



**COMMISSIONING INDEPENDENT NHS
COMPLAINTS ADVOCACY SERVICES BRIEFING
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1. Introduction:

Provision of Independent Advocacy:

1.1 The provision of independent advocacy is a legal requirement for SoS Under section 248(1) of the National Health Service Act 2006:

“The Secretary of State must arrange, to such extent as he considers necessary to meet all reasonable requirements, for the provision of independent advocacy services.”

1.2 This statutory service was launched on 1 September 2003 and provides for the first time a national service delivered to agreed quality standards

1.3 Within the meaning of the Act, advocacy services relate only to the provision of assistance for individuals making or intending to make an NHS complaint (which includes a complaint to the Health Service Ombudsman). Within adult social care, local authorities are currently, expected to make complaints advocacy services available if needed, but availability is a matter of local discretion and decision; there is no statutory requirement.

1.4 The Department of Health on behalf of the Secretary of State for Health, commission these services directly from the Independent Complaints Advocacy Service, which is provided by three suppliers, The Carers Federation, POhWER and SEAP. The Department of Health (DH) has responsibility for the management of contracts, and the quality of service provided. These five-year contracts (let centrally); amounting to approximately £11.75m each year will expire on 31 March 2013.

Future Provision of Independent Advocacy:

1.5 From 1 April 2013, independent advocacy will be commissioned through Local Authorities. Local Authority commissioners will be free to procure independent complaints advocacy services where they see fit. Indicative funding allocations by Authority can be found at **Annex A**.

2. Current Service Provision:

2.1 Independent complaints advocacy is currently provided on a national basis by the Independent Complaints Advocacy Service (ICAS). ICAS is a patient centred service, delivering support ranging from provision of self-help information, through to the assignment of dedicated advocates to assist individuals with letter writing, form filling and attendance at meetings. ICAS aims to ensure complainants have access to the support they need to articulate their concerns and navigate the complaints system.

2.2 ICAS staff use advocacy skills to provide practical support and direction to clients, in order to assist them in finding a resolution to their complaint.

2.3 ICAS's relationship with the client focuses on contact at each of the following points or activities in the NHS complaints procedure, those being:

- Identifying what the available options and possible outcomes are, and deciding which option to take;
- Making the complaint to the appropriate Trust(s);
- Deciding how to proceed with the complaint, following the Trusts initial response;
- Supporting clients during the local resolution phase by attending meetings or entering into correspondence;
- Making a complaint to the Healthcare Commission;
- Supporting the Independent Review stage by attending meetings or entering into correspondence;
- Making a complaint to the Health Service Ombudsman;
- Understanding the Health Service Ombudsman's final decision;
- ICAS will also support clients with a grievance related to any aspect of healthcare that falls under the jurisdiction of the Health Service Ombudsman, such as complaints about poor treatment or service provided through the NHS in England.

2.4 Whilst ICAS does not provide on-going advocacy for clients outside of the health related complaint, ICAS will suggest appropriate referrals for clients who require alternative, additional or specialist support, including referrals to PALS, professional bodies such as the GMC, and to specialist support such as medico-legal advice, bereavement support, mental health support, etc. Details of the original service specification may be found at **Annex B**.

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Geographical Breakdown of ICAS Provision in England:

2.5 There are currently three ICAS providers for England, The Carers Federation, POhWER and SEAP a full geographical breakdown can be found below.

1) **The Carers Federation Ltd** covering:

- East Midlands
- North East
- North West
- Yorkshire & the Humber

2) **POhWER** covering:

- East of England
- London
- West Midlands

3) **South of England Advocacy Service (SEAP)** covering:

- South East
- South West
- Scilly Isles

2.6 Full details of the service provision including key performance indicators (KPI) for the current contract may be found at **Annex C**. The original KPI for the set up of the contract can be found at **Annex D** and a copy of the contract may be found at **Annex E**.

3. NHS Complaints Procedures

Background:

3.1 Prior to April 2009 there were two separate processes for handling complaints about health and social care services. These processes had a number of different stages and timescales, and investigations were carried out in different ways for each service.

3.2 The NHS Complaints Procedure was broadly the same across all NHS services and comprised of three stages. Complaints could be made about any matters connected with the provision of NHS services. The stages were:

- Local Resolution;
- Healthcare Commission;
- Parliamentary and Health Service Ombudsman (PHSO).

3.3 In the White Paper, *'Our Health, Our Care, Our Say'* (January 2006), the Department set out its commitment to develop a comprehensive single complaints system across both health and social care by 2009. This unified system would focus on resolving complaints locally with a more personal and comprehensive approach to handling complaints. This process is known as *"local resolution."*

3.4 The Parliamentary and Health Service Ombudsman (PHSO) in her 2005 report (*Making things better? A Report on Reform of the NHS Complaints Procedure in England*), identified five key weaknesses in the current NHS system and approach:

- complaints systems were fragmented within the NHS, between the NHS and private health care systems, and between health and social care;
- the complaints system was not centred on the patient's needs;
- there was a lack of capacity and competence among staff to deliver a quality service;
- the right leadership, culture and governance were not in place; just remedies were not being secured for justified complaints.

3.5 In addition, the PHSO also identified problems with having fragmented complaints processes across health and social care. She stated that separate procedures for health and social services complaints *"can cause problems for users of both sets of services when things go wrong" and when complaints arise about both services "it is not always clear to service users which organisation is responsible for the services they receive"*.

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The Revised Complaints Procedures:

3.6 In June 2007, DH produced a consultation document entitled *Making Experiences Count*, which set out proposals for a new approach to complaints management. The Department's response to this consultation was published on 7 February 2008 and it confirmed that the complaints regulations would be reformed as responses to the consultation were overwhelmingly supportive of reform and improved joint working arrangements.

3.7 As a result, in April 2009 the Department published the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009. A key change in these regulations was that for the first time social services and NHS complaints were aligned and subject to the same complaints process.

3.8 The fundamental objectives were to facilitate effective handling of complaints at the local level and to encourage organisational learning leading to service improvements. It was recognised that complaints could be a valuable source of feedback on service delivery, particularly if linked to risk management and wider governance processes.

3.9 If the handling of complaints at a local level is robust, effective, comprehensive and proportionate, it was determined that there was no purpose served by having intermediary stages between local resolution and the Ombudsman. The reformed framework for handling future complaints was reduced from a three-tier process to a two tier process comprising:

- Local resolution;
- Ombudsman.

3.10 It was argued that by involving complainants throughout the process, their views taken into account, robust investigation and the decision is justified by the evidence, there ought to be no need to 'have another go' at getting it right. However, it remains important for providers of health and social care services to develop a local approach to local resolution that meets these criteria. The PHSO has published two leaflets, *Principles of Good Complaints Handling* and *Principles for Remedy*, against which she assesses the NHS complaints process.

3.11 This new approach to complaints was also designed to make the experience of making a complaint easier, more user-friendly, co-operative and much more responsive to people's needs. It also ensured independence where required. A vitally important element is that health and social care services should *routinely* learn from complaints, feeding into service improvement.

3.12 Providers should take complaints seriously and their Boards (or equivalents within organisations) need to understand both the benefit of dealing with complaints effectively and the consequences if they do not.

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3.13 Primary Care Trusts and Local Authority commissioners will have a major role to ensure that services they commission have an effective complaints process in place and are, delivered to a high standard. A key element will be the extent to which providers implement change and service improvement in direct response to complaints. Information on complaints about providers will influence commissioning decisions.

4. The NHS Current NHS Complaints Process:

4.1 If an individual wishes to make a complaint about an NHS service, they should make it through the National Health Service (NHS) complaint system. This process is detailed in the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and all NHS providers and commissioners of NHS services must comply with it. NHS organisations known in the regulations as “responsible bodies” must make information available to the public as to its arrangements for dealing with complaints and how further information about these arrangements may be obtained.

4.2 Therefore, a local hospital, trust or GP Practice should have available a copy of their complaints procedure, which should explain how to proceed. On-line information in respect of the NHS complaints system may also be found at the NHS Choices website.

4.3 Briefly the process is as follows. The first step will normally be to raise the matter (in writing or by speaking to them) with the practitioner, e.g. the nurse or doctor concerned, or with their organisation they should have a complaints manager to deal with your case. This process is known as “local resolution” and most complaints are resolved at the local stage. There is a time limit of 12 months in which the complaint must be made. This starts from the date of the incident being complained about came to the attention of the complainant.

4.4 If individuals need assistance in making a complaint, officers from the Patient Advice and Liaison Service (PALS) are available in all hospitals. They offer confidential advice, support and information on health-related matters to patients, their families and their carers.

