



Contract

Between the Secretary of State for the Home Department

and

Health Management Ltd

**FOR THE PROVISION OF REGIONAL BOARDS OF MEDICAL
REFEREES FOR POLICE MEDICAL APPEALS IN GREAT BRITAIN**

Agreement

Schedule 1 Services to be provided

Schedule 2 Costs

Schedule 3 Contract Change Notice

Provision of Regional Boards of Medical Referees

This contract is made this 23rd day of .October 2008 between

Health Management Ltd

whose registered office is at Ash House, The Broyle, Ringmer, East Sussex BN8 5NN company number 4369949 (**known as the Contractor**) and the Secretary of State for the Home Department, acting through the Police Authorities in England and Wales, and on behalf of the Scottish Public Pensions Agency who act through the police authorities in Scotland. The principal office of the Secretary of State for the Home Department is at 2 Marsham Street, London SW1P 4DF.

Whereas

In consideration of the costs to be made under **Schedule 2** to this Contract, the Home Office desires to engage the Services of the Contractor to provide a range of Services as set out in **Schedule 1** and hereinafter called "the Services"

Now it is agreed and declared as follows:

1. Conditions of Contract

1.1 The Conditions of Contract set out below shall apply.

2. Term of contract

2.1 This Contract shall commence on the first date written above with the operational date for the commencement of the Services being 10th November 2008. The Contract shall last for an initial period of three years and thereafter shall be subject to the Home Office's rights of determination. At the discretion of the Home Office and subject to satisfactory performance, the Contract may be extended for a further two years on an annual basis.

3. Performance of the Services

3.1 The Services shall be performed in full conformance with the specification at **Schedule 1**.

4. Payment

4.1 As consideration for the Services, the Home Office shall make costs to the Contractor in accordance with **Schedule 2**.

5. Representatives

5.1 The Contract Manager for this Contract is as follows, unless notified otherwise in writing:

██████████

Police Pensions and Retirement Policy Section
Police Finance and Pensions Unit

6th floor, Fry Building
2 Marsham Street
London SW1P 4DF

[REDACTED]

5.2 The Contract Manager shall be responsible for this Contract with power to manage, vary and determine it in accordance with its terms and conditions, request such reports as may be reasonably required and issue instructions concerning the Services. All formal communications (both oral and written) concerning the performance of the Contract shall be made to the Contract Manager.

5.3 The Contractor's Representative, to whom all formal communications (both oral and written) concerning the performance of this Contract shall be made, is as follows, unless notified otherwise in writing:

[REDACTED]

[REDACTED]

6. Entirety of Agreement

6.1 This Contract, including the schedules attached hereto, constitutes the entire Contract between the parties hereto with respect to the subject matter hereof.

7. Execution

7.1 **In witness hereof** the parties hereto have executed and delivered this Contract as of the date first above written.

for and on behalf of the Secretary of State for the Home Department

By

Name [REDACTED]

Official Position Head of Police Pensions and Retirement Policy Section

for and on behalf of the Contractor

By

Name [REDACTED]

Date 23 October 2008

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1. Definitions and interpretations

1.1 In this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:-

"Award date" means the date of the award of the Contract by the Home Office to the Contractor;

"Commencement date" means 10th November 2008

"Contract" means the documents listed in the Home Office's acceptance letter, including these Conditions and the Specification. In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing;

"Contract price" means the price or prices payable to the Contractor by the Home Office (or as it may direct) under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract;

"Contractor" means the person appointed by the Home Office for the performance of the Services (including any successors);

"Contractor's representative" means a competent person appointed by the Contractor to be their representative in relation to the performance of the Contract who will receive and act on any directions given by the Contract manager;

"Contract manager" means the official of the Home Office, or other person appointed by the Home Office to act on its behalf for the purpose of managing the Contract;

"Home Office" means the Secretary of State for the Home Office acting through the police authorities for England and Wales, the Home Office, Executive Agencies of the Home Office and persons authorised to act on the Secretary of State's behalf;

"Home Office's Property" means anything issued or otherwise provided in connection with the Contract by or on behalf of the Home Office;

"Key Personnel" means the person or persons stated as such in the Home Office's acceptance letter or elsewhere in the Contract at the time of the award of the Contract and any additional or replacement personnel of the Contractor agreed between the Contractor and the Home Office as being fundamental to the performance of the Contract or, in default of agreement, nominated as such by the Home Office;

"Month" means calendar month, unless otherwise defined;

Any reference to a "person" shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, Government Department or Agency or any association or partnership (whether or not having a separate legal personality);

"Opening index" means the index as mentioned in Schedule 2 (costs) figure for the month of the commencement date

"Premises" means any premises occupied, owned or leased by the Contractor or as described in the Contract;

"Programme" means any programme or timetable agreed by the parties to the Contract which regulates or specifies the period or periods for the performance of the Services or any part of them, together with any activities ancillary to the performance of the Services or the preparation and submission of reports;

"Service(s)" or "Work" means all Services detailed in the Specification which the Contractor is required to carry out under the Contract;

"Scottish Public Pensions Agency" is an executive Agency of the Scottish Government which regulates the police pension schemes in Scotland;

"Specification" means the description of Services to be performed under the Contract;

"Term" means three years from the commencement date.

- 1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender;
- 1.3 The headings are inserted for convenience only and shall not affect the interpretation of the Contract.
- 1.4 Reference to any legislative requirement or similar instrument shall include that provision as from time to time amended, modified or re-enacted (whether before or after the date of this Contract)

2. Law

- 2.1 The 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.

3. Duration of the Contract

- 3.1 Subject to the rights of termination herein contained, the Contract shall be in force from the award date for the term and the Services shall be provided throughout the duration of the Contract in accordance with the dates and timetables specified in the programme. Services provided before either the award date or the commencement date shall be deemed for all purposes to have been provided subject to the terms of this Contract.

- 3.2 Not earlier than 6 months before the end of the term, the Home Office may serve notice on the Contractor requesting that the Contract be extended for a period of 12 months ("first extension"). The Contract price during the first extension shall be the Contract price as at the commencement date, varied by a percentage that equals the percentage change between the opening index and the Index mentioned in Schedule 2 (costs) for the month which is the third anniversary of the month of the commencement date. If the Contractor agrees to the first extension at the contract price, varied as set out in this clause, then the Contractor shall within 30 days of service of the said notice reply in writing to the Home Office agreeing that the Contract be extended as set out in this clause 3.2.
- 3.3 Not earlier than 6 months before the end of the first extension the Home Office may serve notice on the Contractor requesting that the Contract be further extended for a further period of 12 months ("second extension"). The contract price during the second extension shall be the contract price as at the commencement date, varied by a percentage that equals the percentage change between the opening index and the Index mentioned in Schedule 2 (Costs) for the month which is the fourth anniversary of the month of the commencement date. If the Contractor agrees to the second extension at the contract price varied as set out in this clause, then the Contractor shall within 30 days of service of the said notice reply in writing to the Home Office agreeing that the Contract be extended as set out in this clause 3.3.

4. Alteration of requirement

- 4.1 The Home Office shall have the right, subject to the Contractor confirming that it can perform the requested alteration (such confirmation not to be unreasonably withheld or delayed), to alter the requirements of the Contract, as detailed in the specification, should this at any time become necessary.
- 4.2 In the event of any alteration of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between the Home Office and the Contractor.
- 4.3 Changes under clauses 4.1 and 4.2 above shall be confirmed by the issue of a Contract Change Notice in the form set out in Schedule 3 to the Contract, which shall be incorporated in the Contract. This will contain details of the agreed changes, the timetable for their implementation and any amendment to the contract prices.

5. Duty of care

- 5.1 The Contractor shall perform the Services with all reasonable skill, care and diligence and in accordance with all relevant legislative and statutory requirements.

6. Contractor's performance

- 6.1 The Contractor shall properly manage and monitor performance of the Services and immediately inform the Contract Manager if any aspect of the Contract is not being or is unable to be performed.

