

RESTRICTED COMMERCIAL



FRAMEWORK AGREEMENT

For

The Provision of Occupational Health Services

Between

THE DEPARTMENT FOR WORK AND PENSIONS

And

ATOS Origin IT Services UK Ltd.

CONTRACT REFERENCE NUMBER: NEC/3/0021



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Date	Variation No.	Description	Name	Signature

SECTION 1

FORM OF AGREEMENT

This Agreement is made between

The SECRETARY OF STATE FOR WORK AND PENSIONS of Caxton House,
Tothill Street, London. SW1H 9NA ("**the Authority**") and

ATOS ORIGIN IT SERVICES UK LIMITED with registered number

1245534 having his main or registered office at:

4 Triton Square, Regent's Place, London NW1 3HG ("**the Contractor**")

together referred to as ("the Parties").

Whereas:

The Contractor has agreed to provide OCCUPATIONAL HEALTH SERVICES
(the Services) on the terms and conditions set out in this Agreement.

It is agreed that:

1. This Form of Agreement (Section 1) together with the attached Sections 2, 3 AND 4 (inclusive) are the documents, which collectively form "the Contract" (as defined in Section 2).

For:	The Contractor	For:	The Authority
By:	_____	By:	_____
Full Name:	_____	Full Name:	_____
of:	_____		_____
Title:	_____	Position:	_____
Date:	_____	Date:	_____

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SECTION 2

STANDARD CONDITIONS

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1. INTERPRETATION

In this Contract: -

“Approval” and “Approved”	refer to the written consent of the Authority's Representative.
"Authority"	means the Secretary of State for Work and Pensions and includes the Authority's Representative.
"Authority's Premises"	means land or buildings owned or occupied by the Authority where the Services are performed.
"Authority's Property"	means any property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.
"Authority's Representative"	means the individual authorised to act on behalf of the Authority for the purposes of the Contract.
"Benefit"	means social security benefits delivered by the Department for Work & Pensions
“Change Control Request”	means a request made by either party in accordance with Paragraph 40 to this contract, which sets out the policies and procedures to manage changes to the service.
"Commencement Date"	means the date on which the Form of Agreement is signed by the Authority.
"Commencement of Full Operations"	means the point in time when the Contractor becomes responsible for the provision of the Services following the completion of the Setting-up Operations.
“Commercially Sensitive	the information listed in Schedule 6 comprising the information of a commercially sensitive nature

Information”	relating to the Contractor, its Intellectual Property Rights, or its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.																																
"Condition"	means a Condition within the Contract.																																
"Contract"	means the agreement to the Conditions between the Authority and the Contractor consisting of the following Sections, which in the event of ambiguity or contradiction between Sections, shall be given precedence in the order listed:																																
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Schedule 6: Commercially Sensitive Information

"Contract End"	means the date of completion of 3 year term, with an option to extend for up to a further 2 years, unless otherwise terminated in accordance with the provision of these Conditions
"Contract Year"	means a period of 12 consecutive months starting on the Commencement Date or an anniversary of the Commencement Date
"Contract Management Team"	means the administrative Personnel responsible for liaising with the Contractor.
"Contractor"	means the Person named as the Contractor in Section 1: Form of Agreement, his permitted successors and assigns.
"Contractor's Representative"	means the individual authorised to act on behalf of the Contractor for the purposes of the Contract.
Contractor's Software	means any software in which the Intellectual Property Rights are owned by the Contractor.
"Contract Period"	means the period of the duration of the Contract
"Contract Price"	means the Price, exclusive of Value Added Tax, payable by the Authority to the Contractor for the performance of the Services.
"Equipment"	means all equipment, materials, consumables and plant, other than Authority's Property, to be used by the Contractor in the provision of the Services.
"External Medical Advisor"	means a General Practitioner and appropriate hospital/medical specialists.

"Government Procurement Card (GPC)"	means a VISA corporate payment card.
"Intellectual Property Rights"	means patents, trade marks, service marks, design rights (whether registerable or not), applications for any of the above rights, copyright, trade or business names or other similar rights or obligations whether registerable or not in any country including but not limited to the United Kingdom.
"Key Staff"	means Staff identified in Appendix D
"Medical Reports"	means the independent medical advice as detailed in Section 3, which is provided by the Contractor and contained within the completed referral files.
"Month"	means calendar month.
"Participant"	means those individuals (other than DWP) for whose benefit and to whom the Contractor provides the service.
"Parties"	means the Authority and the Contractor as identified in Section 1: Form of Agreement.
"Person"	where the context allows, includes a corporation or an un-incorporated association.
"Personnel"	means persons directly employed by the Authority.
"Premises"	means land or buildings where the Services are performed.
"Price"	means a Price entered in Schedule 1: Schedule of Prices and Rates and/or Schedule 1a: Interim Prices and Rates.

"PCSPS"	means the Principal Civil Service Pension Scheme
"Rate"	means a Rate entered in Schedule 1: Schedule of Prices and Rates and/or Schedule 1a: Interim Prices and Rates.
"Request for Information"	means a request for information or an apparent request under the Code of Practice on Access to Government Information, the Freedom of Information Act 2000 or the Environment Information Regulations 2004;
"Services"	means such of the services to be provided by the Contractor as set out in Section 3: The Services which are ordered by the Authority in accordance with Schedule 4.
"Setting-up Operations"	means the activities the Contractor shall undertake between the Commencement Date and the Commencement of Full Operations.
"Site"	means the area within the Premises in which the Services are performed.
"Staff"	means all persons used by the Contractor to perform the Services.
"User"	means all Persons for whom the Services are provided.
"Variation"	means a properly executed Variation to the Contract in compliance with Condition 40.
"VAT"	means Value Added Tax.