4.5 Additionally assistance can also be provided by the Independent Complaints Advocacy Service (ICAS). This is a national service that supports people who wish to make a complaint about their NHS care or treatment.

4.6 If they are unhappy with the outcome at a local level, a complainant can refer the matter to the Parliamentary and Health Service Ombudsman

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who is independent of the NHS and government. but they must have gone through the local complaints process first.

5. The Role of Patient Advice and Liaison Service

Background:

5.1 The Patient Advice and Liaison Service (PALS), was introduced to ensure that the NHS listens to patients, their relatives, carers and friends, and answers their questions and resolves their concerns as quickly as possible. Specifically, PALS will:

- Provide you with information about the NHS and help you with any other health-related enquiry;
- Help resolve concerns or problems when you are using the NHS;
- Provide information about the NHS complaints procedure and how to get independent help if you decide you may want to make a complaint;
- Provide you with information and help introduce you to agencies and support groups outside the NHS;
- Inform you about how you can get more involved in your own healthcare and the NHS locally;
- Improve the NHS by listening to your concerns, suggestions and experiences and ensuring that people who design and manage services are aware of the issues you raise;
- Provide an early warning system for NHS Trusts and monitoring bodies by identifying problems or gaps in services and reporting them.

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5.2 The signposting/information giving role currently undertaken by PCT PALS and funded in the NHS will be transferred to Local Healthwatch when PCTs are abolished in 2013.

PALS Role in NHS Complaints:

5.3 Whilst PALS were set up as a facilitator for users of NHS services, part of their role is to provide information about the NHS complaints arrangements and, if users wish to make a complaint, how to get independent help through, for example, the Independent Complaints and Advocacy Service (ICAS). They provide on the spot help and can be powerful arbitrators between service users and trust staff, diffusing problematic situations and better enabling cooperation and understanding.

5.4 PALS have no formal role in the complaints process, in the sense that a complaint does not have to be routed through PALS, although there is evidence PALS have the potential to reduce complaints [National Evaluation of Patient Advice and Liaison Services; University of the West of England; 2008].

6. THE ROLE OF THE PARLIAMENTARY AND HEALTH OMBUDSMAN

Background:

6.1 Whilst the role of Parliamentary and Health Service Commissioner (PHSO) is currently held by a single post holder, it has always had two separate statutory roles namely the Parliamentary Commissioner for Administration and the Health Service Commissioner for England.

6.2 In her role as Health Service Commissioner for England, the Ombudsman investigates complaints about the NHS not resolved at local level. NHS complaints may be made about any function of a provider of NHS-funded care, or a commissioner of that care.

6.3 Examples of the sorts of complaints the PHSO can look into include:

- Failure to provide a service;
- Receiving the wrong or poor treatment;
- Delay that could have been avoided;
- Faulty procedures, or failing to follow correct procedures;
- Rudeness and not apologising for mistakes;
- Not putting things right when something has gone wrong.

6.4 This could include a complaint about lack of choice however; this is not a specific category in either the PHSO or Departmental complaints data.

The NHS Constitution specifies that:

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“You have the right to choose the organisation that provides your NHS care when you are referred for your first outpatient appointment with a service led by a consultant.”

6.5 There are certain exceptions to this but any NHS organisation failing to provide a choice could be subject to a complaint on that basis.

6.6 Whilst the role of Parliamentary and Health Service Commissioner is currently held by a single post holder, it has always had two separate statutory roles namely the Parliamentary Commissioner for Administration and the Health Service Commissioner for England.

6.7 In the role of Parliamentary and Health Service Commissioner (also referred to as the Parliamentary and Health Service Ombudsman (PHSO)), she carries out independent investigations into complaints about unfair, improper, or poor service by UK government departments, a range of other public bodies, and the NHS in England. In investigating and making findings on complaints referred to her, the Ombudsman will become involved in health matters at an individual and at a more general, systemic level. In addition, the Ombudsman’s unique position affords her an insight and knowledge into the work of the NHS that is valued by both Parliament and Government.

6.8 The Ombudsman’s office works to put things right where it can and shares lessons to improve public services. It is a free service open to everyone.

What Can be Looked at:

6.9 If someone has suffered because of a poor service or not being treated properly or fairly - and the organisation has not put things right where it could have – the Ombudsman may be able to help.

6.10 Before contacting the Ombudsman, the complainant is generally expected to try to make a complaint to the organisation involved. After doing this, and if a satisfactory answer is not received from the organisation, or if there is no response, complainants are advised to contact the PHSO.

6.11 Examples of the sorts of complaints the PHSO can look into include:

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- Failure to provide a service;
- Receiving the wrong or poor treatment;
- Delay that could have been avoided;
- Faulty procedures, or failing to follow correct procedures;
- Rudeness and not apologising for mistakes;
- Not putting things right when something has gone wrong.

6.12 The Ombudsman can also work jointly with the Local Government Ombudsman in some cases where complaints may cover more than one Ombudsman's jurisdiction.

What Cannot be Looked at:

6.13 Complaints about government policy or the content of legislation - Government makes policy decisions and Parliament decides the law.

6.14 In some cases, the PHSO cannot investigate complaints she does not have the legal power to do so, for example:

- Staff issues - such as recruitment, pay and discipline;
- Most commercial or contractual issues.

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6.15 In other cases, there may be another, more appropriate organisations to deal with the complaint; for example, for clinical negligence cases, the best way for the complainant to get the remedy they want may be through going to court.

Approaching the PHSO:

6.16 Under the Parliamentary Commissioner Act 1967, complainants can only submit complaints to the Parliamentary Ombudsman through a Member of Parliament (MP). This process is often referred to as the 'MP filter'.

6.17 This is not the case for the Health Service Commissioner for England, as people with complaints about the NHS have direct access to the Health Service Ombudsman. The 2009 complaints regulations (Regulation 14(2) (d) refers) place a duty on the investigating body in their response to the complainant to advise them of their right to take their complaint to the Health Service Commissioner (Health Ombudsman).

6.18 However, the Ombudsman will normally only take on a complaint after a complainant has tried to resolve the complaint with the trust or NHS provider and has received a response from them. This would mean using the NHS complaints process. The Ombudsman believes that the trust or organisation should be given a chance to respond and, where appropriate, try to put things right before she becomes involved.

6.19 A complainant who remains dissatisfied with the outcome of a complaint at a local level can approach the Health Service Ombudsman and ask them to look at their complaint. The 2009 complaints regulations (Regulation 14(2) (d) refers) require the investigating body in their response to the complainant to advise them of their right to take their complaint to the Health Service Commissioner (Health Ombudsman).

Contacting the Health Service Ombudsman:

6.20 The Ombudsman can be contacted by phone (via a helpline), fax and e-mail. PHSO also has a website. In addition, NHS organisations should, in their information on arrangements for handling complaint make available contact information for the Health Service Ombudsman. This information should also be made available through the Patient Advice and Liaison Service (PALS) operating in hospitals. In addition the Independent Complaints Advocacy Service (ICAS) a free to use service to complainants needing help

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in making a complaint also if appropriate will direct complainants to the Ombudsman.

INDICATIVE ALLOCATIONS FOR LOCAL AUTHORITY COMMISSIONING OF INDEPENDENT ADVOCACY

The Department conducted a consultation asking for views from all stakeholders, including LINks, on options for distributing funding to local authorities for the commissioning of NHS Complaints Advocacy, which is moving from the Department of Health.

The option selected for allocation of funding was the social care relative needs formula

The figures below illustrate the transfer of funding to local authorities to commission NHS complaints advocacy services, and include funding for lost economies of scale. They allocate a total of £14.2 million per year. This amount is illustrative. The actual funding in 2012-13 will be for part of the year. The transfer amount will be confirmed when the Department of Health has completed its 2012/13 financial planning round.

Summary of the Government's Response:

"A majority of respondents agree with the Department's preference to use Option NHSCA2 (adult social care relative needs formulae) to allocate funding for NHS complaints advocacy services, when the responsibility transfers to local authorities.

We have therefore decided that NHS Complaints Advocacy should be funded proportionately to the relative need in each local authority using the total adult social care relative needs formulae.

Funding for NHS Complaints Advocacy will not be allocated this year, as the duty does not pass to local authorities until April 2013. We will set out the quantum of resource to be allocated for NHS Complaints Advocacy next year."