- 6.2 The Contractor shall provide all the necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the Services. All personnel deployed on work relating to the Contract shall have appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Home Office. If the Home Office gives the Contractor notice that any person is to be removed from involvement in the Services, the Contractor shall take immediate steps to comply with such notice. The decision of the Home Office regarding the Contractor's personnel shall be final and conclusive.
- 6.3 The Contractor shall:-
- (a) give the Home Office, if so requested, full particulars of all persons who are or may be at any time employed on the Contract;
 - (b) comply with any rules, regulations and any safety and security instructions from the Home Office, including completion of any additional clearance procedures required by the Home Office, and return of any passes as required.
- 6.4 The Contractor shall take all reasonable steps to avoid changes to any of the staff designated in the Contract as key personnel. The Contractor shall give at least one month's notice to the Contract Manager of any proposals to change key personnel and clause 6.2 shall apply to the proposed replacement personnel.
- 6.5 Unless otherwise agreed by the Home Office, neither the Contractor nor any of his employees or agents shall carry out any business or trading activity within the confines of the premises and no advertisement, sign or notice of any description shall be exhibited without prior approval, in writing, from the Home Office.
- 6.6 The Contractor shall exercise due care and propriety when dealing with third parties in connection with the Contract and ensure that no commitments are entered into (unless expressly required under the Contract), without the Home Office's prior written consent.
- 6.7 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Home Office and the Contractor.

7. Meetings and reports

- 7.1 The Contractor shall attend all meetings arranged by the Home Office for the discussion of matters connected with the performance of the Services.
- 7.2 Without prejudice to the submission of reports as specified under the Contract, the Contractor shall render any additional reports as to the performance of the Services at such time or times and in such form as the Contract Manager may reasonably require.

8. Inspection

- 8.1 During the course of the Contract the Home Office shall have the power to inspect and examine any of the Services on the premises at any reasonable time. Where the Services are being performed on any other premises, the Contract Manager or the Home Office shall on giving reasonable notice to the Contractor be entitled to inspect and examine such Services. The right to inspect and examine such Services on such other premises shall not apply to the extent that the confidentiality of information relating to the Contractor's other clients would be jeopardised by such inspection or examination, provided that the Contractor takes all reasonable steps to prevent this occurring. The Contractor shall provide free of charge all such facilities as the Home Office may reasonably require for such inspection and examination. In this clause, the reference to Services includes planning or preliminary work for the Services.

9. Invoices and payment

- 9.1 The Contractor shall submit to the Home Office (or as it may direct) an invoice as specified in the Contract or within 28 days of the completion of the Services. All invoices shall quote the Contract number and, where appropriate, the purchase order number.
- 9.2 With the invoice the Contractor shall submit to the Home Office (or as it may direct) such records as may reasonably be required including (but not limited to) time sheets, expenses incurred, invoices paid or any other documents which would enable the information and the amounts referred to in that invoice to be verified.
- 9.3 The Contractor shall provide to the Home Office (or as it may direct) the name and address of its bank, the account name and number, the bank sort code and any other details, in whatever format may be required
- 9.4 The Home Office shall ensure that the Contractor is paid in respect of the satisfactory performance of the Services in accordance with the Contract.
- 9.5 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Services shall be inclusive of all costs of staff, facilities, equipment, materials and all other expenses whatsoever incurred by the Contractor in discharging his obligations under the Contract.
- 9.6 The Home Office is committed to prompt payment in accordance with statutory legislation and shall ensure that the Contractor is paid within 30 days of the receipt of a valid invoice, provided that the Home Office is satisfied that the Services for which the invoice relates have been performed fully in accordance with the Contract.

10. Value Added Tax (VAT)

- 10.1 The Home Office shall ensure that the Contractor is paid the amount of any VAT chargeable in respect of the performance of the Services in accordance with Contract.

11. Corrupt gifts and payments of commission

- 11.1 The Contractor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Contract or any other contract with the Crown.
- 11.2 The Contractor shall not conspire with any person to do any of the acts mentioned in clause 11.1.
- 11.3 Any:-
- (a) breach by the Contractor of this condition; or
 - (b) commission of any offence by the Contractor under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract for Her Majesty's Service;

shall entitle the Home Office to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission.

- 11.4 The decision of the Home Office in relation to this condition shall be final and conclusive.

12. Official Secrets Acts

- 12.1 The Contractor shall take all reasonable steps to ensure that all persons employed by him or by any sub-contractor in connection with the Contract are aware of the Official Secrets Acts 1911 to 1989 and that these Acts apply to them during and after performance of any work under or in connection with the Contract.

13. Disclosure of information

- 13.1 Under the Government's Code of Practice on Access to Government Information, the Home Office reserves the general right to disclose information about this Contract, unless otherwise agreed in writing.
- 13.2 The Contractor shall not disclose the Contract or any provision thereof or any information resulting from, in connection with, the Contract, or information (which may be oral or written and include data, ideas, discoveries, inventions, drawings, specifications, formulae, programs, plans, requirements etc. of a confidential nature, used in exercising statutory obligations and daily business of the Home Office, including personal data ("confidential Information") to any person unless it is strictly necessary for the performance of the Contract and authorised in writing by the Home Office. The Contractor shall comply with any instructions regarding changes to authorisations and other instructions regarding disclosure or non-disclosure of Confidential Information. This condition does not apply in relation to information (a) which is in or enters the public domain otherwise than by a breach of an obligation of confidentiality (b) which is or becomes known from other sources without breach of any restriction on disclosure or (c) which is required to be disclosed by law or any professional or regulatory obligation.
- 13.3 Subject to condition 13.2, the Contractor shall ensure that confidential information -

- (a) is divulged only to the minimum number of persons;
 - (b) is divulged only to the extent essential to each person's action in carrying out (or in connection with) the Contract and that such persons do not further divulge such confidential Information;
 - (c) is properly safeguarded.
- 13.4 Subject to the retention of proper professional records, the Contractor shall, on written request from the Home Office, return all documents containing any part of the work carried out by the Contractor, including but not limited to, documents stored electronically.
- 13.5 The Contractor shall ensure that any contract with:
- (a) any employee of his, and
 - (b) any contractor of his engaged in any way in connection with the Contract,
- contains a condition requiring that person to keep all confidential information confidential, and shall draw their attention to the requirements of the Official Secrets Acts and to this condition and condition 13.2.
- 13.6 No facilities to photograph or film shall be given or permitted by the Contractor except with prior written permission of the Home Office, to whom any press or other enquiry or any such matter should be referred. The Contractor shall not use the name or logo of the Home Office without the express written consent of the Home Office
- 13.7 The Contractor shall not, in connection with the Contract, communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the Home Office.
- 13.8 Except with the consent in writing of the Home Office, the Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Home Office otherwise than for the purpose of the Contract.
- 13.9 The decision of the Home Office regarding anything in conditions 13.1 – 13.8 shall be final and conclusive.

14. Discrimination

- 14.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986 and the Disability Discrimination Act 1995 and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract do not unlawfully discriminate. This condition shall not in any way relieve the Contractor of his general obligations to comply with any legislative requirements as provided in condition 5.

15. Merger, take-over or change of control

- 15.1 The Contractor shall forthwith inform the Home Office in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status, or the Contractor (being a company as defined in the Companies Act 1985) shall inform the Home Office of any such change as defined in section 416 of the Income and Corporation Taxes Act 1988. The Contractor shall comply with any request by the Home Office for information arising from this condition.

16. Unsatisfactory performance

- 16.1 Where in the opinion of the Home Office the Contractor has failed to perform the whole or any part of the Services with the standard of skill, care and diligence which a competent and suitably qualified person performing the same Services could reasonably be expected to exercise, or in accordance with the Contract (including the specification and programme), the Home Office may give the Contractor a notice specifying the way in which his performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.
- 16.2 Where the Contractor has been notified of a failure in accordance with condition 16.1, the Home Office may:
- (a) request from the Contractor that, at his own expense and as specified by the Home Office, he re-schedules and performs the Services to the Home Office's satisfaction within such period as may be specified by the Home Office in the notice, including where necessary, the correction or re-execution of any Services already carried out; or
 - (b) withhold or reduce costs to the Contractor, in such amount as the Home Office deems appropriate in each particular case.

17. Termination of the Contract

- 17.1 Without prejudice to any other power of termination, the Home Office may terminate the Contract without notice for any of the following reasons:
- (a) the breach by the Contractor of any of conditions 11 (Corrupt gifts and payments of commission), 12 (Official Secrets Acts), 13 (Disclosure of information) of the Contract, or any other material breach of contract which is incapable of remedy;
 - (b) the failure by the Contractor to comply with a notice given under condition 16 (Unsatisfactory performance);
 - (c) the Contractor ceases or proposes to cease to carry on his business;
 - (d) there is a change of control of the type referred to in condition 15 (Merger, take-over or change of control) and the Home Office has not agreed in advance in writing to the particular change of control, save that in this event the Home Office shall give one month's notice in writing to the Contractor.