The interpretation and construction of the Contract shall be subject to the following provisions:

- 1.2.1 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted. Should any such amendment or re-enactment or other change in law require a

change to the Services or otherwise increase the Contractor's obligations such change or increase in obligations shall be dealt with as a Variation;

- 1.2.2 The headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions;
- 1.2.3 References to Conditions are references to Conditions in the Section of the Contract in which they appear, unless otherwise stated;
- 1.2.4 Where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa.

2. ENTIRE AGREEMENT

- 2.1 [Not Used]
- 2.2 This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation. All warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.

3. CONTRACT PERIOD

- 3.1 The Contract shall take effect on the Commencement Date and shall expire 3 years after the Commencement of Full Operations with an option to extend for up to a further 2 years by 6 months' prior written notice, unless it is otherwise terminated in accordance with the provisions of these Conditions, or otherwise lawfully terminated.

4. CONTRACTOR'S OBLIGATIONS

- 4.1 The Contractor shall provide the Services in accordance with the terms of the Contract.
- 4.2 The Contractor shall provide an e-enabled service for case referrals, individual case tracking and provision of outcome summary reports in accordance with Section 3.

4.3 To the extent that the Services are ordered by the Authority, the Contractor shall:

- a) Provide those Services in a manner intended to help the Authority increase its work productivity by reducing and maintaining at a low level the proportion of staff days accounted for by sickness absence in the Authority's workforce;
- b) Provide those Services in accordance with the provisions set out in the Contract, and in particular, Schedules 1 to 5 in order to help the Authority's managers take action to reduce and maintain at a low level the proportion of sick absence in the Authority's workforce, as far as it is reasonably practicable to do so;
- c) Ensure that the Services provided under the Contract are sufficiently flexible, and resourced to reflect and respond to the Authority's priorities, operating style and organisational structure, and variation or changes to these, as communicated by the Authority, as far as is reasonably practicable to do so;
- d) Provide such information (whether statistical or otherwise) to enable the Authority to judge the success of the Service and to determine its future specification or usage, as far as it is reasonably practicable to do so. This is subject to agreement over charges for information that is not provided for elsewhere in the Contract.

5. FRAUD

5.1 The Contractor shall use all reasonable endeavours to safeguard the Authority's funding of the Services against fraud generally and, in particular, fraud on the part of the Contractor's directors, employees or subcontractors. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring.

6. COMMENCEMENT OF FULL OPERATIONS

6.1 The Authority shall authorise the Commencement of Full Operations on [DN: Planning assumption is for commencement of full operations on a date to be agreed subject to successful IT implementation] if the Contractor either:

- a) Has complied fully with the requirements set out in Section 3: The Services relating to the Setting-up Operations including service set-up and implementation of the browser based web portal for case referrals, case tracking and provision of outcome reports; or
- b) Has otherwise demonstrated to the satisfaction of the Authority (such satisfaction not to be unreasonably withheld or delayed) his capacity to deliver the Services to be provided following the Commencement of Full Operations.

- 6.2 If the Authority has not authorised the Commencement of Full Operations in accordance with Condition 6.1, due to the Contractor's default within 3 months of [Insert envisaged date for the Commencement], the Authority shall have the right, after taking into account all representations made by the Contractor, either:
- a) To extend the Setting-up Operations for such period as may be specified by the Authority, during which period the Contractor shall correct the fault or deficiency which caused the Authority to withhold authorisation for the Commencement of Full Operations; or
 - b) To terminate the Contract, or to terminate the provision of any part of the Services, in accordance with Condition 43.
- 6.3 Where the Authority has not authorised the Commencement of Full Operations on the expiry of any extension of the Setting-up Operations under Condition 6.2 (a), the Authority shall have the right to repeat the exercise of the options set out in Condition 6.2.

7. CONDITIONS AFFECTING PROVISION OF SERVICES

- 7.1 The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services, the means of communication with and access to the Site, the supply of and conditions affecting labour, the suitability of the Authority's Property and the Equipment necessary for the performance of the Services, subject to all such matters being discoverable by the Contractor.

8. CONTRACTOR'S STATUS

- 8.1 In carrying out his obligations under the Contract the Contractor agrees that he shall be acting as principal and not as the agent of the Authority.
- 8.2 The Contractor shall not say or do anything that may lead any other Person to believe that the Contractor is acting as the agent of the Authority.
- 8.3 Nothing in the Contract shall render the Authority liable to indemnify the Contractor in respect of any liability of any kind incurred by the Contractor to any other Person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either any term of the Contract or any negligence on the part of the Authority, its Personnel or agents.

9. AUTHORITY'S PROPERTY

- 9.1 All Authority's Property shall remain the property of the Authority and shall be used in the performance of the Contract and for no other purpose without prior Approval.
- 9.2 On receipt of Authority's Property the Contractor shall subject it to a visual inspection and such additional inspection and testing as may be necessary to check that it is not defective; within 14 days of receipt of any item of the Authority's Property, or such other period as may be Approved, the Contractor shall notify the Authority in writing of any defects discovered; within 14 days after receiving such notification, the Authority shall inform the Contractor of the action to be taken.
- 9.3 The Authority shall be responsible for the repair or replacement of the Authority's Property unless the need for repair or replacement is caused by the negligence or default of the Contractor.
- 9.4 The Contractor shall be responsible for his own costs resulting from any failure of the Authority's Property, unless he can demonstrate that the Authority had caused undue delay in its replacement or repair.
- 9.5 [Not Used]
- 9.6 The Contractor shall be liable for any loss of or damage to any Authority's Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.
- 9.7 The Contractor shall not in any circumstances have a lien on any of the Authority's Property and shall take all steps necessary to ensure that the title of the Authority and the exclusion of any lien are brought to the attention of any third party dealing with any Authority's Property.

10. EQUIPMENT

- 10.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.
- 10.2 The Contractor shall maintain all items of Equipment in good and serviceable condition.
- 10.3 All Equipment shall be at the risk of the Contractor and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.