LOCAL AUTHORITY	INDICATIVE FUNDING
Barking and Dagenham	52,506
Barnet	85,069
Barnsley	74,687
Bath & North East Somerset	43,289
Bedford	37,030
Bexley	52,656
Birmingham	334,706
Blackburn with Darwen	44,337
Blackpool	52,931

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LOCAL AUTHORITY	INDICATIVE FUNDING
Bolton	81,066
Bournemouth	50,551
Bracknell Forest	21,274
Bradford	137,051
Brent	73,787
Brighton & Hove	71,370
Bristol	121,919
Bromley	69,439
Buckinghamshire	99,594
Bury	48,558
Calderdale	55,451
Cambridgeshire	137,838
Camden	75,223
Central Bedfordshire	49,832
Cheshire East	85,743
Cheshire West and Chester	86,550
City of London	3,766
Cornwall	170,037
Coventry	92,292
Croydon	81,229
Cumbria	152,433
Darlington	29,851
Derby	69,864
Derbyshire	219,472
Devon	212,413
Doncaster	88,740
Dorset	112,774
Dudley	93,583
Durham	168,763
Ealing	81,188
East Riding of Yorkshire	87,529
East Sussex	150,770
Enfield	75,831
Essex	354,767
Gateshead	66,677
Gloucestershire	148,466
Greenwich	76,049
Hackney	79,823
Halton	37,562
Hammersmith and Fulham	54,050
Hampshire	278,522
Haringey	64,627
Harrow	56,822
Hartlepool	28,852
Havering	58,287
Herefordshire	51,913
Hertfordshire	241,685
Hillingdon	59,584

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LOCAL AUTHORITY	INDICATIVE FUNDING
Hounslow	55,909
Isle of Wight Council	46,789
Isles of Scilly	847
Islington	70,838
Kensington and Chelsea	59,974
Kent	357,410
Kingston upon Hull	89,210
Kingston upon Thames	33,242
Kirklees	109,625
Knowsley	59,396
Lambeth	86,609
Lancashire	328,428
Leeds	204,403
Leicester	92,873
Leicestershire	141,664
Lewisham	79,726
Lincolnshire	199,465
Liverpool	176,748
Luton	44,776
Manchester	161,277
Medway	56,524
Merton	44,785
Middlesbrough	45,425
Milton Keynes	53,195
Newcastle upon Tyne	90,110
Newham	77,246
Norfolk	250,030
North East Lincolnshire	46,002
North Lincolnshire	44,742
North Somerset	56,055
North Tyneside	61,270
North Yorkshire	145,019
Northamptonshire	160,623
Northumberland	90,824
Nottingham	93,011
Nottinghamshire	211,440
Oldham	66,341
Oxfordshire	134,361
Peterborough	45,510
Plymouth	77,495
Poole	37,199
Portsmouth	52,882
Reading	33,475
Redbridge	63,883
Redcar and Cleveland	42,907
Richmond upon Thames	38,584
Rochdale	65,290
Rotherham	80,273

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LOCAL AUTHORITY	INDICATIVE FUNDING
Rutland	7,895
Salford	78,902
Sandwell	108,139
Sefton	90,626
Sheffield	166,204
Shropshire	82,124
Slough	29,890
Solihull	50,383
Somerset	148,139
South Gloucestershire	55,344
South Tyneside	54,556
Southampton	67,906
Southend-on-Sea	48,512
Southwark	93,850
St Helens	57,868
Staffordshire	210,398
Stockport	76,458
Stockton-on-Tees	49,948
Stoke-on-Trent	80,348
Suffolk	193,482
Sunderland	94,827
Surrey	231,959
Sutton	43,360
Swindon	44,576
Tameside	69,402
Telford and the Wrekin	46,422
Thurrock	39,939
Torbay	50,775
Tower Hamlets	81,125
Trafford	56,564
Wakefield	100,507
Walsall	84,111
Waltham Forest	60,103
Wandsworth	75,022
Warrington	49,253
Warwickshire	132,585
West Berkshire	28,828
West Sussex	192,403
Westminster	85,318
Wigan	95,400
Wiltshire	106,185
Windsor and Maidenhead	27,242
Wirral	107,229
Wokingham	23,413
Wolverhampton	81,753
Worcestershire	142,433
York	43,902
TOTAL	14,199,996

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INDEPENDENT COMPLAINTS ADVOCACY SERVICE SPECIFICATION 2005

Structure of the Specification:

Section One – Describing the Service

- Definition of ICAS advocacy;
- Description of the physical structure of the service;
- Based on 9 government regions;
- Organisations to bid for one, several or national contracts;
- Where there are consortium bids, there must be one lead organisation/management structure and we need to be absolutely certain how the management structures work, how the organisations communicate with each other and report to the lead organisation and how any disputes would be resolved;
- Telephone support staff need to be working in teams, not in isolation.
- Promotes better/quicker development of necessary skills and expertise
Allows better management monitoring/control;
- This should also reduce the number of local offices that organisations set up and therefore have to fund which have no real benefit. Much better for them to fund one or two larger offices than 8 or 9 smaller ones that are inaccessible;
- Description of the boundaries of the client-advocate relationship;
- Summary description of capacity to date;
- ITT will include first year's operational report and overall statistics for each region over the last six months (most accurate that we have since advent of use of new databases).

Section Two – Governance and Management Requirements:

- Delivering excellence – Departments definition of excellent delivery of ICAS;
- ICAS core principles;

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- ICAS project director's code of practice;
- ICAS advocate code of practice.

Section Three – Absolute requirements:

- CRB checks for all ICAS staff – Bichard checks from 2007 – see e-mail from– 2nd August 2005;
- Regular support and supervision for ICAS staff (including team working arrangements);
- IT infrastructure – database, access to internet and e-mail accounts for all ICAS staff, fax facilities;
- Reporting requirements – Department, Patient Forums, Oversight and Scrutiny Committees.

Department Reporting:

- Quarterly stats and highlight report;
- Quarterly financial forecast and actual spend;
- Monthly service complaints reports;
- Performance self-assessment reports.

Skill Mix:

- 100% advocates will have generalist skills;
- In addition, at least 25% advocates should be able to offer specialist knowledge, or skills that would allow them to support clients with more complex needs, such as those suffering with mental health problems, those with learning disabilities, communication difficulties, sight or hearing impairment or clients without English as their first language;
- In addition, as a core feature of the service, organisations must have the capacity and expertise to support clients in secure environments;
- Telephone advocacy must be delivered by staff working in teams and not in isolation.
- Specialist advocates could be home based
- Language line or equivalent translation and interpretation services

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- Professional medico-legal support for advocates

Summary - Bids Must Demonstrate:

- Commitment to definition of ICAS advocacy;
- Management capability, capacity and accountability;
- Client Focus;
- Wider organisation support – a good match with their values/ethos;
- Lines of communication;
- Organisational and staff development capacity;
- Commitment to Departments definition of ICAS excellence;
- Environmental analysis/knowledge of their potential client base.

Section One – A Description of the Service Offered by ICAS

Advocacy for Health Related Complaints

The Independent Complaints Advocacy Service ('ICAS') is a client centred, flexible service that empowers anyone who wishes to resolve a complaint about healthcare commissioned and/or provided by the NHS in England.

ICAS staff use advocacy skills to provide practical support and direction to clients, in order to assist them in finding a resolution to their complaint.

ICAS' relationship with the client focuses on contact at each of the following points or activities in the NHS complaints procedure, those being:

- Identifying what the available options and possible outcomes are, and deciding which option to take;
- Making the complaint to the appropriate Trust(s);
- Deciding how to proceed with the complaint, following the Trusts initial response;
- Supporting clients during the local resolution phase by attending meetings or entering into correspondence;
- Making a complaint to the Healthcare Commission;
- Supporting the Independent Review stage by attending meetings or entering into correspondence;
- Making a complaint to the Health Service Ombudsman;
- Understanding the Health Service Ombudsman's final decision.

ICAS will also support clients with a grievance related to any aspect of healthcare that falls under the jurisdiction of the Health Service Ombudsman, such as complaints about poor treatment or service provided through the NHS in England. The Ombudsman looks into complaints against NHS services provided by hospitals, health authorities, trusts, GPs, dentists, pharmacists, opticians and other health care practitioners. The Ombudsman can also investigate complaints against private health providers if the treatment was funded by the NHS. (For more information on the work of the Ombudsman, please go to www.ombudsman.org.uk)

Whilst ICAS does not provide on-going advocacy for clients outside of the health related complaint, ICAS will suggest appropriate referrals for clients who require alternative, additional or specialist support, including referrals to PALS, professional bodies such as the GMC, and to specialist support such as medico-legal advice, bereavement support, mental health support, etc.

Section Two - ICAS Governance and Management

Delivering Excellence:

The Department of Health defines excellence in ICAS delivery as:

- The overall way of working that results in balanced stakeholder (clients, employees, partners) satisfaction, so increasing the capacity for organisational learning that supports the ICAS core principles, codes of practice and the long term success of the service;
- In assessing Expressions of Interest for progression to the next stage, Invitation to Tender, the Department will be looking for structures, systems and procedures within organisations that will support this definition.