18. Break

19.1 The Home Office shall in addition to its powers under any other of these conditions have power to terminate the Contract at any time by giving to the Contractor one month's written notice. Upon the expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.

19. Consequences of termination and break

19.1 Where the Contract is terminated under condition 17 (Termination of the contract), the following provisions shall apply:

- (a) any sum due or accruing from the Home Office to the Contractor may be withheld or reduced by such amount as the Home Office in either case considers reasonable and appropriate in the circumstances;
- (b) the Home Office may make all arrangements which are in its view necessary to procure the orderly completion of the Services including the letting of another contract or contracts;
- (c) where the total costs reasonably and properly incurred by the Home Office by reason of such arrangements exceed the amount that would have been payable to the Contractor for the completion of the Services, the excess shall, subject to any overall limitation of liability contained in condition 22 (Loss or damage), be recoverable from the Contractor and the Home Office reserves the right to recover such excess by set-off against any amount withheld by the Home Office under condition 19.1(a) above or as otherwise provided for under Condition 23 (Recovery of sums due).

19.2 Without prejudice to condition 19.1, where the Contract is terminated under condition 17.1(d) or condition 18 (Break), the Contractor shall have the right to claim from the Home Office reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Services, including any commitments, liabilities or expenditure which are reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. For the avoidance of doubt the Home Office will not indemnify the Contractor against loss of profit. The Home Office shall not in any case be liable to pay under the provisions of this condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total Contract price.

19.3 Where the Contract is terminated under condition 17 (Termination of the Contract) or condition 18 (Break), the Home Office may, during any notice period:-

- (a) direct the Contractor, where the Services have not been commenced, to refrain from commencing such Services or where the Services have been commenced, to cease work immediately;
- (b) direct the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid at the agreed Contract price or, where no agreement exists, a fair and reasonable price.

20. Assignment, sub-contractors and suppliers

- 20.1 The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Home Office.
- 20.2 The Contractor shall ensure that any sub-contractor complies with the terms and conditions of the Contract, so far as they are applicable. Any sub-contract shall not relieve the Contractor of his obligations under the Contract.
- 20.3 Where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing the Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the Contract requirements.

21. Insurance

- 21.1 The Contractor shall effect and maintain insurance necessary to cover his liabilities under the Contract and, where the Contractor sub-contracts part of the Contract, he shall procure that any such sub-contractor effects and maintains insurance to cover its liabilities under the sub-contract.
- 21.2 Where in compliance with condition 21.1 the Contractor effects, or is to procure that a sub-contractor effects, professional indemnity insurance, the requisite insurance shall cover liabilities under the Contract, or sub-contract as the case may be, from the commencement of the Services, or the Services under the sub-contract as the case may be, until 6 years after the completion of the Services or the termination of the Contract, whichever is the earlier.
- 21.3 The Contractor shall, whenever required by the Home Office, produce to the Home Office documentary evidence showing that the insurance required by conditions 21.1 and 21.2 has been taken out and is being maintained.
- 21.4 If, for whatever reason, the Contractor fails to maintain, or fails to procure that any sub-contractor maintains, the insurance required by this condition 21, the Home Office may make alternative arrangements necessary to protect its interests and recover the costs thereof from the Contractor, provided always that any overall limitation of liability contained in condition 22 (loss or damage) shall not thereby be exceeded.
- 21.5 The terms of any insurance or the amount of cover shall not relieve the Contractor or his sub-contractors or consultants of any liabilities under the Contract, their sub-contracts or their terms of commission.

22. Loss or damage

- 22.1 Condition 22 applies to any loss or damage which arises out of or is in any way connected with the performance of the Contract and shall include, for the avoidance of doubt and without prejudice to the generality of the foregoing, breaches of conditions 24.1, 26 and 32.
- 22.2 The Contractor shall, without delay and at his own expense, replace or make good to the satisfaction of the Home Office or, if the Home Office requires, compensate the Home Office for, any loss or damage.

- 22.3 The Contractor shall indemnify the Crown and servants of the Crown against all demands, liabilities, claims made, or proceedings brought, against the Crown or servants of the Crown in respect of any loss or damage and against all costs and expenses reasonably incurred in dealing with or in settling such demands, liabilities, claims or proceedings.
- 22.4 The Home Office shall notify the Contractor as soon as possible of any demand or claim made, or proceedings brought, against the Crown in respect of any loss or damage.
- 22.5 If any loss or damage:
- (a) was not caused or contributed to by the Contractor's neglect or default, whether by act, omission or otherwise (for the purposes of this condition 22.5, "Contractor" shall include his servants, agents or sub-contractors), he shall be under no liability under this condition 22;
 - (b) was in part caused or contributed to by the Contractor's neglect or default, whether by act, omission or otherwise, and in part by the act, neglect or default of any other person and/or circumstances outside both the Contractor's control and his reasonable contemplation, the Contractor's liability under this condition 22 shall, except in relation to any loss or damage arising out of the Contractor's fraud or breach of condition 11 or 12 (to which this condition 22.5(b) shall not apply), be limited to the proportion of the loss or damage which it is just and equitable for the Contractor to pay having regard to the extent of the Contractor's responsibility for the same and on the basis that any such other person shall be deemed to have paid the Crown such proportion of the loss or damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the same (for the avoidance of doubt, whether or not they would actually be able to pay such amount); and the risk of the proportion of loss or damage arising from circumstances outside both the Contractor's control and his reasonable contemplation shall lie with the Crown.
- 22.6 In this condition 22, loss or damage includes:
- (a) loss or damage to property;
 - (b) personal injury and death;
 - (c) loss of profit or loss of use;
 - (d) any other loss.

23. Recovery of sums due

- 23.1 Whenever under the Contract any sums of money shall be recoverable from or payable by the Contractor to the Home Office, the same may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the Home Office or with any other Home Office, Agency or office of Her Majesty's Government.

24. Data protection

24.1 The Contractor shall take such technical and organisational measures as are necessary to comply with the seventh data protection principle set out in Part I, and amplified in Part II, of Schedule 1 to the Data Protection Act 1998.

25. Insolvency of the Contractor

25.1 The Contractor shall inform the Home Office:-

- (a) if being an individual, or where the Contractor is a firm, any partner in that firm, shall at any time become bankrupt, or shall have a receiving order or administration order made against him, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or not our bankrupt, or any application shall be made under any bankruptcy Act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or
- (b) if being a company, he passes a resolution, or the Court makes an order, that the company be wound up otherwise than for the purpose of reconstruction or amalgamation, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court, otherwise than for the purposes of amalgamation or reconstruction, to make a winding-up order.

25.2 If any of the events described in conditions 25.1(a) or 25.1(b) occur (whether or not the Contractor has informed the Home Office) the Home Office may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor. Such termination shall not prejudice or affect any right of action or remedy which shall have accrued before that date or shall accrue thereafter to the Home Office.

26. Royalties and licence fees

26.1 The Contractor shall ensure that all royalties, licence fees or similar expenses in respect of all intellectual property used in connection with the Contract have been paid and are included within the Contract price.

27. Drawings, specifications, software, designs and other data

27.1 All rights in data, reports, drawings, specifications, software designs and/or other material produced by the Home Office shall vest in and be the property of the Crown.

27.2 All rights in data, reports, drawings, specifications, software designs and/or other material produced by the Contractor in connection with the Contract shall become or, as the case may be, remain the property of the Home Office and be delivered up to the Home Office on completion or termination of the Contract, subject to the retention of proper professional records.

27.3 The Contractor agrees to do all such things and to sign and execute all such documents and deeds as may be required to perfect, protect or enforce any of the rights herein granted.

28. Retention of documentation and National Audit Office access

- 28.1 The Contractor shall retain for a period of two years from the date of conclusion of provision of the Services or termination of the Contract (whichever is the earlier), or such longer period as may be agreed between the Home Office and the Contractor (such agreement to be recorded in writing), full and accurate records of the performance of the Services, including, without prejudice to the generality of the foregoing, records of all costs made to the Contractor by the Home Office in relation to the Contract.
- 28.2 The Contractor shall:
- (a) produce such records retained pursuant to condition 28.1 as the Home Office may reasonably require;
 - (b) afford such facilities as the Home Office may reasonably require for his representatives to inspect the records retained pursuant to condition 28.1. Provided that the Contractor takes all reasonable steps to prevent this exception from applying, the right granted by this condition 28.2(b) shall not apply to the extent that the confidentiality of information relating to the Contractor's other clients would be jeopardised by such inspection; and
 - (c) provide such explanations of records produced pursuant to condition 28.2(a) or inspected pursuant to Condition 28.2(b) as the Home Office may reasonably require.
- 28.3 For the purpose of:
- (a) the examination and certification of the Home Office's accounts; or
 - (b) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Home Office has used its resources,
- the Comptroller and Auditor General shall have a right of access at all reasonable times to such documents as he may require which are owned, held or otherwise within the control of the Contractor and the Contractor shall provide to the Comptroller and Auditor General such assistance and such oral and/or written information and explanation as he may require.
- 28.4 For the avoidance of doubt, nothing in condition 28.1, condition 28.2 or condition 28.3 constitutes a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Contractor.