- 10.4 The Contractor shall provide for the haulage or carriage of Equipment to the Premises and its off-loading and removal when no longer required.
- 10.5 The Authority may at its option purchase any item of Equipment used solely to provide the Services from the Contractor at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract. The purchase price to be paid by the Authority shall be the fair market value.

11. STAFF

- 11.1 All Staff shall possess the qualifications and competence appropriate to the tasks for which they are employed.
- 11.2 The Contractor shall ensure that tasks will be allocated to staff at an appropriate level of qualification and competence as is required for the specified service
- 11.3 The Contractor shall provide, at all times, the number of Staff required to fulfil his obligations under the Contract.
- 11.4 Unless given prior Approval (such Approval not to be unreasonably withheld or delayed) the Contractor shall make the Key Staff available (save to the extent that they are unavailable due to illness or being on leave) for the entire period needed to fulfil their part in the provision of the Services, whilst they are employed or engaged by the Contractor.
- 11.5 The Contractor shall be responsible for ensuring that appropriate pre-employment checks are undertaken for all Staff involved in provision of the Services. For the avoidance of doubt, this includes all employees, temporary workers and contract staff. In line with HMG Personnel Baseline Security Checks pre-employment checks will include as a minimum:
- Identity
 - Nationality and Immigration status
 - Employment History (past 3 years) including a reasonable account of any significant periods (6 months or more in the past 3 years) of time spend abroad
 - Criminal record (unspent convictions only).

12. CO-ORDINATION

- 12.1 The Contractor shall co-ordinate his activities in the provision of the Services with those Personnel of and other contractors engaged by the Authority.

13. USE OF AUTHORITY'S PREMISES

- 13.1 Where the Services are performed on the Authority's Premises the Contractor shall have use of the Authority's Premises without charge as a licensee and shall vacate those Premises on completion or earlier termination of the Contract.
- 13.2 The Contractor shall not use the Authority's Premises for any purpose or activity other than the provision of the Services unless given prior Approval.
- 13.3 Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- 13.4 The Contractor shall not deliver any Equipment to the Authority's Premises outside normal working hours without prior Approval.
- 13.5 The Contractor shall maintain all Equipment and its place of storage within the Authority's Premises in a safe, serviceable and clean condition.
- 13.6 On the completion or earlier termination of the Contract, the Contractor shall, subject to the provisions of Condition 10.5, remove all Equipment and shall clear away from the Authority's Premises all waste arising from the performance of the Services and shall leave the Authority's Premises in a clean and tidy condition.
- 13.7 Whilst on the Authority's Premises, all Staff shall comply with such rules, regulations and other requirements as may be in force in respect of the conduct of Persons attending and working on the Authority's Premises.

14. RIGHT OF ACCESS TO THE AUTHORITY'S PREMISES

- 14.1 Where the Services are to be performed on the Authority's Premises, the Authority shall grant to the Contractor reasonable access to the Site.
- 14.2 If the Authority gives the Contractor notice that a specifically named member of Staff shall not be admitted to the Authority's Premises, the Contractor shall ensure that that Person shall not seek admission and shall not be admitted.

- 14.3 If and when so directed in writing by the Authority, the Contractor shall within seven days provide: -
- a) A list showing the name and address of every Person whom the Contractor wishes to be admitted to the Authority's Premises and, where required by the Authority, every other person who is or may be involved in any other way in the performance of the Contract, the capacity in which each person is or may be so involved and any other particulars required by the Authority;
 - b) Satisfactory evidence as to the identity of each such person and compliance with the requirements of Condition 11.5; and
 - c) Any other information about each such person, with any supporting evidence required by the Authority, including full details of birthplace and parentage of any such person who is not a citizen of the United Kingdom by birth, or born within the United Kingdom of parents who were not citizens of the United Kingdom by birth.
- 14.4 Where Staff are required to have a pass for admission to the Authority's Premises, the Authority's Representative shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued.
- 14.5 Staff who cannot produce a proper pass when required to do so by any appropriate Personnel or agent of the Authority, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Authority's Premises or required to leave those Premises if already there.
- 14.6 The Contractor shall promptly return any pass if at any time the Authority's Representative so requires or if the person for whom it was issued ceases to be involved in the performance of the Contract. The Contractor shall promptly return all passes on completion or earlier termination of the Contract.

15. MANNER OF PROVIDING THE SERVICES

- 15.1 The Contractor shall perform the Services timeously with all due care, skill and diligence, and in accordance with good industry practice and in accordance with the key quality indicators in schedule 2. The Services shall, in particular, be provided in accordance with Section 3 and Schedule 3.
- 15.2 The Contractor shall, upon the instruction of the Authority's Representative: -

- a) Remove from the Authority's Premises any materials that are not in accordance with the Contract and substitute proper and suitable materials;
 - b) Remove and properly re-execute any work that is not in accordance with the Contract, irrespective of any previous testing or payment by the Authority. The Contractor shall at his own expense complete the re-executed work correctly in accordance with the Contract within such reasonable time as the Authority may specify.
- 15.3 The signing by the Authority's Representative of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.

16. STANDARDS

- 16.1 Materials and processes used in connection with the provision of the Services shall be in accordance with the standards set out in Section 3: The Services.
- 16.2 On the request of the Authority's Representative, the Contractor shall provide proof to the Authority's satisfaction that the materials and processes used, or proposed to be used, conform to those standards.
- 16.3 The introduction of new methods or systems that negatively impact on the provision of the Services shall be subject to prior Approval.

17. OVERTIME WORKING

- 17.1 The Contractor shall not normally be prevented from working reasonable overtime hours on the Authority's Premises if he so desires, provided that he obtains prior Approval and it is at no additional cost to the Authority.

18. PROGRESS REPORTS

- 18.1 Where progress reports are required to be submitted under the Contract, the Contractor shall render those reports at such time and in such form as may be specified or as otherwise agreed between the Parties.
- 18.2 The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.