Performance Management:

Organisations delivering ICAS will need to demonstrate how their structures and management systems monitor their own performance against the following criteria:

ICAS Leadership:

- Leaders develop the mission, vision and values of the service and are role models of a culture that supports their delivery;
- Leaders are personally involved in ensuring that the service's management system is developed, implemented and continuously improved;
- Leaders are involved with all stakeholders in order to support the development of the service;
- Leaders motivate, support and recognise the organisation's people.

ICAS policy and Strategy:

- Policy and strategy are based on the present and future needs and expectations of stakeholders;
- Policy and strategy are based on information from performance measurement, research and learning;
- Policy and strategy are developed, reviewed and updated;
- Policy and strategy are deployed through a framework of key processes and procedures;

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- Policy and strategy are communicated and implemented.

ICAS People:

- People resources are planned, managed and improved;
- People's knowledge and competencies are identified, developed and sustained;
- People are involved and empowered;
- People and the wider organisation have a dialogue;
- People are rewarded, recognised and cared for.

ICAS Stakeholders and Resources:

- External relationships are managed;
- Finances are managed;
- Buildings, equipment and materials are managed;
- Technology is managed;
- Information and knowledge are managed.

ICAS Processes and Procedures:

- Processes and procedures are systematically designed and managed;
- Processes and procedures are improved, as needed, using innovation in order to fully satisfy and generate increasing value for clients and other stakeholders;
- Services are designed and developed based on client needs and expectations;
- Client relationships are managed.

ICAS Core Principles:

ICAS is governed by seven core principles that set out its approach to supporting its clients.

ICAS delivers a free, independent, professional support service to clients wishing to pursue a formal complaint against the NHS.

Empowerment:

ICAS empowers people by:

- Providing them with information, enabling them to decide whether or not they wish to pursue a complaint about the NHS; and
- Where needed, by providing an advocate to support them in pursuing their complaint.

Accessibility:

ICAS respects the diversity of clients and provides support appropriate to the needs of the client by:

- Ensuring support is accessible at the point of contact to all, both in terms of the physical environment where it is delivered and the mode of communication used; and
- Providing appropriate services and materials for those clients who do not have English as their first language.

Resolution:

ICAS supports clients in trying to achieve a resolution to their complaint, within the NHS complaints procedure by:

- Supporting the process of Local Resolution, where clients and NHS staff work together to resolve complaints, at a point as close as possible to the point of service that has caused dissatisfaction.

Independence:

ICAS is not tied to, or controlled by the NHS, enabling ICAS to work solely on behalf of its clients

Partnership:

ICAS supports the aspirations of the NHS in improving the patient experience by working with all stakeholders to promote positive change in the NHS.

Confidentiality:

ICAS treats all interactions between clients as confidential, in line with ICAS provider's confidentiality policies.

Value for Money:

Organisations providing ICAS should deliver the service using the principles of value for money, those being:

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- Economy;
- Efficiency;
- Effectiveness.

Codes of Practice:

In addition to the ICAS core principles, two codes of practice, one relating to the work of ICAS project directors and one relating to the work of ICAS advocates, underpin effective service delivery.

ICAS PROJECT DIRECTORS' CODE OF PRACTICE

Accessing the Service:

The service must be delivered in a way that ensures it is accessible to all clients, both in terms of physical environment and mode of communication (e.g. audiotapes, symbols etc).

Delivering Advocacy:

- Advocates must be made aware of the ICAS Advocates Core Code of Practice and supported to ensure it is applied to service delivery;

The service must be aligned to maximise front line resources, empowering all who contact ICAS to be supported in pursuing a complaint against the NHS; Advocates must be encouraged to actively review cases and close them in a timely way.

Keeping Records:

- Providers must ensure that accurate records are kept of all interactions with clients;
- Records must be securely stored to ensure the confidentiality of the client/service relationship;
- Clients should have access to their records;
- ICAS advocacy services must comply with the requirements of the Data Protection Act 1998.

Policies and Procedures:

ICAS advocacy services will develop and maintain the following policies:

- Equal opportunities;
- Confidentiality;
- Health and Safety (including home and prison visits);
- Staff recruitment and selection (including CRB checks);
- Staff supervision and support (including staff access to confidential, external counselling support);
- Dealing with vexatious complainants;

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- Communicating trends and concerns to individual Trusts;
- Grievance and disciplinary procedures;
- Training and development;
- Service monitoring, review and evaluation;
- Complaints procedure, including arrangements for independent advocacy for clients who require it;
- Service prioritisation;
- Freedom of information;
- Home working.

The following protocols and information should be regularly reviewed:

- External advocacy support for clients wishing to complain against ICAS provision

Local Self Help Information:

Arrangements for specialist medico-legal support for advocates
Definition of roles and responsibilities between advocates, NHS staff and other support agencies

Staffing of the Service:

All staff appointments must comply with UK employment law. In addition:

- All staff must be CRB checked;
- All staff must be provided with regular personal supervision;
- Advocates should be encouraged to attend regular group supervision and/or peer support sessions;
- Staff appraisal should be undertaken not less than annually and include creation of personal development plans;
- Staff should be provided with access to external counselling support.

Training and Networking:

- Advocates must be given a programme of induction training within a month of joining the service;

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- Advocates must receive on-going training including updates on health policy and practice;
- Advocates should be encouraged to attend regional and national advocacy network events as appropriate.

Governance and Accountability:

Where services are provided by a voluntary or not-for-profit organisation, they should have an overall management committee which:

- Is duly elected according to the governing documents;
- Has representation of service users;
- Oversees the sound financial management of ICAS; and
- Ensures the organisation adheres to charity and company law.

Organisations providing ICAS should ensure that they have a dedicated, appropriately qualified and experienced management structure, supported by the wider organisation.

The service must report on a quarterly basis in accordance with the contract requirements.

Value for Money:

Organisations providing ICAS should deliver ICAS using the principles of value for money, those being economy, efficiency and effectiveness, where;

- Economy relates to minimising the costs of resources used within the service, but having regard to quality;
- Efficiency relates to the relationship between output, in terms of services or other results, and the resources used to produce them;
- Effectiveness relates to the extent to which objectives have been achieved. The relationship between the intended impacts and actual impacts of an activity.

Involving Clients:

Clients should be actively encouraged to provide feedback about their experience of using ICAS and this information should be used to inform service development.

Feedback and Alerts:

In considering communications on patient welfare issues, ICAS providers must adhere to the policies issued by the Department on vexatious complaints and breach of confidentiality.

Monitoring and review:

- The service must collect anonymised monitoring data on service delivery, process and outcomes as required by the contract managers;
- The service is expected to obtain feedback on the quality of the service from clients and other stakeholders;
- An annual report and audited accounts should be submitted to the contract managers by the end of September each year;
- Quarterly reports should be submitted to the contract managers in line with the published reporting schedule;
- Information on the running of ICAS should be made available to contract managers as requested.

ICAS ADVOCATE CORE CODE OF PRACTICE

ICAS will deliver a free, independent, professional support service to clients wishing to pursue a formal complaint against the NHS.

Purpose

ICAS:

- Helps safeguard the rights of clients as set out in both health policy and law;
- Empowers clients to self advocate as far as they are able;
- Supports clients to get their views heard;
- Supports clients in seeking resolution to issues which concern them; and
- Uses client experiences to inform service development in the NHS

ICAS advocates must ensure that clients understand:

- The core service principles of independence and confidentiality;
- What they can expect from the service and what the service expects from the client, through the early completion of the client/service contract when appropriate;
- Limits of what ICAS can achieve;
- What they can expect from the NHS complaints procedure and where other advocacy/support services can provide more specialist advice;
- When and how the advocacy service can be contacted;
- They can request to meet with an advocate to talk in confidence to them (except when other staff have to be present for reasons of safety or security);
- They can make a complaint about any aspect of the ICAS service and how to do so

ICAS advocates must:

- Only act or speak on behalf of a client if they request it;
- Discuss options with clients providing full and balanced information to enable them to make decisions and choices;
- Help clients access the information they need;
- Where it is appropriate to the client, try to contain face-to-face advocacy requirements to no more than two meetings per client, and where further contact is needed, discuss how these could be best met with their supervisor.

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General practice:

At all times, advocates must:

- Act, honestly and courteously, treating clients and NHS staff with respect;
- Work within the law;
- Adhere to the organisation's confidentiality policy;
- Not disclose information about a client to others without consent;
- Not sign anything or accept any verbal or written information that allows them to know information about a client which they cannot disclose to that client;
- Not give anything away in negotiation without the consent of the client;
- Not hold documents, money or valuables belonging to clients;
- Not accept gifts from clients or other stakeholders.