29. Serving of notices

29. Any notice required to be given or served under this Contract by the Home Office shall be in writing and shall be served by either:
- (a) delivery to the Contractor's representative, or
 - (b) sending it by Special delivery, Royal mail or equivalent post to the Contractor's last known place of business or registered office, when it shall be deemed to be served on the day when in the ordinary course of the post it would have been delivered.

30. Dispute resolution

- 30.1 If any dispute arises out of this agreement (other than a matter or thing as to

which the decision of the Home Office is under the Contract stated to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract), the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("the Model Procedure").

- 30.2 To initiate a mediation, the Contract Manager or the Contractor's representative must give notice in writing ("ADR notice") to the other of them addressed, in the case of a notice to the Contractor's representative in accordance with clause 29 and, in the case of a notice to the Contract Manager to 2 Marsham Street, London SW1P 4DF or such other address as the Contract Manger shall in writing notify the Contractor's representative, requesting a mediation in accordance with condition 30.1. A copy of the request should be sent to CEDR Solve.
- 30.3 The procedure in the Model Procedure will be amended to take account of: any relevant provisions in this agreement; or any other agreement which the parties may enter into in relation to the conduct of the mediation ("Mediation Agreement").

31. Transfer of responsibility

- 31.1 In the event that a different organisation is required to take over the Services at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer under arrangements to be notified to him by the Home Office.
- 31.2 The transfer shall be arranged between the Home Office and the Contractor so as to reduce to a minimum any interruption in the Services.

32. Contractor's obligations in connection with TUPE

- 32.1 Where requested to do so the Contractor shall provide such information (including any changes to and interpretations thereof) in connection with The Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE), as the Home Office may require, to the Home Office and/or to any other person authorised by the Home Office who is to be invited to submit a tender in relation to the provision of similar Services, within 10 days of the request.
- 32.2 During the 8 month period preceding the expiry of this Contract or within any period of notice of Termination or notice of Break, the Contractor shall not without the prior written agreement of the Home Office, which shall not be unreasonably withheld or delayed:-
- (a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or
 - (b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract.
- 32.3 The Contractor shall not knowingly do or omit to do anything which may adversely affect an orderly transfer of responsibility for provision of the Services.

33. Occupation of Government premises

33.1 Any land or premises (including temporary buildings) made available to the Contractor by the Home Office in connection with the Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion or determination of the Contract. Any utilities required by the Contractor shall be subject to such charges as are set out elsewhere in the Contract.

34. Environmental requirements

34.1 The Contractor shall provide the Services in accordance with the Home Office's environmental policy, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, Volatile Organic Compounds and other substances damaging to health and the environment.

34.2 All written work, including reports, in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post-consumer waste and used on both sides where appropriate.

35. Severability

35.1 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 Home Office and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

36. Waiver

36.1 The failure of the Home Office or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.

36.2 No waiver shall be effective unless it is communicated to either the Home Office or the Contractor in writing.

36.3 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.

37. Rights of third parties

37.1 A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

38. Conflict of interest

38.1 The Contractor shall ensure that no conflict of interest arises in connection with the Services to be carried out under this Contract. The Contractor shall consult the Home Office if there is any uncertainty about whether any conflict of interest may exist or arise.

39. Framework agreements

- 39.1 This framework arrangement shall operate in two parts - the overarching framework agreement itself and individual orders placed against it, each of which shall constitute a Contract.
- 39.2 The estimated quantity is stated either in the Specification or the invitation letter (or both) but more or less may be ordered. The Home Office does not bind itself to demand any amounts from the framework agreement or to receive and pay for any amounts other than those actually ordered.

40. Variation of price

- 40.1 The contract price shall be unchanged for a period of two years from the commencement date. Not more than two months before the expiry of two years from the commencement date, either party may serve on the other a notice of variation of the contract price to take effect on the second anniversary of the commencement date.
- 40.2 The contract price shall be varied by a percentage that equals the percentage change between the opening index and the index contained within Schedule 2 (costs) for the month of the second anniversary of the commencement date.
- 40.3 No price variation shall be retrospective, save that the price variation may be retrospective where it has not been possible to ascertain the appropriate index before the variation is to take effect.
- 40.4 The Contractor may propose price reductions at any time.

Schedule 1 to the Contract: services to be provided

Definitions

- 1. Introduction**
- 2. Background**
- 3. Appeal Board membership**
- 4. Appeal Board accommodation**
- 5. Appeal Board administration**
- 6. Legal advice and post-decision casework**
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Appendix 1: Questions to be referred to the Selected Medical Practitioner

Appendix 2: Judicial review of board decisions

Appendix 3: Format of reports

Definitions

"Appeal Board" means the board of three or more medical practitioners appointed by the Contractor to hear medical appeals under the police pensions or injury benefit regulations.

"Appellant" means the officer or former officer who has made an appeal to the Board.

"Board" means the same as "Appeal Board".

"Board member" means one of the medical practitioners appointed by the Contractor to sit on the Board.

"Calendar days" means any day, including weekends and bank holidays.

"Contractor" means the company appointed by the Home Office to provide the services defined in this Specification.

"Contract Manager" means the Home Office official nominated to liaise with the Contractor and to ensure that the terms of the contract between the Home Office and the Contractor are being adhered to.

"Contractor's Representative" means the person nominated by the Contractor to be responsible to the Home Office for the effective provision of the services defined in the Specification.

"Parties" means the officer or former officer who has appealed and the police authority for the force in which the appellant is serving or last served.

"Regulations" means the police pensions regulations and police injury benefit regulations which apply in England and Wales and Scotland, as listed in paragraph 1.2.

"Working days" means any day except Saturdays, Sundays and bank holidays

1. Introduction

- 1.1 This document specifies the services to be provided by the Contractor to the Home Office, acting through the police authorities in England and Wales, and to the Scottish Public Pensions Agency, acting through the police authorities in Scotland, in respect of the boards of medical referees which conduct medical appeals under the police pensions and injury benefit regulations in England and Wales and Scotland.
- 1.2 The required services comprise the provision of regional medical appeal boards for the police service in England and Wales and in Scotland, which act in accordance with the following regulations made under section 1 of the Police Pensions Act 1976:
- The Police Pensions Regulations 1987 (SI 1987 No 257)
 - The Police Pensions Regulations 2006 (SI 2006 No 3415)
 - The Police Pensions (Scotland) Regulations 2007 (SSI 2007 No 201)
 - The Police (Injury Benefit) Regulations 2006 (SI 2006 No 932)
 - The Police (Injury Benefit) (Scotland) Regulations 2007 (SSI 2007 No 68)
- 1.3 The purpose of the boards is to consider appeals from police officers or former police officers who are dissatisfied with a decision made by a medical practitioner, selected by the police authority, in relation to their qualifying for ill-health and injury benefits. The required services fall into three main categories:
- Appeal Board membership (section 3).
 - Appeal Board accommodation (section 4)
 - Appeal Board administration (section 5)
- 1.4 There will also be some post-decision casework in a limited number of cases (section 6)
- 1.5 The Contract will be between the Home Office, acting through the police authorities in England and Wales and acting on behalf of the Scottish Public Pensions Agency for the police authorities in Scotland, and the Contractor. The Home Office has policy responsibility for police pensions and the legislation relating to police pensions in England and Wales. The Scottish Public Pensions Agency, an executive Agency of the Scottish Government regulates the police pension schemes in Scotland.

2. Background: the medical appeals process

- 2.1 There are currently around 140,000 police officers in home police forces in England and Wales¹. The 43 police authorities (39 in England and 4 in Wales) and the Serious Organised Crime Agency (SOCA)² are responsible for administering procedures for medical retirement and determining awards payable under the police pension schemes. In Scotland there are eight police forces with approximately 16,000 officers, with the relevant police authority having

¹ Home police forces in England and Wales are the 43 forces for the areas defined in Schedule 1 to the Police Act 1996. They do not include the British Transport Police and other non-territorial forces.