19. RE-TENDERING AND HAND-OVER

- 19.1 Within 21 days of being so requested by the Authority's Representative, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, the information detailed in Schedule 5.
- 19.2 Where, in the opinion of the Authority's Representative, the Transfer of Undertakings (Protection of Employment) Regulations 2006 are likely to apply on the termination or expiration of the Contract, the information to be provided by the Contractor under Condition 19.1 shall include (in anonymised form) all details as required under TUPE Regulations and as applicable, accurate information relating to the Staff who would be transferred under the same terms of employment under those Regulations, including in particular: -
- a) The number, location(s) and job descriptions of staff who would be transferred;
 - b) In respect of each of those members of Staff, their age, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
 - c) The general terms and conditions applicable to those members of Staff, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.
- 19.3 The Authority shall take all necessary precautions to ensure that the information referred to in Condition 19.2 is given only to service providers who have qualified to tender for future provision of the Services. The Authority shall require that such service providers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- 19.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under Condition 19.2. The Authority shall comply with clause 25.6 in relation to any claim to which this clause relates.
- 19.5 The Contractor shall not: -

a) At any time during the Contract Period including any extension of the original Contract Period, move any persons in his employment into the undertaking or relevant part of an undertaking which provides the Services, who do not meet the standards of skill and experience, or who are in excess of the number, required for the purposes of the Contract;

or

b) Make any substantial change in the terms and conditions of employment of any Staff that is inconsistent with the Contractor's established employment and remuneration policies.

19.6 Where, in the opinion of the Authority's Representative, any change or proposed change in the Staff in the undertaking or relevant part of any undertaking, or any change in the terms and conditions of employment of such Staff, would be in breach of Condition 19.5, the Authority shall have the right: -

a) To make representations to the Contractor against the change or proposed change;

b) To give notice to the Contractor requiring him to remedy the breach within 30 days;

c) If the Contractor has not remedied the breach to the reasonable satisfaction of the Authority's Representative by the end of the period of 30 days, to terminate the Contract by reason of the default of the Contractor, in accordance with Condition 43.

19.7 The Contractor shall allow reasonable access to the Site, in the presence of the Authority's Representative, to any person representing any service provider whom the Authority has selected to tender for the future provision of the Services.

19.8 For the purpose of access to the Site in accordance with Condition 19.7, where the Site is on the Contractor's Premises, the Authority shall give the Contractor 7 days notice of a proposed visit together with a list showing the names of all persons who will be attending those Premises. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit and signature of a non disclosure agreement in favour of the Contractor.

19.9 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the Setting-up Operations period of the new contractor, shall extend to allowing full access to, and providing

copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements. The Contractor acknowledges that on termination or expiry of this Contract, the continuity of the Services is of paramount importance.

- 19.10 Within 10 working days of being so requested by the Authority's Representative, the Contractor shall transfer to the Authority, or any Person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format.
- 19.11 The Contractor will ensure that the methods for obtaining, communicating and storing all information and data provided by the Authority or collected by the Contractor in the provision of the Services comply, as a minimum, to the Authority's security standards as at the date of this Agreement.

20. TRANSFER OF UNDERTAKINGS

- 20.1 The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 may apply in respect of the award of the Contract and that for the purposes of those Regulations the undertaking concerned, or any relevant part of the undertaking, shall transfer to the Contractor on the Commencement of Full Operations.
- 20.2 The Contractor shall comply with the requirements of the Regulations in respect of the Personnel who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Contractor.
- 20.3 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by a person who transfers to the Contractor pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with this Agreement for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise resulting from any act or omission of the Contractor on or after the Commencement of Full Operations in relation to such person, except where such claims arise as a result of any act or omission of the Authority. The Authority shall comply with clause 25.6 in relation to any claim to which this clause relates.

21. PAYMENT AND VALUE ADDED TAX

- 21.1 In consideration of the provision of the Services by the Contractor in accordance with the terms of the Contract, the Authority shall pay the Contract Price, calculated in accordance with Schedule 1: Schedule of Prices and Rates and/or Schedule 1a: Interim Prices and Rates.

- 21.2 The Contractor shall submit an original and a copy invoice to the Authority at Monthly intervals in arrears in respect of the Services provided by the Contractor. Each invoice shall contain all appropriate references, a detailed breakdown of the Services and the appropriate Prices or Rates and shall be supported by any other documentation required by the Authority's Representative to substantiate the invoice. Refer to Schedule 2, Invoicing.
- 21.3 Payment shall be made to the Contractor within 30 days of receipt by the Authority (at its nominated address for invoices) of the Contractor's valid original invoice. Such payment to be made in pounds sterling or the Euro in accordance with Condition 47.
- 21.4 The Authority shall pay the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.
- 21.5 All payments made by the Authority shall use Automated Credit Transfer (ACT).
- 21.6 The Authority may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 21.7 The Authority may request that the Contractor submits an original and a copy invoice by electronic means under 21.2 above.

22. PAYMENT OF SUB-CONTRACTORS

- 22.1 Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

23. PRICE ADJUSTMENT

- 23.1 The Prices and Rates shall be firm for the first Contract Year.
- 23.2 Thereafter the Contractor shall be entitled to increase the Prices and Rates once per Contract Year subject to a maximum increase in accordance with increases in the previous 12 months Retail Price Index - without mortgage (RPIx) from the later of the Commencement Date or the date of the previous review to the date of review. The Contractor will be expected to reflect efficiency savings gained over previous periods in any proposal put forward.

24. RECOVERY OF SUMS DUE

- 24.1 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of this Contract), the Authority may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract or under any other contract with the Authority.
- 24.2 The Authority shall give at least 21 days' notice to the Contractor of its intention to make a deduction under Condition 24.1, giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.
- 24.3 Any overpayment by the Authority to the Contractor, whether of the Contract Price or of Value Added Tax, shall be a sum of money recoverable by the Authority from the Contractor.