Advocates as employees should:

- Avoid conflicts of interest, but where they do occur, they should be declared to their supervisor and options for action explored;
- Work to the ICAS standards and code of practice;
- Seek to continuously develop their practice and to contribute to the development of the service.

Relationships with Stakeholders:

- Advocates should seek to develop constructive working relationships with all stakeholders.

NB This code of practice should be read and applied in conjunction with individual ICAS provider's code of practice.

Section Three – Absolute requirements

3.1 CRB checks for all ICAS staff

3.2 Regular support and supervision for ICAS staff (including team working arrangements)

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3.3 Strategic training and development plan including performance management system

3.4 IT infrastructure – database, access to internet and e-mail accounts for all ICAS staff, fax facilities

3.5 Reporting requirements – Department, Patient Forums, Oversight and Scrutiny Committees:

Department reporting Quarterly stats and highlight report;

Quarterly financial forecast and actual spend;

Monthly service complaints reports;

Performance self-assessment reports.

3.6 Language line or equivalent translation and interpretation services

100% advocates will have generalist skills

3.7 In addition, at least 25% advocates should be able to offer specialist knowledge, or skills that would allow them to support clients with more complex needs, such as those suffering with mental health problems, those with learning disabilities, communication difficulties, sight or hearing impairment or clients without English as their first language.

In addition, as a core feature of the service, organisations must have the capacity and expertise to support clients in secure environments

3.8 Specialist advocates could be home based

3.9 Telephone advocacy should be delivered by staff working in teams and not in isolation.

Current ICAS Key Performance Indicators 2012-2013

Key Performance Indicators

KPI ICAS 001: Activity & Volume

Increase in number of new cases per annum (levels 1- 5)

KPI ICAS 002: Diversity & Equality

Effective information gathering relating to client diversity / equality:

- a. Percentage of new client's ethnicity data collected during reporting quarter.
- b. Percentage of new client's age data collected during reporting quarter.
- c. Percentage of new client's self-defined disability data collected during the reporting quarter.

KPI ICAS 003: Satisfaction

- a. Clients are satisfied with the service provided
- b. Providers maintain positive relationships with key stakeholders.

KPI ICAS 004: Service Management (staff)

Team members are actively supported and monitored in their role:

- a. Supervision carried out every 2 months for every ICAS team member
- b. Five active case files are to be reviewed every 2 months for every advocate- (30 active case file reviews achieved annually per advocate).

6. Providers are committed to staff involvement in service development and delivery:

- a. Providers carry out annual anonymous staff survey and achieve target response rate.
- b. Providers achieve target positive response rate to question involvement in business planning and development.

ICAS Key Performance Indicators (KPI) for Setup of ICAS 2005

SETUP KPIs

KPI ICAS 001: Improving accessibility

- (1) Demonstrable research into client needs ref accessibility (100% completion by March 07)
- (2) review of multi-media formats for ICAS information, including SHIP (100% completion by March 07)
- (3) working towards recognised accessibility standards for websites (** 3As by March 2007)

KPI ICAS 002: IMPROVED SUPERVISION AND SUPPORT FOR ICAS ADVOCATES

- (1) One to one supervision to be carried out bi-monthly
- (2) Five active files to be reviewed on a bi-monthly basis
- (3) Peer to peer sharing of complex cases at team meetings on a monthly basis

KPI ICAS 003: Increased Training and Development Opportunities for ICAS advocates and staff

- (1) ICAS staff have an annual training and development programme agreed with their line manager at their main annual appraisal.
- (2) Providers produce an annual staff training plan which is linked to individual training and development plans
- (3) Training and development activities are evaluated by staff undertaking them
- (4) Training and development activities are evaluated by Managers

KPI ICAS 004: Confidentiality

- (1) Regular review of confidentiality policy and its internal communication, evidenced by staff register
- (2) Assessment of implementation of confidentiality policy built in to training (to include advocates understanding of policy, ability to convey policy and ability to implement procedures that support the policy)
- (3) Indication in case notes that confidentiality policies are communicated to and understood by clients, through Technical File Review and monitoring of client records
- (4) Number of reported breaches of confidentiality
- (5) Correct recording of operation of confidentiality policy/actions taken when a decision is made to breach client confidentiality
- (6) Computer usage – annual review/audit of systems security and DPA compliance

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SETUP KPIs

KPI ICAS 005: Independence

1. Increase in the number and diversity of sources of referral
2. Increase in Positive Stakeholder feedback
3. Increase in client numbers from hard to reach groups
4. Increase in Circulation of publicity material in new areas

KPI ICAS 006: Resolution (NOT REQUIRED)

KPI ICAS 007: Partnership

1. Increase in Number of presentations to stakeholders
2. Increase in no of referrals from relevant stakeholders
3. Increase in Uptake and display of publicity material to recognised stakeholders

Target

4. Increase in Quarterly meetings with stakeholders outside of complaints process
5. Building a comprehensive database of relevant contacts

KPI ICAS 008: Empowerment

- (1) Increase in percentage of clients who report on case closure that they felt enabled/more confident to act independently in future.
- (2) Increase in percentage of contacts who felt able to pursue complaint without advocate support after initial contact/ SHiP
- (3) Organisations with over 100 employees hold Staff Consultation Groups when required
- (4) Staff questionnaire (measuring staff empowerment within their role) is completed and submitted by staff as part of annual appraisal or other suitable process

KPI ICAS 009: Service Transition

- (1) Set up costs on target
- (2) Completion of transition requirements (as reported in monthly transition reports)
- (3) Evidence of management plans where completion is not practicable

KPI ICAS 010: Implementation of Quality Standards

- (1) To produce a plan for achievement of the award by end March 2007
- (2) To have achieved award or be working towards award by April 2008

Example of ICAS Contract

PROVISION OF THE INDEPENDENT COMPLAINTS ADVOCACY SERVICE FOR THE EAST MIDLANDS REGION OF ENGLAND

SECTION 2: TERMS AND CONDITIONS OF CONTRACT

1. Definitions
2. Variation
3. The Price
4. Value Added Tax
5. Payment
6. Recovery of Sums Due
7. Time of Performance
8. Inspection of Contract Areas & Conditions Affecting Provision of Services
9. Contractor's Status
10. Contractor's Personnel
11. Substitution
12. Manner of Carrying Out the Services
13. Use of the Authority's Premises
14. Issued Property
15. Provision of Equipment
16. Transition of Work
17. Payment of Sub-contractors
18. Confidentiality
19. Intellectual Property Rights
20. Publicity
21. Right of Audit
22. Indemnity and Insurance
23. Corrupt Gifts and Payments of Commission
24. Conflict of Interest
25. Unlawful Discrimination
26. Health and Safety
27. Transfer and Sub-Contracting
28. Service of Notices and Communications
29. Severability
30. Waiver
31. Termination on Change of Control and Insolvency
32. Termination on Default
33. Break
34. Consequences of Termination
35. Transfer of Undertakings (Protection of Employment) (TUPE)
36. Dispute Resolution
37. Arbitration
38. Freedom of Information
39. The Contracts (Rights of Third Parties) Act 1999
40. Law and Jurisdiction

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APPENDICES

Appendix A

Variation to Contract form

Appendix B

Novation Agreement

Appendix C

List of Persons Transferring to the Contractor

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1. DEFINITIONS

1.1 In this Contract: -

The following definitions shall be used for the purposes of interpreting the Contract and all documents relating thereto except where the context requires otherwise. Other definitions that are not applicable to all Sections shall be stated in the Section where the definition is first used and shall apply only to that Section and subsequent Sections as appropriate:

"Approved" or "Approval" means approved or approval in writing.

"Associate Company" in relation to corporate body means any other corporate body controlled by the same person or persons who control the first mentioned corporate body, where "control" has the meaning assigned thereto by Section 840 of the Income and Corporation Taxes Act 1988.

"the Authority" shall include any designated person who is authorised to act on behalf of the Secretary of State for Health in matters pertaining to the Contract.

"the Authority's Representative" shall mean the person nominated in Section Five - Administrative Instructions - authorised to act on behalf of the Secretary of State for Health.

"Client" means the person who makes use of the Service.

"the Commencement Date" shall be in accordance with the programme detailed in Section Three - Scope of Work.

"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. In the event that the Contractor's responsibility for the provision of the Services is phased, the Commencement of Full Operations means the commencement of each phase following the Setting up Operations in respect of that phase.

"Commercially Sensitive Information" means the subset of Confidential Information listed in Section Six composed of the types of information:

- (a) which is provided by either Party in confidence for the period set out in Section Six; and/or
- (b) that constitutes a trade secret.

"Condition" means a condition within the Contract.