² Certain employees of SOCA, namely those who joined directly from the former National Crime Squad or National Criminal Intelligence Service when SOCA was created on 1 April 2006, are able to retain membership of the police pension schemes.

responsibility for the administrative procedures to determine awards under the pension and injury benefit schemes.

- 2.2 There are two police pension schemes in England and Wales and Scotland, namely the 'old' scheme provided for by the Police Pensions Regulations 1987, and the 'new' scheme which was introduced on 6 April 2006 by the Police Pensions Regulations 2006 in England and Wales and by the Police Pensions (Scotland) Regulations 2007 in Scotland (both sets of regulations having retrospective effect from 6 April 2006). These are commonly referred to as the 1987 scheme and the 2006 scheme respectively. Membership of the 2006 scheme is confined to officers who joined the service on or after 6 April 2006 and the small number of officers (230 in England and Wales, 20 in Scotland) who chose to transfer from the 1987 scheme. Officers who are members of the 1987 scheme will be in the majority for some time to come.
- 2.3 Under either scheme, when an officer is assessed as being permanently disabled from performing ordinary police duties, the police authority may, at their discretion, compulsorily retire that officer. An officer retired in this way is entitled to an ill-health pension payable immediately upon retirement.
- 2.4 Under either scheme, an officer assessed as being permanently disabled is eligible for early payment of his or her deferred pension³.
- 2.5 There are some differences between the two schemes in terms of the ill-health retirement benefits and procedures. The main difference is that the 2006 scheme provides for two tiers of ill-health pension: a standard ill-health pension for officers who are permanently disabled from performing ordinary police duties; and an enhanced top-up ill-health pension for officers who are also permanently disabled from any regular employment. An officer who has retired on ill-health grounds can move from one tier to the other depending on whether his or her condition worsens or improves. The 1987 scheme provides for only one tier of ill-health pension, for officers who are permanently disabled from performing ordinary police duties.
- 2.6 If an officer's permanent disablement is the result of an injury on duty, his or her ill-health benefits may be further increased by an injury award consisting of a gratuity and an injury pension. Provision for injury awards is now made outside the pension schemes, under the Police (Injury Benefit) Regulations 2006 (for all officers, irrespective of which pension scheme they belong to). Appeals to the medical appeal board can arise under the injury benefit regulations as well as under the pensions regulations.
- 2.7 The police authority initiates procedures for medical retirement, with the initial (medical) decision being obtained in writing from a qualified medical practitioner selected by the authority – known as the Selected Medical Practitioner or SMP. The police pensions regulations and the police injury benefit regulations specify the questions which the police authority must refer to the SMP and under what circumstances. The SMP answers in the form of a written report, which is copied to the officer or former officer. If the officer or former officer is dissatisfied with the SMP's decision as set out in the report, he or she has the right to appeal to

³ A deferred pension is a pension right held by someone who has left the pension scheme before the age at which an pension is normally payable to them. An ordinary pension is payable at 60 in the case of the 1987 scheme and 65 in the case of the 2006 scheme.

the Board.

- 2.8. The questions which must be referred to the SMP under the various sets of regulations, and which may give rise to an appeal to the Board, are set out at Appendix 1 to this Specification.

3. Appeal Board membership

- 3.1 Appeal Board members play a vital role in the determination of medical appeals under the police pensions and injury benefit regulations. The Appeal Board must be independent and the Contractor will ensure that there are no conflicts of interest. Board members must not have been employed by or contracted to work for any police authority, home police force or police staff association in England, Wales, Scotland or Northern Ireland within the previous two years (and ideally within the previous three years). This definition applies only to work undertaken in respect of police officers, not civilian staff.

- 3.2 An Appeal Board will normally consist of three members, who will have the following qualifications and experience:

Chairperson	a consultant occupational physician who is a Fellow or member of the Faculty of Occupational Medicine
Second member	a consultant occupational physician or senior occupational physician who is at least an Associate member of the Faculty of Occupational Medicine
Third member	a consultant physician with the medical expertise relevant to the particular medical condition(s) to be heard in the appeal case.

- 3.3 The third member will conduct a medical examination of the appellant with the other Board members present. The medical examination will be completed during the hearing.

- 3.4 If the appeal concerns two or more different medical conditions, a consultant physician with medical expertise relevant to each of the medical conditions will be appointed to the board. A consultant physician may deal with more than one related medical condition where he or she has the relevant expertise.

- 3.5 The Contractor will be responsible for the recruitment and appointment of all Board members and will ensure that they have the necessary qualifications and experience. The Contractor will make permanent appointments for the chairperson and second member positions. The Contractor will be responsible for making relief arrangements in cases of sickness or other absences by Board members.

- 3.6 The Contractor will ensure that, in appointing the chairperson of the Board, the chairperson is responsible for the conduct and procedural order of the appeal and ensures that:

- the hearing is conducted in accordance with the police pensions regulations;
- all relevant issues as raised by both parties are considered by the Board;
- all relevant medical evidence, including the findings of the medical examination

- by the third member, is fully considered;
 - the Board reaches a clear and unambiguous decision;
 - the decision is not given to either party on the day of the appeal;
 - the decision is recorded in writing and signed by all Board members;
 - a report of the appeal hearing is produced (see also paragraph 5.22).
- 3.7 The Home Office will provide initial training to the Contractor before the commencement of appeal hearings, as follows:
- A training day which chairpersons and second members shall attend. The Contractor will bear the costs of the venue and catering and the Home Office will bear the costs of the delegate packs. The Contractor and the Home Office will each bear the travel, subsistence and loss of earnings costs (if any) of their own attendees.
 - Visits by chairpersons and second members to one or more police forces in England and Wales and Scotland, to give an insight into the operational duties of police officers including those in specialist roles.
- 3.8 Ongoing training of Board members following the commencement of the contract will be the responsibility of the Contractor. The Contractor will provide details of post-contract training to the Home Office. The Contractor will ensure that Board members attend occasional seminars and other training events which the Contractor will arrange jointly with the Home Office. These will cover topics such as the police pensions and injury benefit regulations, key developments in occupational health and medical appeals case law.
- 3.9 The Contractor will be responsible for meeting all costs incurred by Board members.
4. Appeal Board accommodation
- 4.1 Boards consider cases from all parts of England and Wales and Scotland. The Contractor will organise the Boards on a regional basis to reduce travelling for appellants and respondents. There will be a minimum of four locations for England and Wales and three for Scotland (boards are currently organised on the basis of five locations for England and Wales and three for Scotland).
- 4.2 The Contractor will be responsible for ensuring that all accommodation used for medical appeals fully meets the following minimum requirements:
- A hearing room sufficient in size to accommodate the hearing. The maximum number attending is likely to be around ten people - i.e. three or more Board members, the parties and their representatives (see also paragraph 5.9).
 - A separate room with appropriate medical equipment for the third Board member to undertake the specialised medical examination. The room must ensure the level of privacy appropriate for a medical examination.
 - Two waiting rooms (one for each party to the appeal and their representatives).
 - Appropriate reception and toilet facilities.
 - A facility that will enable Board members to converse in private.
- 4.3 The Contractor will be responsible for ensuring that these facilities provide access

for disabled persons.

- 4.4 The Contractor will ensure that the appeal will normally be heard by the Board which is located nearest to the appellant's police force if he or she is a serving police officer and nearest to the appellant's home if he or she is a retired officer. However, there will be exceptions when:
- the parties have agreed otherwise in advance and have informed the Contractor accordingly; or
 - the appellant is a serving officer but is able to travel only a short distance due to his or her relevant medical condition, in which case the appeal will be heard by the Board which is located nearest to the appellant's home. The Contractor will be responsible for determining fitness to travel in the absence of agreement between the parties.
- 4.5 There will be a number of cases where the appellant's medical condition is sufficiently serious to prevent travel to the nearest Board at its normal location. In such cases, where the appellant is resident in England and Wales or Scotland, the Contractor will make the necessary arrangements for the Board to hold a special appeal hearing as close as possible to the appellant's home or at the appellant's home. In such cases the Contractor will be responsible for determining fitness to travel in the absence of agreement between the parties and the Contractor will claim the additional costs which it has incurred from the police authority following discussion and agreement with the police authority.
- 4.6 There will also be a number of cases where the appellant lives outside England and Wales or Scotland and his or her medical condition is sufficiently serious to prevent travel to England and Wales or Scotland. The Contractor will be responsible for determining fitness to travel in the absence of agreement between the parties. Where the appellant is unfit to travel to England and Wales or Scotland the appeal will be heard by the Board which is located nearest to the appellant's police force or former police force and the Contractor will discuss the special arrangements for the appeal with the police authority and the appellant. Such arrangements may include the medical examination being undertaken prior to the appeal hearing in the appellant's country of residence by the third member or another appropriately qualified person appointed by the Contractor and the provision of a video link to enable the appellant to participate in the appeal hearing. The Contractor will claim the additional costs which it has incurred from the police authority following discussion and agreement with the police authority.