25. INTELLECTUAL PROPERTY RIGHTS - ASSIGNMENT AND INDEMNITY

- 25.1 Ownership of all of the Contractor's Intellectual Property Rights, including all Intellectual Property Rights in the Contractor's Software, shall remain in the Contractor at all times. The Contractor grants to the Authority, with effect from the Commencement of Full Operations, a non-exclusive, non-transferable licence to use the Contractor's Software which is provided to it by the Contractor for the purpose of receiving the Services in connection with the Authority's receipt of the Services being provided by the Contractor. The Authority undertakes to the Contractor that it will not copy or otherwise deal with the Contractor's Software other than as may be reasonably necessary for the receipt of the Services by the Authority in accordance with this Agreement.
- 25.2 In performing the Services the Contractor shall obtain Approval (such Approval not to be unreasonably withheld or delayed) before utilising any material which the Authority will need to use to receive the Services which is or may be subject to any Intellectual Property Rights other than those referred to in Condition 25.1.
- 25.3 Subject to Condition 25.4, the Contractor shall indemnify the Authority against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, or the use by the Authority following delivery by the Contractor, of any material which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.

- 25.4 The provisions of Condition 25.3 shall not apply in respect of any material which the Authority has supplied to the Contractor or which the Authority has specified for use by the Contractor or for delivery to the Authority.
- 25.5 The Authority shall indemnify the Contractor against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, of any material referred to in Condition 25.4 which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.
- 25.6 Where any claim is made by a third party in respect of any material referred to in Condition 25.3 or 25.5, (i) the party receiving the indemnity (the "Indemnitee") shall notify the Party which is required to provide the indemnity (the "Indemnitor" promptly of the claim; (ii) the Indemnitee shall make no admissions nor attempt to settle or compromise the claim without the Indemnitor's written consent; (iii) the Indemnitor shall have the right to conduct, or take over the conduct of, the defence to the claim and to any proceedings or action brought by the third party; and (iv) the Indemnitee shall act in accordance with the reasonable instructions of the Indemnitor and give the Indemnitor such assistance as the Indemnitor shall reasonably require in relation to the claim.

26. SECURITY

- 26.1 The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Contractor in the performance of the Services.
- 26.2 The Contractor will ensure that appropriate operational and security procedures are in place to preserve the security and confidentiality of personal information gained or provided in the course of delivering the Service. This will include, but is not limited to, policies consistent with the Guidance on Ethics for Occupational Physicians (FOM May 2006), Medical Records Act 1988, Data Protection Act 1998, Access to Health Records 1990 and all other relevant legislation.

Although it is ultimately a matter of law for the judicial process the parties agree that the Authority is not the data controller for the medical records produced or obtained by the Contractor in the course of providing the Services whilst this Agreement is in force. Upon termination or expiry of this Agreement, the Authority shall promptly notify the Contractor in writing whether the Authority wishes the Contractor to:

- (a) deliver such records to the Authority or the Authority's new occupational health provider. In such case the Contractor shall, subject to the Authority paying a reasonable charge therefor, deliver (save to the extent it is prohibited from doing so by law), and the Authority shall accept or procure that its new occupational health provider shall accept such records. The Authority undertakes that it and any new occupational health service provider shall retain the records delivered to them where required to do so by law and give the Contractor such access to the records in their possession as the Contractor may reasonably require; or
- (b) store such records for a reasonable period of time. In such case the Contractor shall be entitled to make a reasonable charge for transfer of the records into and the provision of such storage and for any retrieval requests made in relation to such data.

The Authority shall elect or be considered to have elected for option (b) in relation to records which the Contractor is prohibited from delivering to the Authority or its new occupational health service provider by law. Option (b) shall be also be considered to apply unless and until the Authority has indicated which option it wishes to apply. Where the Authority opts for option (b) it shall be entitled to subsequently opt for option (a)."

- 26.3 The Contractor agrees to abide by DWP Enterprise Strategies in respect of Information Technologies including, but not restricted to, security,

architecture and IT testing and comply with current version Information Security Standards (ISSS).

- 26.4 The Contractor shall not conclude any off-shoring arrangements in respect of the contract without prior agreement with the Authority. The Authority's agreement to any off-shoring arrangements will be dependant on mandate compliance with legislation applicable in the UK without exception and, in particular, with Data Protection Act 1998 (DPA), and completion of a Departmental Security Team (DST) assessment of the proposal to provide services from an off-shore location.
- 26.5 The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Condition 26.1 will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.
- 26.6 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises. The Authority shall provide copies of its written security procedures to the Contractor on request.
- 26.7 The Authority shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Authority's Premises.
- 26.8 The Contractor shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters and when required by the Authority's Representative -
- a) Shall use his best endeavours to make any Staff identified by the Authority's Representative available to be interviewed by the Authority's Representative, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contractor's Representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authority's Representative and the Contractor's Representative; and
 - b) Shall, subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Services. The Authority shall have the right to retain any such material for use in connection

with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

27. CONFIDENTIALITY

27.1 Each Party -

- a) Shall treat as confidential all information obtained from the other Party under or in connection with the Contract;
- b) Shall not disclose any of that information to any third party without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or, as regards the Authority, in pursuance of its obligations under the Freedom of Information Act 2000; and
- c) Shall not use any of that information otherwise than for the purposes of the Contract.

27.2 The Contractor shall take all necessary precautions to ensure that all information obtained from the Authority under or in connection with the Contract -

- a) Is given only to the minimum number of Staff and then only to the extent necessary for each member of Staff's activities in the provision of the Services; and
- b) Is treated as confidential and not disclosed (without prior Approval) or used by any Staff otherwise than for the purposes of the Contract.

27.3 Where it is considered necessary in the reasonable opinion of the Authority's Representative, the Contractor shall ensure that Staff sign a confidentiality undertaking, as set out in Appendix G, before commencing work in connection with the provision of the Services.