"Confidential Information" means information that falls within the types of information which has been designated as confidential by either Party and included in Section Six - Confidential and Commercially Sensitive Information or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Goods/Services, developments, trade secrets,

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Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information.

"Conflict of Interest" means a situation in which the Contractor or a member of Staff has a private, personal or corporate interest which could appear to influence the objective exercise of his or her work towards the provision of the Services.

"the Contract" shall mean the agreement concluded between the Authority and the Contractor consisting of the following Sections which shall be read as one document and which, in the event of ambiguity or contradiction between Sections, shall be given precedence in the order listed;

(i) Section one	Form of Agreement
(ii) Section Two	General Conditions of Contract
(iii) Section Three	Scope of Work
(iv) Section Four	Schedule of Prices (Rates)
(v) Section Five	Administrative Instructions.
(vi) Section Six	Confidential and Commercially Sensitive Information

"Contract Period" shall be the period for which the Contract shall continue as defined in Section Three - Scope of Work.

"Contract Price" means the price, exclusive of Value Added Tax, payable by the Authority to the Contractor for the performance of the Services in accordance with Section Four - Schedule of Prices (Rates).

"Contracting Authority" means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) Regulations 2000 other than the Authority.

"the Contractor" shall mean the company named in the Form of Agreement who undertakes to carry out the Services for the Authority as is provided by the Contract and, where the Contractor is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners, as the case may be and the expression may also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority.

"Contractor's Representative" means the individual authorised to act on behalf of the Contractor for the purposes of the Contract.

"Environmental Information Regulations" means the Environmental Information Regulations 2004.

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"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.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

"Information" has the meaning given under section 84 of the Freedom of Information Act 2000.

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

"Issued Property" means Government property issued in connection with the Contract.

"month" shall mean calendar month.

"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 unincorporated association.

"Personnel" means persons directly employed by the Authority.

"Premises" means the location where the services are to be performed.

"Price" means a price entered in Section Four: Schedule of Prices (Rates).

"Rate" means a rate entered in Section 4: Schedule of Prices (Rates).

"Requests for Information" shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

"RRA" means the Race Relations Act 1976 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Commission for Race Equality in relation to such legislation.

"the Services" shall mean the services to be performed under this Contract.

"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.

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"Staff" means all persons used by the Contractor to perform the Services.

"Term" means a term within the Contract.

"Variation" means a properly executed variation to the Contract in compliance with Condition 2.1.

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

- a) 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;
- b) the headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions;
- c) references to Conditions are references to Conditions in the Section of the Contract in which they appear, unless otherwise stated;
- d) reference to a Clause is a reference to a paragraph within a Condition unless stated otherwise;
- e) where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa.

2. VARIATION

2.1 The Contract shall not be varied unless such variation is made in writing by means of a Variation to Contract Form as set out at Appendix A and agreed with the Authority's Representative.

2.2 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, which shall be confirmed by the issue of a Variation to Contract Form - Appendix A - within 7 days.

2.3 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, and no such Variation shall vitiate the Contract.

2.4 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 it considers should give rise to a Variation within seven days of such occurrence first becoming known to the Contractor;
- b) any proposed Variation shall be fully supported by a quotation as

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detailed in Condition 2.5.

2.5 The Contractor, within 14 days of being requested by the Authority's Representative or where requesting a Variation pursuant to Condition 2.4, 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 or the Contractor's organisation.

2.6 The price for any Variation shall, unless otherwise agreed between the Parties, be calculated in the following order of precedence:-

- a) using the Price or Rates;
- b) prices pro-rata to the Prices or Rates;
- c) prices based on the Prices or Rates.

2.7 The Authority shall either approve or reject any Variation proposed by the Contractor.

2.8 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.

3. THE PRICE

3.1 The prices shall be fully inclusive of carrying out the services as stated in the Contract, and shall remain firm for the duration of the Contract.

3.2 The Contract Price shall be firm for the initial Contract Period. In the event of an extension, being considered beyond the Contract Period the Authority would wish to review the charges with the Contractor in the six months prior to the expiry of the Contract.

3.3 During this six month period, the Contractor may, following agreement with the Authority and by giving the Authority 3 (three) Months' notice in writing to take effect at the end of the Contract Period increase or reduce the Contract Price subject to Clause 3.4 below.

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3.4 Any claim for an increase in the Contract Price will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in a schedule to this Contract) between the Commencement Date and the date of the said notice given under Clause 3.2.

3.5 All prices shall be strictly net of VAT.

4. VALUE ADDED TAX

4.1 The Authority shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the goods and services provided in accordance with the Contract.

4.2 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of regulations made under the Finance Act, 1976.

4.3 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of Value Added Tax chargeable under the Contract and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor under Condition 6 - Recovery of Sums Due.

5. PAYMENT

5.1 Unless otherwise stated in the Contract, the Contractor shall submit an invoice for Services monthly in advance for the following month and payment shall be within 30 days of receipt of a properly prepared invoice.

6. RECOVERY OF SUMS DUE

6.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract or under any other contract with the Authority or with any other Department or Agent of Her Majesty's Government.

7. TIME OF PERFORMANCE

7.1 The Contractor shall begin performing the Services or delivering the Goods on the date stated in the Contract and shall complete them by the date stated in the Contract or continue to perform them for the period stated in the Contract (whichever is applicable). The Authority may by written notice require the Contractor to execute the Services in such order as the Authority may decide. In the absence of such notice, the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.

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8. INSPECTION OF CONTRACT AREAS & CONDITIONS AFFECTING PROVISION OF SERVICES

8.1 The Contractor is deemed to have satisfied himself as regards to the means of communication with and access to all the various Contract Areas, the risk of injury or damage to property in the Contract Areas or to the occupiers of such property, the conditions under which the Services may be carried out, the supply of and conditions affecting labour and generally to have obtained his own information on all matters affecting the execution of the Services and the prices tendered therefore.

8.2 No claim by the Contractor for additional payment will be allowed on the grounds of any misunderstanding or misapprehension in respect of any such matter or otherwise or on the grounds of any allegation or fact that incorrect information was given to him by any person whether in the employment of the Authority or not, or of the failure on his part to obtain correct information unless such incorrect information was given in writing by the Authority's Representative nor shall the Contractor be relieved from any risks or obligations imposed on or undertaken by him under the Contract on any such grounds.

9. CONTRACTOR'S STATUS

9.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor. Accordingly:

(a) the Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority; and

(b) nothing in this Contract shall impose any liability on the Authority in respect of any liability 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 a breach of this Contract or any negligence on the part of the Authority, his staff or agents.

10. CONTRACTOR'S PERSONNEL

10.1 The Contractor shall, unless specified elsewhere, supply a sufficient number of competent personnel for the purpose of executing the Services and shall supply sufficient extra competent personnel for any additional work covered by a Variation to Contract Form detailed in Appendix A.

10.2 If the Authority's Representative gives the Contractor notice that any person is not to be admitted to or is to be removed from any of the Contract Areas under the Contract or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the

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Authority's Representative the Contractor shall replace any persons removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

10.3 If and when instructed by the Authority's Representative the Contractor shall give to the Authority a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Authority may reasonably require.

10.4 The decision of the Authority's Representative as to whether any person is to be admitted to or is to be removed from the Contract Area or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

10.5 With regard to Richmond House (other buildings if applicable) the Contractor shall give to the Authority a list of names and addresses and any other particulars as the Authority may reasonably require of all persons shall or who may require access to the building in performance of the Services for the purposes of security vetting prior to commencement of the Contract. It shall be deemed a breach of the Contract by the Contractor to use staff at Richmond House who have not previously undergone said security vetting.

10.6 The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this Condition.

11. SUBSTITUTION

11.1 No substitution of an on-site manager or supervisor by the Contractor shall be made without the prior Approval of the Authority. Any substitution of said personnel shall be deemed to be a Variation to the Contract.

12. MANNER OF CARRYING OUT THE SERVICES

12.1 The Contractor shall perform the Services with due skill, care and diligence, without detriment to the fabric, fixtures, fittings or furnishings of the Contract Areas, using the most efficient and cost effective means and methods.

12.2 Access to the Contract Areas shall not be exclusive to the Contractor but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Authority may reasonably require. The Contractor shall co-ordinate his activities in the provision of the Services with those of Personnel and other contractors engaged by the Authority.

12.3 The Authority's Representative shall at all times have access to the

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area where the Services are being carried out.

13. USE OF THE 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.

14. ISSUED PROPERTY

14.1 Issued Property shall remain the property of the Authority whether or not paid for or charged against the Contractor and shall be used in the execution of the Contract and for no other purpose whatsoever, save with the prior Approval of the Authority.