5. Appeal Board administration

General

- 5.1 Efficient administration is essential to the medical appeals process. The Contractor will be required to ensure that deadlines are met, that papers are submitted on time and that appeal hearings are arranged without unnecessary delay. The Contractor will be required to liaise effectively with police authorities and appellants and their representatives.
- 5.2 The Contractor will therefore provide a sufficient level of resources to ensure that the administration runs smoothly and effectively at all times. This will include, as a minimum and in addition to the Contractor's Representative, a deputy to provide

day-to-day supervision and support in dealing with difficult cases, an administrator engaged full-time on Appeal Board work and an administrator able to help at times of peak demand and to cover for absences. The Contractor will ensure that telephone calls are answered immediately wherever possible and that use of voice mail is kept to a minimum. Where, in exceptional circumstances, voicemail is used all calls received during office hours must be returned within the same day.

Appeal case papers

- 5.3 All necessary appeal case papers will be sent to the Contractor by the police authority. The papers will include copies of the original police authority decision letter and the police authority's notification of appeal, a medical documents form containing the complete record from the force's occupational health file (subject to the appellant's consent) and copies of the appellant's notice of appeal and statement of grounds of appeal. The full list of papers and their format will be agreed with the Contractor following the award of the contract.
- 5.4 The Contractor will act promptly upon receiving the papers from the police authority.
- 5.5 The Contractor will ensure that any papers sent to the parties are copied to Board members.
- 5.6 The Contractor will provide to the police authority, within three working days of receipt, a written receipt of the appeal case papers which must include the date, name of the appellant, Contractor's reference number of the case and confirmation that the papers are complete. The Contractor will determine, prior to consideration by the Board, if additional documentation is necessary to consider the case. If additional medical documents are required the Contractor will be responsible for obtaining them and the necessary consent from the appellant. Any reasonable costs necessarily incurred by the Contractor in obtaining these additional medical documents will be added to the Contractor's charge at the end of the case.

Appeal hearings and submission of written evidence

- 5.7 The Contractor will arrange the date of the appeal hearing and wherever possible will set a date suitable for both parties. The appeal hearing will be held within such time as to enable the Board's report to be issued within 16 weeks of receipt by the Contractor of papers from police authority.
- 5.8 The Contractor will notify both parties in writing of the arrangements for the hearing, including the date and time, the address where it is to be held and the names of the Board members. The notification to the appellant will be sent by special delivery. The Contractor will give at least two months' notice of the hearing and the parties will be required to confirm their attendance within ten working days of this notice. The notification will inform both parties that a submission of written evidence setting out the case must be provided to the Board and to the other party not less than 35 calendar days before the hearing and that any responses to those submissions must be sent to the Board no later than seven calendar days before the hearing.
- 5.9 The Contractor will require the parties to the appeal to give notice of who will attend and will be responsible for ensuring that the number of attendees will not

prevent the orderly hearing of the appeal. The appellant, the SMP and any medical representative for each party will have the right to attend. If the SMP is unable to attend, the police authority may send the force medical adviser or other medical representative in his or her place. Non-medical representatives or companions may be allowed to attend provided that at least seven calendar days' notice is given.

- 5.10 The Contractor will also comply with any further guidance on attendance at appeals, entitlement to be present at the medical examination and conduct of appeals which the Home Office may provide after the award of the Contract.
- 5.11 The Contractor will inform Board members of the date and time of the hearing and provide Board members with all necessary case documentation. Any additional costs incurred because the Contractor failed to ensure that all necessary documentation was available to the Board on the day of the hearing will be the responsibility of the Contractor.

Withdrawal of appeal or cancellation of hearing

- 5.12 Any decision by the appellant to withdraw an appeal once papers have been received by the Contractor or cancel a hearing once a hearing date has been set may incur a charge according to a pre-set scale of charges. The charge for a withdrawn appeal will be payable to the Contractor by the police authority, but will be incurred entirely by the appellant unless the appellant and the police authority agree otherwise. The police authority will recover costs from the appellant as necessary.
- 5.13 The charge for a cancelled hearing will be levied to the police authority, but the Board may determine whether the appellant was at fault, in which case the police authority may recover its costs.

Adjournment or postponement of hearing

- 5.14 The Contractor must consider a request for adjournment or postponement from either party where adequate notice of at least 28 calendar days is given. The Contractor will inform the other party immediately where such a request is being considered and will liaise with both parties in setting a revised date. The final decision on any request for postponement will rest with the chairperson of the Board. A scale of charges will apply. This scale of charges will also apply when the Board decides that adjournment or postponement is necessary due to fresh submissions being made less than 21 calendar days before the hearing.

Scale of charges

- 5.15 The scale of charges referred to in paragraphs 5.12 and 5.14 will also be applied when an appeal hearing which has begun is adjourned due to late introduction of evidence or failure to attend; and when an appeal hearing is cancelled (i.e. one of the parties withdraws from the appeal) without adequate notice.
- 5.16 In the circumstances set out in paragraphs 5.12, 5.14 or 5.15 the relevant charge in each case will be met by the party responsible for the postponement, adjournment or cancellation, unless the Board considers that there are exceptional reasons for failure to give adequate notice or to attend.

- 5.17 The Board will also have a duty to make directions that when the police authority is responsible for a postponement, adjournment or cancellation of the appeal hearing (in the circumstances set out in paragraphs 5.12, 5.14 or 5.15), the police authority will pay the appellant's reasonable expenses for attending the hearing which have been incurred as a result of the postponement, cancellation or adjournment, unless the Board considers that there are exceptional reasons why this should not be so. The direction as to costs will be made as soon as practicable after the postponement, adjournment or cancellation.
- 5.18 For the purposes of paragraphs 5.12, 5.14 or 5.15, the Contractor will advise the parties as follows:
- Exceptional reasons for failure to give adequate notice or to attend include the appellant's unexpected illness (requiring a doctor's certificate), the appellant's attendance at a court hearing and the appellant's bereavement (parents, siblings, children, grandparents, grandchildren); and exclude all but the most extreme travel or transport difficulties affecting the appellant. The appellant is expected to make adequate allowance for the risk of public transport or traffic delays.
 - The police authority is expected to find a substitute for any representative who is unable to attend for any reason.
 - If the appellant is to be represented, he or she is expected to find a substitute for any representative who is unable to attend for any reason.
 - The Contractor otherwise has discretion as to what constitutes exceptional reasons for failure to give adequate notice or to attend and will take account of how promptly notification is given of any difficulties in attending on the arranged hearing date.
- 5.19 Following the award of the contract, the Home Office will give further guidance to the Contractor on the application of the scale of charges in the event of postponement, adjournment and cancellation and on the Board's duty to make directions as to reasonable expenses.

Decision that an appeal is frivolous or vexatious

- 5.20 Where the Board decides in favour of the police authority, the Board may report that in its opinion the appeal was frivolous or vexatious. The Board will consider any points made by the police authority in this context, but the decision that an appeal is frivolous or vexatious rests with the Board. Where the Board rejects a suggestion by the police authority that an appeal is frivolous or vexatious, it will explain why.
- 5.21 Where the Board reports that in its opinion the appeal was frivolous or vexatious, it will invite comments from the parties within 14 calendar days as to the award of costs to the police authority. The police authority may require the appellant to meet the Contractor's costs either wholly or in part unless the Board, after taking account of any representations from either party, decides that there are exceptional reasons.

Report by the Board

- 5.22 For each appeal case, the Board will produce a written report and send two copies each to the police authority and the appellant and one to the Home Office or the Scottish Public Pensions Agency, as appropriate. The report must include the

decision by the Board signed by all the Board members; reasons for the decision (including any calculations used in degree of disablement cases); details of the evidence produced by both parties and a short record of the appeal proceedings. Where the Board decides in favour of the police authority, it shall state in the report whether in the Board's opinion the appeal was frivolous or vexatious. The format of the Board's written report will be as set out in Appendix 3 to this Specification.