27.4 The provisions of Condition 27.1 and 27.2 shall not apply to any information which is: -

- a) or becomes public knowledge (otherwise than by breach of this Condition), or
- b) in the possession of the Party concerned, without restriction as to its disclosure, before receiving it from the disclosing Party, or
- c) received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

27.5 Nothing in this Condition shall prevent the Authority -

- a) Disclosing such information relating to the outcome of the procurement process for the Contract as may be required to be published in the Supplement to the Official Journal of the European Communities in accordance with EC directives or elsewhere in accordance with requirements of United Kingdom government policy on the disclosure of information relating to government contracts;
- b) Disclosing any information obtained from the Contractor: -
 - i) To any other department, office or agency of the Crown, or
 - ii) To any Person engaged in providing any Services to the Authority for any purpose relating to or ancillary to the Contract,

Provided that in disclosing information under sub-paragraph (i) or (ii) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate; or
- c) Disclosing information obtained from the Contractor under Condition 19.2 subject to the obligations imposed by Condition 19.3.

27.6 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of confidential information or an infringement of any Intellectual Property Rights.

27.7 The Contractor shall not use any confidential information obtained from the Authority for the solicitation of business from the Authority or any other part of the Crown.

27.8 The Authority will use reasonable endeavours to consult with the Contractor before it discloses any information in pursuance of its obligations under the Freedom of Information Act 2000.

27.9 The obligations imposed by this Condition 27 shall continue to apply after the expiry or termination of the Contract.

27A FREEDOM OF INFORMATION

27A.1 The Contractor acknowledges that the Authority is subject to the Code of Practice on Government Information, the Freedom of Information Act 2000 and the Environment Information Regulations 2004 and shall assist

and cooperate with the Authority to enable the Authority to comply with its information disclosure obligations.

27A.2 The Contractor shall and shall procure that its subcontractors shall:

27A.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 working days of receiving a Request for Information;

27A.2.2 provide the Authority with a copy of all information held on behalf of the Customer covered by the Request for Information in its possession, or power in the form that the Authority reasonably requires within 5 working days of the Authority's request; and

27A.2.3 provide all necessary assistance as reasonably requested by the Authority to respond to the Request for information within the time for compliance set out in section 10 of the Freedom of Information Act 2000 or the Environment Information Regulations 2004.

27A.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision of this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, the Freedom of Information Act 2000 or the Environment Information Regulations 2004.

27A.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

27A.5 The Contractor acknowledges that (notwithstanding the provisions of clause 27A) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the Freedom of Information Act 2000 or the Environment Information Regulations to disclose information concerning the Contractor or the Services:

27A.5.1 in certain circumstances without consulting the Contractor;

27A.5.2 following consultation with the Contractor and having taken its views into account;

provided always that where clause 27A.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice or, failing that, to draw the disclosure to the Contractor's attention after such disclosure.

27A.6 The Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 6 is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause 27A.5.

28. PUBLICITY

28.1 The Contractor shall not make any public statement relating to the existence or performance of the Contract without prior Approval, which shall not be unreasonably withheld.

29. RIGHT OF AUDIT

29.1 The Contractor shall keep secure and maintain until three years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

29.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records and personnel as they may reasonably require in order to check the Contractor's compliance with the Contract.

29.3 For the purpose of:

- a) The examination and certification of the Authority's accounts; or
- b) Any examination pursuant to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which the Authority has used its resources,

29.4 The Controller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and / or written explanations as he considers necessary. This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

29.5 The Contractor shall keep secure and maintain full and accurate records of the operational delivery, financial records and employee/manager feedback as produced in the provision of the Service to the Authority.

29.6 The Contractor shall grant to the Authority, or its authorised agents, such access to those records and personnel as they may reasonably require in order to check the Contractor's compliance with the Contract.

30. LIABILITY

- 30.1 Neither party's liability to the other in respect of death or personal injury resulting from negligence shall be limited.
- 30.2 The Authority's liability to pay the Contractor in accordance with this Contract shall not be limited by this Clause 30.
- 30.3 Except as provided in Clauses 30.1 and 30.2, each party's total liability to the other (by way of indemnity or otherwise) for direct physical damage to the other's tangible property resulting from negligence shall not exceed five hundred thousand pounds (£500,000) in respect of any one event or series of connected events.
- 30.4 Except as provided in Clauses 30.1, 30.2, and 30.3 above:
 - 30.4.1 each party's total liability to the other party in respect of all claims arising in any Contract Year by way of indemnity or otherwise shall in no event exceed one hundred per cent (100%) of the charges paid and payable by the Authority for the Services during that Contract Year; and
 - 30.4.2 notwithstanding the provisions of Clause 30.4.1 above, each party's total liability to the other party in respect of all claims arising under this Contract by way of indemnity or otherwise shall not exceed one hundred and twenty five per cent (125%) of the charges paid and payable by the Authority for the Services during the first Contract Year.
- 30.5 Except as provided in Clauses 30.1 and 30.2 above, neither party shall have any liability to the other party (by way of indemnity or otherwise) for:
 - 30.5.1 loss of profits, goodwill, revenue, production, anticipated savings, use or contracts, losses consequent upon loss or corruption of data nor the cost of reconstituting data; or
 - 30.5.2 any type of indirect or consequential loss, damage, injury or expense.
- 30.6 The exclusions and limitations of liability set out in this Contract shall exclude and limit each party's liability to the other in respect of all matters arising out of or in connection with this Contract whether in contract, tort (including but not limited to negligence), for breach of statutory duty or otherwise.

31. INDEMNITY AND INSURANCE

- 31.1 Subject to the limits laid out in clause 30, the Contractor shall indemnify the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury, or loss of or damage to property, which is caused directly or indirectly by any act or omission of the Contractor. This Condition shall not apply to the extent that the Contractor is able to demonstrate that

such death or personal injury, or loss or damage, was not caused or contributed to by his negligence or default, or the negligence or default of his Staff or sub-contractors, or by any circumstances within his or their control.