14.2 Upon receipt of Issued Property, the Contractor shall subject it to:

(i) a reasonable visual inspection, and

(ii) such additional inspection and testing as may be necessary and practicable in order to check that the Issued Property is not defective or deficient for the purpose for which it has been provided.

14.3 Within a reasonable period, the Authority shall replace or re-issue Issued Property agreed to be defective.

14.4 The Contractor shall be responsible for the safe custody and due return of all Issued Property.

15. PROVISION OF EQUIPMENT

15.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

15.2 The Contractor shall maintain all items of Equipment in good and serviceable condition.

15.3 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.

15.4 The Contractor shall provide for the haulage or carriage of equipment to the Premises and its off-loading and removal when no longer required.

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15.5 The Authority may at its option purchase any item of equipment 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.

16. TRANSITION OF WORK

16.1 At expiration or termination of this Contract the Contractor shall cooperate in the transfer, to the new Contractor under arrangements notified to him by the Authority.

16.2 At the discretion of the Authority, the Contractor shall be reimbursed any reasonable cost incurred, paid for at the rates current at the time of expiry or determination.

16.3 Transfer of responsibility for facilities made available to the Contractor shall be the subject of a mutually agreed inventory between the interested parties at the time of transfer. The transfer shall be arranged between the Authority and the Contractor so as to reduce to a minimum any interruption of the Services. Any special equipment purchase for use in site, which have been paid for by the Authority, shall remain the property of the Authority and shall be handed over to the in-coming Contractor.

16.4 At expiration or termination of the Contract, the Contractor shall hand-over all files, records, documents, plans, and drawings etc., how so ever generated under this Contract, to the Authority or person or persons designated by the Authority.

16.5 The Contractor shall be responsible for ensuring that any computerised filing, recording, documenting, planning and drawing software systems utilised under this Contract is transferred free of any charges to the Authority or person or persons designated by the Authority to facilitate a smooth hand-over of work at expiration or termination of the Contract.

17. PAYMENT OF SUB-CONTRACTORS

17.1 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.

18. CONFIDENTIALITY

18.1 Each Party:

(a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

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(b) shall not disclose any Confidential Information belonging to the other Party to any other person 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 except where disclosure is otherwise expressly permitted by the provisions of this Contract.

18.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Contract:

(a) is given only to such of the Staff and sub-contractors engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

(b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or sub-contractors otherwise than for the purposes of the Contract.

18.3 The Contractor shall ensure that Staff or sub-contractors are aware of the Contractor's Confidentiality obligations under this Contract. Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or sub-contractors sign a confidentiality undertaking before commencing work in connection with the Contract.

18.4 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.

18.5 The provisions of Clauses 18.1 to 18.4 shall not apply to any Confidential Information received by one Party from the other:

(a) which is or becomes public knowledge (otherwise than by breach of this Condition);

(b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d) is independently developed without access to the Confidential Information; or

(e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Condition 38 (Freedom of Information).

18.6 Nothing in this Condition shall prevent the Authority:

(a) disclosing any Confidential Information for the purpose of:-

(i) the examination and certification of the Authority's accounts; or

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(ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

(b) disclosing any Confidential Information obtained from the Contractor:

(i) to any other Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority; 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 (b) 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.

18.7 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 Intellectual Property Rights.

18.8 In the event that the Contractor fails to comply with this Condition 18, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

18.9 The provisions under this Condition 18 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

18.10 Both Parties shall comply with their respective obligations under the Data Protection Acts of 1984 and 1998, as these may be deemed to apply in performance of the Contract, while accepting either Parties' over-riding legal or statutory obligations to disclose information to a third party.

18.11 The provision of this Condition 18 shall apply during the continuance of this Contract and after its termination howsoever arising without limitation of time.

19. INTELLECTUAL PROPERTY RIGHTS

19.1 The Contractor hereby assigns to the Authority all Intellectual Property Rights (IPR) owned by the Contractor in any material which is generated by the Contractor and delivered to the Authority in the performance of the Services and shall waive all moral rights relating to such material.

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19.2 In performing the Services the Contractor shall not infringe the Intellectual Property Rights of any third party. Where there are prior rights or rights of third parties in any material, the Contractor shall obtain Approval before using the material and this Approval shall include the right of the Authority to use, copy, modify adapt or enhance the material.

19.3 The Contractor shall indemnify the Authority and the Crown against all actions, suits claims, demands losses, charges, costs and expenses which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.

19.4 Subject to any prior rights and to the rights of third parties, copyright and every other property right in all reports, documents and things produced or information obtained by the Contractor or which is prepared or obtained under the Contractor's direction or control under this Agreement shall be vested as copyright in the Crown.

19.5 Without prejudice to Condition 21 - Right of Audit, the Contractor and his sub-contractors shall not disclose any specifications, plans, instructions, drawings, patents, models or other information obtained pursuant to or by reason of this Contract, without the written permission of the Authority.

19.6 The provisions of this Condition shall apply during the continuance of this Contract and after its termination howsoever arising, without limitation of time.

20. PUBLICITY

20.1 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.

20.2 The Contractor and his sub-contractors shall not refer to the Authority in any advertisement without the Authority's written consent.

20.3 The provisions of this Condition shall apply during the continuance of this Contract and after its termination howsoever arising, without limitation of time.

21. RIGHT OF AUDIT

21.1 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.

21.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to

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check the Contractor's compliance with the Contract.

21.3 For the purpose of:

(i) the examination and certification of the Authority's accounts; or

(ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

the Comptroller 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.

22. INDEMNITY AND INSURANCE

22.1 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 22.1 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.

22.2 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks, which may be incurred by the Contractor, arising out of the Contractor's performance of 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.

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

22.4 The Contractor shall produce to the Authority's Representative, on request, copies of all insurance policies referred to in this Condition or other 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.

22.5 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

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Condition 22.2.

23. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

23.1 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"):

(i) 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;

(ii) 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.

23.2 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 -

(i) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

(ii) to recover from the Contractor the amount or value of any such gift consideration or commission; and

(iii) 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.

23.3 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;

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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.

24. CONFLICT OF INTEREST

24.1 The Contractor shall ensure that there is no Conflict of Interest as to be likely to prejudice his independence and objectivity in performing the Contract, and undertakes that upon becoming aware of any such Conflict of Interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance), he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises, and shall furnish such further information as the Authority may reasonably require.

24.2 Where the Authority is of the opinion that the Conflict of Interest notified to it under Condition 24.1 is capable of being avoided or removed, the Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

- a) if the Contractor fails to comply with the Authority requirements in this respect; or
- b) if, in the opinion of the Authority, compliance does not avoid or remove the conflict,

the Authority may terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination.

24.3 Where the Authority is of the opinion that the Conflict of Interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Authority may terminate the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

25. UNLAWFUL DISCRIMINATION

25.1 Neither Party shall unlawfully discriminate either directly or indirectly on such grounds as disability, gender, sexual reassignment or sexual orientation within the meaning of the Disabilities Discrimination Act 1995, the Sex Discrimination Act 1975 or the Employment Equality (Sexual Orientation) Regulations 2003 as amended by the Employment Equality (Sexual Orientation) (Amendment) Regulations 2003.

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25.2 The Contractor shall not:

- (a) discriminate directly or indirectly or by way of victimisation or harassment against any person on racial grounds within the meaning of the RRA contrary to Part II (Discrimination in the Field of Employment) and/or Part III (Discrimination in Other Fields) of the RRA
- (b) contravene Part IV (Other Unlawful Acts) of the RRA.

25.3 The Contractor shall notify the Authority immediately of any investigation of or proceedings against the Contractor under the RRA and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

25.4 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the RRA due directly or indirectly to any act or omission by the Contractor, its agents, employees or sub-contractors.

25.5 In the course of performing this Contract both Parties shall give all due regard to the provisions of the Human Rights Act 1998 and to comply with their respective obligations as they may apply to this Contract.

25.6 The Contractor shall take all reasonable steps to secure the observance of the provisions contained in Clauses 25.1 to 25.5 above by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

26. HEALTH AND SAFETY

26.1 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 in the performance of the Services.

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

26.3 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Services.

26.4 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

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measures.

26.5 Whilst on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Personnel and other Persons working on those Premises.

26.6 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 where that incident causes any personal injury or any damage to property, which could give rise to personal injury.

27. TRANSFER AND SUB-CONTRACTING

27.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Approval of a sub-contractor shall be signified by the inclusion of the name on Appendix A to Section 5: Administration Instructions. Names can only be added to this list by a covering Variation.

27.2 The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.

27.3 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, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.

27.4 Subject to Condition 27.6, the Authority shall be entitled to:

(i) Assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any contracting authority, as defined in Regulation 3(1) of the Public Services Contracts Regulations 1993, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations pursuant to this Contract; or

(ii) Novate this Contract to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by any Contracting Authority

27.5 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Condition 27.6, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Authority.