Timescales

- 5.23 For each appeal case the Contractor will provide services within the following timescales:
- An overall target that it will send the report to the police authority and the appellant within 16 weeks of the Contractor's written receipt of the appeal case papers.
 - A post-hearing target that it will send the report to the police authority and the appellant within ten working days of the appeal hearing. In extenuating circumstances (i.e. where there is a need to obtain further information from a force or third consultant, or a Board member is not available to sign), the target will be extended to 15 working days.
- 5.24 Paragraph 7.4 defines the remedial measures available to the Home Office to address the Contractor's failure to deliver services within these timescales.

6. Legal advice and post-decision casework

Access to legal advice

- 6.1 Medical Appeal Boards have a quasi-judicial role. The training to be provided before the commencement of the award of the Contract will highlight the legal consequences of the Boards' decisions, but Tenderers will be expected to show that the Boards will have access to legal advice both before and after the hearings, whether from its own legally qualified staff or from hired legal advisers. It will not normally be practicable to take legal advice during a hearing, although procedural issues may arise on which a Board will wish to take the views of the parties and, if necessary, the Home Office or the Scottish Public Pensions Agency, as appropriate.
- 6.2 The Board's legal advisers will where necessary review the robustness of decisions in order to minimise cause for judicial review.

Judicial Review

- 6.3 In a small number of cases, a Board's decision may be the subject of application for judicial review proceedings in the Administrative Court (Court of Session in Scotland) by the appellant's legal representatives or the police authority. The procedure for dealing with applications for judicial review is set out at Appendix 2 to this Specification.

Further consideration of appeals

- 6.4 The police pensions and injury benefit regulations allow for an appeal decision to be reconsidered by the Board if both parties agree that this should be done (e.g. if there is new medical evidence or a point of law raising doubts about the original decision). This can be achieved either by a review of the papers or by a re-hearing (which might be necessary if there is substantial new evidence to be considered). The pricing structure allows for a specified charge in a case where the Board reconsiders a decision without a further hearing. The charge in the case of a re-hearing may be the same or less than that for a normal hearing.

Retention of papers

- 6.5 The Contractor will keep all relevant papers for each appeal case for 12 months after completion of the report and then securely destroy them. During this period the Contractor will be responsible for dealing with Subject Access Requests under the Data Protection Act. The Contractor will provide the Home Office or the Scottish Public Pensions Agency, as appropriate, with a certificate of destruction for destroyed papers

7. Financial aspects of the contract

- 7.1 All costs incurred by carrying out the services specified in the contract will be charged by the Contractor to the relevant police authority. In cases where the appellant pays some or all of the costs, the police authority will normally recover costs by instalments.
- 7.2 All costs will be as specified in Schedule 2 to the Contract. Condition 3 of the

General Conditions of Contract at Schedule 1 of Document D (draft form of contract) covers the duration of the contract and condition 40 covers variation of price.

- 7.3 The only circumstances in which the Contractor may claim reimbursement of additional costs from the police authority, on production of appropriate evidence, are:
- (a) Where the chairperson of the Board decides, after taking into account the police authority's views, that the appeal concerns more than one medical condition, the Contractor may charge for one or more additional consultant physicians as additional Board members. Tenderers are asked to show the cost per additional Board member on the price schedule.
 - (b) Where additional costs (which must be discussed with and agreed by the police authority in advance) have been incurred by the Contractor because a special appeal hearing has had to be arranged due to the appellant being unable to travel, or able to travel only a short distance.
 - (c) Where a hearing has been postponed, adjourned or cancelled without adequate notice in the circumstances set out at paragraphs 5.12 and 5.14. A sliding scale of charges will apply equally to postponements, adjournments and cancellations, with the highest charge for the shortest period of notice, as set out in Schedule 2 to the Contract.
 - (d) When the Contractor has obtained additional medical documents in accordance with paragraph 5.6.
- 7.4 If the Contractor fails to provide services within the timescales described in paragraph 5.23, the Contractor will receive a reduced fee from the police authority in recognition of the detrimental effects of the delay on the reputation and operational efficiency of the police authorities and the force and the inconvenience to the parties. The reduction will be as follows:
- Failure to meet the overall target will result in a 5% reduction in the fee;
 - Failure to meet the post-hearing target will result in a 5% reduction in the fee;
 - If neither target is met there will therefore be a total reduction of 10% in the fee.
- 7.5 Persistent failure to meet the timescales described in paragraph 5.23 will result in further reductions to the fee payable from police authorities. The details of any scale of further reductions will be agreed between the Home Office and the Contractor following the award of Contract.
- 7.6 If, as a result of any act or omission by the Board, an appeal hearing is postponed without adequate notice or adjourned (for example, but not by way of limitation, if a Board is not properly constituted), the Contractor will pay the reasonable expenses of the appellant and the SMP for attending the hearing which have been incurred as a result of the postponement or adjournment.
- 7.7 In the event of the Contractor and the police authority being unable to agree what costs will be incurred or have been incurred by the Contractor, or whether services have been provided within the prescribed timescales, the Contractor will refer the matter to the Home Office or the Scottish Public Pensions Agency, as appropriate,

for a decision.

8. Monitoring the contract

- 8.1 The Contractor will provide a quality plan explaining how the services will be managed including details of quality assurance, accreditation and qualifications of medical practitioners.
- 8.2 The Contractor will also provide the Home Office and the Scottish Public Pensions Agency with statistical information about the Boards' decisions in a format and frequency to be agreed. The Home Office and the Scottish Public Pensions Agency will make this information publicly available.
- 8.3 The Contractor will nominate a competent person to be its representative in relation to the performance of the Contract, who will receive and act on any directions given by the Contract Manager nominated by the Home Office.
- 8.4 The Contract will form the basis on which the Home Office will monitor the service provided by the Contractor. The Home Office will use Key Performance Indicators (KPI) (both quantitative and qualitative) to assist in monitoring the contract. The KPIs, to be agreed with the Contractor by the Home Office, will be based on the following list.

Quantitative KPIs

- KPI 1 - Written acknowledgement of appeal case papers within three to five working days of receipt (target of 95%)
- KPI 2 - Appeal hearing held and Board's report issued within 16 weeks of receipt of papers from police authority (target of 95%)
- KPI 3 - Despatch of Board decision within ten working days of appeal hearing (15 working days in extenuating circumstances) (target of 95%)
- KPI 4 - Acknowledgement of post-decision requests for clarification within two working days (target of 95%)
- KPI 5 - Response to post-decision requests for clarification within ten working days (target of 95%)

Qualitative KPIs

- KPI 6 - Attendees' level of satisfaction with the administrative arrangements leading up to the hearing, based on forms completed by the parties after a hearing (target of 95% satisfied of those who express an opinion)
- KPI 7 - Attendees' rating of the venue and administrative arrangements on the day of the board hearing, based on forms completed by the parties after a hearing (extremely good to extremely poor) (target of 95% good or extremely good ratings of those who express an opinion)
- KPI 8 - Attendees' level of satisfaction with the way the Board was conducted, based on forms completed by the parties after a hearing (target of 95%)

satisfied or very satisfied of those who express an opinion)

- KPI 9 - Attendees' rating of the professional conduct of Board members on the day of the board hearing, based on forms completed by the parties after a hearing (target of 95% rating in the top two categories of those who express an opinion)
 - KPI 10 - Quality measure of conduct of boards and of reports (details to be agreed following award of Contract).
- 8.5 The Contractor will provide short questionnaires to those attending the Board (one to each party), after the hearing is complete, for the purposes of assessing performance against KPIs 6-9 and will take active steps to encourage both parties to complete them. The Contractor, in reporting performance against KPIs 6-9, will state the number of questionnaires completed by appellants and police authorities and the percentage completed of those issued over the reporting period.
- 8.6 The Contractor will actively co-operate in any review of the operation of the Appeal Boards. Any mutually agreed operational changes as a result of a review will be effected under condition 4 of the General Conditions of Contract (alteration of requirement) and will also be subject to condition 13 of the General Conditions of Contract (disclosure of information).

Appendix 1 to the Specification: Questions to be referred to the Selected Medical Practitioner

The Police Pensions Regulations 1987, the Police Pensions Regulations 2006 the Police Pensions (Scotland) Regulations 2007 the Police (Injury Benefit) Regulations 2006 and the Police (Injury Benefit) Scotland Regulations 2007 each specify questions which the police authority must refer to the SMP in specified circumstances and which may be the subject of an appeal to the Board. These questions are set out below.