31.2 The Contractor shall either self insure to, or effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, in respect of death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor subject to the limits laid out in clause 30 of this Contract.

31.3 [Not Used]

31.4 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

31.5 The Contractor shall produce to the Authority's Representative, on request, evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

31.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Condition 31.2.

31.7 The Contractor shall use his reasonable endeavours to ensure that he shall not by his acts or omissions cause any policy of insurance to be invalidated or avoided.

32. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

32.1 The Contractor shall not do (and warrants that in entering the Contract he has not done) any of the following (referred to in this Condition as "prohibited acts"):

- a) Offer, give, or agree to give, to any servant of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other contract with the Crown, or for showing or not showing favour or disfavour to any Person in relation to this or any other contract with the Crown;

- b) Enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Authority.

32.2 If the Contractor, his employees, agents or any sub-contractor, or anyone acting on his or their behalf, does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 to 1916, with or without the knowledge of the Contractor, in relation to this or any other contract with the Crown, the Authority shall be entitled -

- a) To terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
- b) To recover from the Contractor the amount or value of any such gift, consideration or commission; and
- c) To recover from the Contractor any other loss sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.

32.3 In exercising its rights or remedies under this Condition, the Authority shall: -

- a) Act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;
- b) Give all due consideration, where appropriate, to action other than termination of the Contract, including (without limitation to):
 - i) Requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of a sub-contractor;
 - ii) Requiring the Contractor to procure the dismissal of an employee (whether his own or that of a sub-contractor) where the prohibited act is that of such employee.

33. UNLAWFUL DISCRIMINATION

33.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex-Discrimination Act 1975, Employment Equality (Age) Act 2006 or the Disability Discrimination Act 1995 or any statutory modification or re-enactment of these Acts or analogous legislation which has been, or may be, enacted from time to time relating to discrimination in employment.

33.2 The Contractor shall take all reasonable steps to secure that all servants, employees or agents of the Contractor and all sub-contractors employed in the performance of the Contract do not unlawfully discriminate as set out in Condition 33.1.

34. HEALTH AND SAFETY

34.1 The Contractor shall promptly notify the Authority of any health and safety hazards that may arise in connection with the performance of the Services.

34.2 The Authority shall promptly notify the Contractor of any health and safety hazards that may exist or arise at the Authority's Premises and approved satellite centres, which may affect the Contractor in the performance of the Services.

34.3 The Contractor shall promptly notify the Authority of any health and safety hazards that may exist or arise at the Contractor Premises and approved satellite centres, which may affect the User in partaking of the Services.

34.4 The Contractor shall inform all Staff engaged in the provision of Services at the Authority's Premises of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.

34.5 Whilst on the Authority's Premises, the Contractor and his sub-contractors (if applicable) shall comply with any health and safety measures implemented by the Authority in respect of Personnel and other Persons working on those Premises.

34.6 The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Services on the Authority's Premises and/or the Contractor premises and approved Satellite Centres where that incident causes any personal injury or any damage to property which could give rise to personal injury. This to include Contractor and the Authority's employees.

34.7 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Staff and/ or Participants in the performance of the Services.

35. CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999

- 35.1 For the avoidance of doubt nothing in the Contract shall confer on any third party any benefit or the right to enforce any term or Condition of the Contract.

36. TRANSFER AND SUB-CONTRACTING

- 36.1 The Contractor shall not assign, sub-contract, or in any other way dispose of the Contract or any part of it without prior Approval (such Approval not to be unreasonably withheld or delayed). Approval of a sub-contractor shall be signified by the inclusion of the name on Appendix E. Names can only be added to this list by a covering Variation, agreement of which shall not be unreasonably withheld.
- 36.2 On giving notice to the Contractor of not less than 30 days, the Authority shall be entitled to assign any or all of its rights under the Contract to any contracting authority as defined in Regulation 3(1) of the Public Contracts Regulations 2006, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.
- 36.3 The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.
- 36.4 The Contractor shall ensure all self-employed individuals employed on the provision of services as part of this contract are covered within the insurance arrangements of the contract and are operating appropriate accounting arrangements in compliance with Her Majesty's Revenue and Customs legal requirements.

37. SERVICE OF NOTICES AND COMMUNICATIONS

- 37.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 37.2 Any notice or other communication that is to be given by either Party to the other shall be given by letter, or by facsimile transmission or electronic mail confirmed by letter. Such letters shall be delivered by hand or sent prepaid by first class post to the address of the other. If the other Party does not acknowledge receipt of any such letter, facsimile transmission or item of electronic mail, and the relevant letter is not returned as undelivered, the notice or communication shall be deemed to have been given 3 working days after the day on which the letter was posted.
- 37.3 Either Party may change its address for service by notice given in accordance with this Condition.

38. SEVERABILITY

- 38.1 If any court of competent jurisdiction holds any provision of the Contract invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

39. WAIVER

- 39.1 The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 39.2 No waiver shall be effective unless it is communicated to the other Party in writing.
- 39.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

40. VARIATION

- 40.1 The Contract shall not be varied unless such Variation is made in writing by means of a Variation to Contract Form as set out in Appendix A.
- 40.2 In the event of an emergency the Authority shall have the right to vary the Contract by oral instructions given by the Authority's Representative unless such instructions are reasonably objected to by the Contractor, which instructions shall be confirmed by the issue of a Variation to Contract Form within 7 days.
- 40.3 The Authority shall have the right to vary the Services at any time, subject to the Variation being related in nature to the Services being provided, unless such variation is reasonably objected to by the Contractor, and no such Variation shall vitiate the Contract.
- 40.4 The Contractor may request a Variation provided that:
- a) The Contractor shall notify the Authority's Representative in writing of any additional or changed requirement which he considers should give rise to a Variation within seven days of such occurrence first becoming known to the Contractor;
 - b) Any proposed Variation should be fully supported by a quotation as detailed in Condition 40.5.
- 40.5 The Contractor, within 14 days of being requested by the Authority's Representative or where requesting a Variation pursuant to Condition 40.4, shall submit a quotation to the Authority, such quotation to contain at least the following information:
- a) A description of the work together with the reason for the proposed Variation;
 - b) The price, where applicable;
 - c) Details of the impact, if any, on other aspects of the Contract.
- 40.6 The price for any Variation shall, unless otherwise agreed between the Parties, be calculated in the following order of precedence:
- a) Using the Prices or Rates;
 - b) Prices pro-rata to the Prices or Rates;
 - c) Prices based upon the Prices or Rates.

