in this Contract against service deliverables approved by the Client's authorised officer (as set out in Section 5 of the Contract) and in accordance with the agreed financial arrangements and payment schedule set out below. The Client shall not be responsible for any costs incurred by the Supplier in excess of the figures in section 4.2 below unless a variation has been agreed in accordance with Clause 2.15 of Section 2 of the Contract.

The Supplier will invoice the Client in the manner set out in Clause 2.8 of Section 2 of the Contract clearly outlining the Client contract reference number and Client purchase order number.

4.2 CONTRACT PRICE

The Contract Price is fixed (unless subsequently altered in writing by mutual agreement in accordance with Clause 2.15 of Section 2 of the Contract) and shall be **£237,500 plus VAT**.

4.3 PAYMENT SCHEDULE

<i>Period/financial year</i>	<i>£ (exc. VAT)</i>	<i>Invoice due from supplier</i>
April 2006 – June 2006	£41,270	July 2006
July 2006 – September 2006	£41,270	October 2006
October 2006 – December 2006	£41,270	January 2007
January 2007 – March 2007	£41,270	April 2007
April 2007 – June 2007	£36,210	July 2007
July 2007 – September 2007	£36,210	October 2007

The precise timing of invoices and payments (within each period specified above) may be varied by mutual agreement in writing in accordance with Clause 2.15 of Section 2 of the Contract. Payment is dependent on successful delivery to the quality and timescales as set out elsewhere in this contract.