Police Pensions Regulations 1987

- Whether a person is disabled for the ordinary duties of a member of the police force.
- Whether any such disablement is likely to be permanent.
- Whether a person who was assessed as permanently disabled has again become capable of performing the duties of a member of the police force (i.e. whether the disablement has ceased).
- Whether a person has brought about or substantially contributed to his or her permanent disablement by his or her own default.

Police Pensions Regulations 2006 and Police Pensions (Scotland) Regulations 2007

- Whether a person is disabled for the performance of the ordinary duties of a member of the police force.
- Whether any such disablement is likely to be permanent.
- Whether the person is also disabled for engaging in any regular employment (other than as a regular police officer).
- Whether any such disablement is likely to be permanent.
- Whether the disablement of a person who was assessed as being permanently disabled has ceased, significantly worsened or significantly improved.
- Whether a person has brought about or substantially contributed to his or her permanent disablement by his or her own default.

Police (Injury Benefit) Regulations 2006 and the Police (Injury Benefit) Scotland Regulations 2007

- Whether a person is disabled for the performance of the ordinary duties of a member of the police force.
- Whether any such disablement is likely to be permanent.
- Whether a person is totally disabled (i.e. incapable of earning any money in any employment)
- Whether any such disablement is likely to be permanent.
- Whether any disablement has been occasioned by an injury without default in the execution of duty.
- The degree to which a person is disabled – i.e. the extent to which a person's earning capacity has been reduced by the relevant injury. [Degrees of disablement fall into 4 bands: 25% or less (slight), more than 25% but not more than 50% (minor), more than 50% but not more than 75% (major), and more than 75% (very severe)].
- Whether a person's degree of disablement has altered since the initial injury award sufficiently to move from one band to another.
- Whether a person has brought about or substantially contributed to his or her permanent disablement by his or her own default.

Appendix 2 to the Specification: Judicial Review of Board decisions

- A2.1 The procedure for dealing with an application for judicial review of a Board decision will be as follows.
- A2.2 PNB guidance, which will be issued in time for the contract, will require either party to a medical appeal to notify the Contractor's agreed contact point and the other party to the appeal of any application to the Administrative Court (Court of Session in Scotland) for leave for judicial review.
- A2.3 The Contractor, as soon as it becomes aware of any application for judicial review, will check directly with the other party to the appeal to ensure that they are aware of the application.
- A2.4 The Contractor will also notify the Administrative Court (Court of Session in Scotland) and both parties that its policy is not to contest a judicial review for the purpose of upholding an appeal decision and that the other party to the appeal must take over the defence of the case if it wishes the appeal decision to stand.
- A2.5 In some judicial review cases, which are likely to be rare, there might a challenge, directly or indirectly, to the good faith or professional competence of the Board or a Board member notwithstanding any statement by the appellant or police authority who applies for judicial review that they have no issue with the Board on either such count. In such cases the Contractor will consider, in consultation with its legal advisers where necessary, whether to retain an active role in contesting the action in order to defend the good faith or competence of the Board.

Contested judicial reviews

- A2.6 The Contractor will reply to the appellant or the police authority, copied to the other party and the Home Office (or, in the case of a Scottish appeal, the Scottish Public Pensions Agency), if it decides to contest a judicial review. The Contractor will invite the other party to consider whether to join any action to defend it or to defend it on their own, as the case may be. The police authority will write to the Aggrieved Party, copied to the Contractor and the Home Office or the Scottish Public Pensions Agency, as appropriate, to confirm their position.
- A2.7 Where the Contractor decides, for whatever reason, to contest a judicial review it will bear any costs falling due to it as a result.
- A2.8 In all cases where there is no point of law for the courts to determine, and where both parties agree that a fresh decision is necessary, it will be good practice for the Contractor and the two parties to the appeal to avoid an application for judicial review by agreeing to a review of the Board's decision by another Board under regulation H3 of the Police Pensions Regulations 1987, regulation 73 of the Police Pensions Regulations 2006, regulation 73 of the Police Pensions (Scotland) Regulations 2007, regulation 32 of the Police (Injury Benefit) Regulations 2006 or regulation 32 of the Police (Injury Benefit) (Scotland) Regulations 2007, as the case may be⁴.

⁴ These provisions, which are identical in effect, provide for a decision to be referred back to the medical authority which made it, if both parties agree. In these circumstances the medical authority (which includes the medical appeal board) will reconsider the decision and if necessary issue a fresh report.

Appendix 3 to the Specification: Format of Reports

Report of the Police Medical Appeal Board undertaken in accordance with the Police Pensions Regulations and the Police (Injury Benefit) Regulations

Date of Board	
Location	

Appellant	
Name	
Force	
Rank	
Date of birth	
Address	

Board members	
Chairperson	
2 nd Member	
Consultant	

Attendees	
Appellant	
Appellant's representative	
Police Authority representatives	

Documentation submitted and considered by the Board		
Ref.	Date	Description
Form A		Appellant's statement of grounds of appeal
Form B		Appellant's submission to the Board in support of the appeal, plus medical report and correspondence attached)
Form C		Appeal Notification from Police Authority
Form D		Police Authority's Submission, plus supporting documentation

Reason for Appeal

The SMP's decision with which the appellant disagrees.

Occupational history and background

A summary of the appellant's employment history and a chronological summary of the circumstances which led to the decision which is the subject of appeal.

Submission by the appellant

A summary of the key points in the appellant's submission.

Submission by the Police Authority

A summary of the key points in the Police Authority's submission.

Response by the appellant to the Police Authority's submission

A summary of any written comments made by the appellant on the Police Authority's submission.

Response by the Police Authority to the appellant's submission

A summary of any written comments made by the appellant on the appellant's submission.

Key issues for the Board

A summary of the key points which the Board sought to establish through questions put to the appellant and the Police Authority at the hearing.

Comments made by the appellant

A summary of the points made by the appellant at the hearing.

Comments made by the Police Authority

A summary of the points made by the Police Authority representatives at the hearing.

Clinical assessment by the Consultant Specialist

The report by the Consultant Specialist following the medical examination performed at the hearing.

The Board's consideration

A summary of the Board's deliberation's following the hearing, including:

- The Board's conclusions on the key issues
- References to any relevant case law
- Consideration of the issue of apportionment, where appropriate

The Board's determination

The Board's decision on the appeal including, where appropriate, a decision on whether the appeal was frivolous or vexatious.

Signatures of each Board member

Date

Schedule 2 to the Contract: Costs

Appeals for years 1 and 2

Service provided	Cost
Standard Appeal Heard by 3 member board	£6,200
Additional cost (per appeal) per member if additional consultant physician(s) required	£1,000

Postponement, adjournment or cancellation charges

Failure to attend, same day notice or one working day's notice	£6,200
Two working days notice	£6,200
Three to five working days notice	£5,200
Six to ten working days notice	£3,250
More than ten working days notice and up to 21 calendar days notice	£1,300
More than 21 calendar days notice and up to 28 calendar days notice	£0
More than 28 calendar days notice	£0

Other costs

Reconsideration of appeals with a further hearing	£6,200
Reconsideration of appeals without a further hearing	£1,600

All costs exclude VAT

Cost for years 3 onwards will be based on Employment and Earnings: Main Industry Sectors SA: Private Sector Services SA inc Bonus: Index 2000=100:GB (Short code is emp: EG2:JJGH:AEI)

Exception to KPIs/SLAs:

Any handover cases from incumbent that fall outside of this contract, as part of Health Management Limited assisting the Home Office with the back log of the cases. At this time approximately 23 cases are in this area, but may increase in the next three months, depending on the incumbents closure.

All cases that get postponed or delayed by incumbent post 31st January, will be picked up by Health Management Limited and charged at full rate of £6,200.

Schedule 3 to the Contract: Contract Change Notice

Home Office Regional Boards of Medical Referees	
Contract Change Notice No.	
Part A – Change requirement (to be completed by the Contract Manager)	
Definition of requirement(s) is/are as follows:	
Contract Manager's signature _____ Date _____	
Part B - Implementation (to be completed by the Contractor's Manager)	Cost £
Description of work:	
Timescales:	
Resources:	
Signature _____ Date _____	Total Cost £
Part C - Approval (to be completed by the authorising officer)	Total agreed cost £
Signature _____	