27.6 If the Contract is novated to a body which is not a Contracting Authority pursuant to Condition 27.4(ii) or if a successor body which is not a Contracting Authority becomes the Authority pursuant to Condition 27.5 (in the remainder of this Condition both such bodies are referred to as the "transferee"):

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- (i) The rights of termination of the Authority in Condition 31 and Condition 32 shall be available to the Contractor in the event of the bankruptcy, insolvency or Default of the transferee;
- (ii) The transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Contractor;
- (iii) The following Conditions shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if the Contract had been amended by the Parties.
 - (a) In Condition 6.1 - Recovery of Sums Due - the words "or with any Department or Agent of Her Majesty's Government" shall be deleted;
 - (b) Condition 21 - Right of Audit - ceases to be applicable in the event that the Contract is novated to a private sector body;
 - (c) In Condition 23.1 - Corrupt Gifts and Payments of Commission, the word "Crown" shall be replaced with the word "Authority";

27.7 The Authority shall be entitled to disclose to any transferee any Confidential Information of the Contractor, which relates to the performance of the Services by the Contractor. In such circumstances the Authority shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that the transferee accepts an obligation of confidence.

27.8 To assign the Contract the Authority shall complete the form as set out at Appendix B, amended appropriately.

28. SERVICE OF NOTICES AND COMMUNICATIONS

28.1 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.

28.2 Any notice or other communication which 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, addressed to the other Party referred to in Section Five – Administration Instructions. 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

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the letter was posted.

29. SEVERABILITY

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

30. WAIVER

30.1 The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

30.2 No waiver shall be effective unless it is communicated to the other Party in writing.

30.3 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.

31. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

31.1 The Authority may terminate the Contract by written notice having immediate effect if:

(i) 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

(ii) 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

(iii) 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.

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31.2 The Authority may only exercise its right under Condition 31.1(i) 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.

32. TERMINATION ON DEFAULT

32.1 The Authority may terminate the Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:

- (i) the Contractor has not remedied the default to the satisfaction of the Authority within 30 days, or such other period as may be specified by the Authority, after service of written notice specifying the default and requiring it to be remedied; or
- (ii) the default is not capable of remedy; or
- (iii) the default is a fundamental breach of the Contract.

33. BREAK

33.1 The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving 3 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.

34. CONSEQUENCES OF TERMINATION

34.1 If the Authority terminates the Contract under Condition 32, 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 cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the Contract is terminated under Condition 32, no further payments shall be payable by the Authority until the Authority has established the final cost of making those other arrangements.

34.2 If the Authority terminates the Contract, or terminates the provision of any part of the Services, under Condition 33, the Authority shall reimburse the Contractor in respect of any loss, not including loss of profit, 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

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as appropriate.

34.3 For the purposes of Condition 34.2, the Contractor shall submit to the Authority's Representative, within 20 working days after service of the notice, 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.

34.4 The Authority shall not be liable under Condition 34.2 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.

35. TRANSFER OF UNDERTAKINGS (Protection of Employment) TUPE

35.1 The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 1981 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.

35.2 The Contractor shall comply with the requirements of those Regulations in respect of the persons identified in Appendix C to Terms and Conditions of Contract (who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Contractor).

35.3 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person currently or previously employed by the Authority or by the Contractor for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Authority) resulting from any act or omission of the Contractor on or after the Commencement of Full Operations, except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Authority arising or accruing before the Commencement of Full Operations.

35.4 The Contractor shall, on request, provide full details of all Staff who may be affected by such transfer to any other contractor who may require such details in the future. These details shall include but not be limited to:

- (i) copies of Employment Contracts including offer letters;
- (ii) standard terms;

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- (iii) company rules and disciplinary procedures and details of any collective agreements, written or unwritten, with employees;
- (iv) details of staff benefit schemes (if any) including but not limited to:
 - pensions;
 - employee share schemes;
 - company cars;
 - bonus/profit sharing;
 - insurance schemes.
- (v) details of all recognised unions and/or staff associations;
- (vi) copies of all redundancy/job security agreements with Unions;
- (vii) name;
- (viii) age;
- (ix) sex;
- (x) length of employment (start and finish dates, where applicable);
- (xi) contracted basic hours of work;
- (xii) contracted overtime;
- (xiii) rate of pay (broken down by gross pay and allowances / enhancements included);
- (xiv) holiday entitlement and notice entitlement;
- (xv) present work location;
- (xvi) whether employment is permanent or temporary;
- (xvii) whether on maternity leave or on long-term sick leave;
- (xviii) details of current Industrial Tribunal, or Litigation by or against the employee;
- (xix) details of any claims in respect of allegations of unlawful discrimination

36. DISPUTE RESOLUTION

36.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract promptly through negotiations between their representatives.

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36.2 If the matter is not resolved through negotiation, the Parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure.

36.3 The performance of obligations under the Contract shall not cease or be delayed by the application of an ADR procedure pursuant to condition 36.2

36.4 If the matter has not been resolved by an ADR procedure within one month of the initiation of such procedure, or if either Party will not participate in an ADR procedure, the dispute shall be referred to arbitration in accordance with Condition 37 below.

37. ARBITRATION

37.1 All disputes, differences or questions between the Parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Authority is under the Contract to be final and conclusive which cannot be resolved in accordance with Condition 36, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons, one to be appointed by the Authority and one by the Contractor in accordance with the provisions of the Arbitration Act 1950 or any other statutory modification or re-enactment thereof.

38. FREEDOM OF INFORMATION

38.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.

38.2 The Contractor shall and shall procure that its sub-contractors shall:

- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within five working days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five working days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

38.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

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- a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
- (b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

38.4 The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose Confidential Information:

- (a) without consulting with the Contractor, or
- (b) following consultation with the Contractor and having taken its views into account.

38.5 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

38.6 The Contractor acknowledges that any lists provided by it outlining Confidential Information (including the sub-set Commercially Sensitive Information) are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information and/or Commercially Sensitive Information in accordance with Clause 38.4.

39. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

39.1 A person who is not a party to this Contract shall have no right to enforce any terms of it, which confer a benefit on him.

40. LAW AND JURISDICTION

40.1 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.

VARIATION TO CONTRACT FORM

CONTRACT TITLE: PROVISION OF THE INDEPENDENT COMPLAINTS
ADVOCACY SERVICE FOR THE EAST MIDLANDS REGION OF
ENGLAND

CONTRACT REF:

VARIATION No.....

.....

DATE: / /

BETWEEN:

The Secretary of State to The Department of Health (hereinafter called the Authority) and The Carers Federation Limited (hereinafter called the Contractor) having his main or registered office at 1 Beech Avenue, Sherwood Rise, Nottingham, NG7 7LJ:

The Contract is varied as follows:

(DN:INSERT DETAILS OF VARIATION)

Words and expressions in this Variation shall have the meanings given to them in the Contract.

The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED:

For: The Authority

For: The Contractor

By:

By:

Full Name:

Full Name:

Grade/Pay Band:

Title:

Date:.....

Date:

DN: If provided with copies already signed on behalf of the Authority sign both and return one copy to the Authority. If unsigned, sign both and return both to the Authority for completion.

NOVATION AGREEMENT

THIS AGREEMENT is made on the day of

BETWEEN

(Original Company)

(Company which has taken over the obligations of the Original Company)

SECRETARY OF STATE FOR HEALTH (“The Customer”) whose principal place of business is at Richmond House, 79 Whitehall, London, SW1A 2NS

WHEREAS

This Agreement is supplemental to an agreement dated (date of contract) between (Original Company) and the Customer (“the Contract”) under which (Original Company) agreed to provide certain services to the Customer.

IT IS HEREBY AGREED AS FOLLOW:

The Contract shall continue in full force and effect from (date of takeover of company) as if (Company which has taken over original company) were named as a party to the Contract in place of (Original company).

All rights, obligations or liabilities arising under the Contract from the date of this Agreement shall be rights, obligations and liabilities between the Customer and (Company which has taken over original company)

Any existing rights, obligations or liabilities of (Original Company) relating to the performance of the Contract up to the date of this Agreement shall pass to (Company which has taken over original company) and shall be enforceable between the Customer and (Company which has taken over original company) in place of (Original company)

This Agreement shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the courts of England and Wales.

Signed by:

DRAFT

For and on behalf of (Original company)
In the presence of

Signed by:
For and on behalf of (Company which has taken over the original
company)
In the presence of

Signed by:
For and on behalf of the Secretary of State for Health
In the presence of

LIST OF PERSONS TRANSFERRING TO THE CONTRACTOR

Not applicable