- 40.7 The Authority shall either Approve or reject any Variation proposed by the Contractor.
- 40.8 In the event that the Contractor disputes any decision by the Authority to reject a proposed Variation or contends that a proposed Variation is outstanding or continues to be required, the Contractor shall update the information contained in his quotation for the proposed Variation every Month and shall send the updated information to the Authority.

41. FORCE MAJEURE

- 41.1 Neither Party shall be liable to the other Party by reason of any failure or delay in performing its obligations under the Contract, which is due to Force Majeure, where there is no practicable means available to the Party concerned to avoid such failure or delay.
- 41.2 If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that Party shall promptly give notice to those circumstances as soon as practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.
- 41.3 For the purposes of this Condition “Force Majeure” means any event or occurrence which is outside the control of the Party concerned and which is not attributable to any act or failure to take preventative action by the Party concerned, but shall not include any industrial action occurring within the Contractor’s organisation or within any sub-contractor’s organisation.
- 41.4 Any failure or delay by the Contractor in performing his obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Contractor by Force Majeure.

42. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

- 42.1 The Authority may terminate the Contract by written notice having immediate effect if:
- a) The Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or

- b) Where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
- c) Where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

42.2 The Authority may only exercise its right under Condition 42.1(a) within 6 Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Authority immediately when any change of control occurs.

43. TERMINATION ON DEFAULT

- 43.1 The Authority may terminate the Contract, by written notice to the Contractor with immediate effect if the Contractor is in material default of its obligations under the Contract and:
- a) The Contractor has not remedied the default within 30 days, or such other longer period as may be specified by the Authority, after service of written notice specifying the default and requiring it to be remedied; or
 - b) The default is not capable of remedy; or
 - c) The default is a fundamental breach of the Contract.

44. BREAK

44.1 The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, or to terminate the provision of Services to any named Party of the Authority for convenience at any time by giving six (6) Months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

45. CONSEQUENCES OF TERMINATION

- 45.1 If the Authority terminates the Contract under Condition 43, or terminates the provision of any part of the Services under that Condition, and then makes other arrangements for the provision of the Services, the Authority shall be entitled to recover from the Contractor the reasonable cost of making those other arrangements and any reasonable additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the Contract is terminated under Condition 43, no further payments shall be payable by the Authority until the Authority has established the final cost of making those other arrangements.
- 45.2 If the Authority terminates the Contract, or terminates the provision of any part of the Services, under Condition 44, the Authority shall reimburse the Contractor in respect of any loss, including loss of profit (such loss of profit to be for the period of 12 months less the period of notice given), actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce Equipment and labour costs as appropriate.
- 45.3 For the purposes of Condition 45.2, the Contractor shall submit to the Authority's Representative, within 20 working days after the date of termination, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.
- 45.4 The Authority shall not be liable under Condition 45.2 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum (calculated on the basis of immediately preceding historic volumes) that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.
- 45.5 Termination of the Contract shall not affect the coming into, or continuance in force of any provision of this Contract, which is expressly or by implication intended to come in force upon termination of this Contract including in particular Conditions, 24, 25, 27. The Contractor shall keep secure and maintain until three years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

45.6 The Contractor shall grant to the Authority, or its authorised agents, such access to those records and personnel as they may reasonably require in order to check the Contractor's compliance with the Contract, 29, 30, 35, 38, 39, 45 and 49.

46. DISPUTE RESOLUTION

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

46.2 If the dispute cannot be resolved by the Parties pursuant to Condition 46.1, the dispute may, by agreement between the Parties, be referred to mediation pursuant to Condition 46.4.

46.3 The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 46.2.

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

- a) A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon the identity of the Mediator within 14 days after a request by one Party to the other (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator;
- b) The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
- c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both the Authority's Representative and the Contractor's Representative;

- e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties;
- f) If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

47. EURO

- 47.1 Any legislative requirement to account for the Services in Euro, instead of and/or in addition to Sterling, shall be implemented by the Contractor at nil charge to the Authority.
- 47.2 The Authority shall provide all reasonable assistance to facilitate such changes.

48. BUSINESS CONTINUITY

- 48.1 The Contractor shall have robust contingency plans in place, agreed with the Authority (such agreement not to be unreasonably withheld or delayed), to ensure that the service to the Authority will be maintained in full in the event of disruption (including, but not limited to, disruption to communication and/or information technology systems) to the Contractor's operations, and those of sub-contractors to the Contractor, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test once per Contract Year at any reasonable time, and shall be subject to regular updating and revision throughout the currency of the contract. Communication and information technology should be taken to mean, but not restricted to:
 - a) Any internet website containing information about the Service, training material and contact arrangements;
 - b) Any internet website containing the means to make case referrals, case tracking and retrieval of outcome summary reports and the commissioning of services;
 - c) Any electronic means for sending data to, or receiving data from, the Contractor;
 - d) Any encryption software or other devices and methods put in place to meet the Authority's security standards;
 - e) Information technology used to store data and information;
 - f) Telephony communication lines into the Occupational Health Advice and Administrative Support systems.

49. LAW AND JURISDICTION

49.1 This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.