

# **Legal Services Commission**

## **General Family Mediation Contract (Not for Profit)**

### **Overview**

#### **1 Background**

1.1 This is a brief overview of the Commission's General Family Mediation Contract (Not for Profit), to help you understand it and find your way about it. The contract has developed out of mediation pilots run by the Commission and the research on them. Its breakdown of mediation services into "joint" and "separate" assessment meetings and "sole" and "co" mediations for "all issues", "property and finance" and "child only" (as well as the related payments and the payments for "willingness tests" and "formal agreements") is based on the pilots and the research and our experience of implementing the General Family Mediation Contract for the for-profit services.

1.2 However, it can be one thing to run a pilot and another to implement and run a much larger scheme. We intend, therefore, to monitor carefully how the contract operates in practice, particularly in its early stages. And we welcome any feedback from contractors on how the scheme is working and on amendments that might be made. If we consider that the contract needs changing, we will draw up proposals for change and will consult on them, as is required by the contract.

#### **2 Contract Documents**

2.1 There are five contract documents.

- 2.2 First, there is a short document for signature. This will be a contract for a “Quality Marked Office”, for offices that hold a Quality Mark Standard for Mediation Certificate.
- 2.3 Our intention is to keep this contract and the Commission’s General Civil Contract (nfp) in step so that any changes that might be relevant to both e.g. to the contract standard terms (which are similar) are introduced at the same time.
- 2.4 The next document is a Schedule to the short document for signature. It sets out the expected volumes of work that we expect you to carry out while the Schedule is in force, and the payments that we will make for them. If any of the information in the Schedule changes, we will issue a Schedule Amendment Notice specifying the new information. An Outreach Work Authority may be issued to specify how much of the expected volumes of work stated in the Schedule may be performed as Outreach Work.
- 2.5 The third document is the Contract Standard Terms. These are similar to those for the Commission’s General Civil Contract (nfp), though with such amendments as are necessary to support this contract. The Standard Terms will be subject to amendment in line with amendments made to the Commission's other General Contracts after consultation
- 2.6 The Specification is the fourth document. It includes a few general rules and sets out all the detailed provisions on payment for contract work. It also includes some additional quality requirements that do not appear in the Quality Mark Standard for Mediation. These are largely provisions that the Commission requires you to comply with because it is paying for the work that you carry out – rather than requirements that any holder of the CLS Mediation Quality Mark is required to comply with, as a condition of holding the Quality Mark. We expect to make amendments to the Specification from time to time, following consultation.

- 2.7 The final document is the Quality Mark Standard for Mediation. This sets out the quality requirements that all holders of the CLS Mediation Quality Mark must meet.
- 2.8 If you have previously held a Pilot Mediation Contract (Not for Profit) with us, you must claim payment for matters started when it was in force, under that contract and not under this Contract. This means that for all Willingness Tests, Assessment Meetings and Mediations started on or before **1 October 2004**, you must claim payment under the Pilot Mediation Contract. Payments under that contract must be claimed by **10 October 2004**.

## **2 General**

- 2.9 If anything in these documents is unclear, please contact your Account Manager first, as they may be able to deal with your issue.
- 2.10 We do welcome your comments on the operation of this contract, in practice. If you want to give us your views on any matter then please, again, contact your Account Manager first.
- 2.11 The deadline for responses to this consultation is 3 September 2004. Responses should be sent to Children and Families Services, Legal Services Commission, 85 Grays Inn Road, London, WC1X 8TX.



**Legal Services Commission**

**General Family Mediation Contract (Not for Profit)**

**Quality Marked Office**

**Contract No. [ ] Between:**

**A. The Legal Services Commission** (“us”) whose head office is at :  
85 Gray’s Inn Road, LONDON WC1X 8TX

- and -

**B. [XXXXXXXXXX XXXXXX]** (“you”) whose Office is at:  
[XXXXXXXXXXXXXXXXXXXXXXXXX X XXXXXXXXXXXXXXXXXXXXX XXX]

**General**

1 The terms of this Contract are set out in the Contract Documents, which comprise: (a) this Quality Marked Office Contract; (b) the Schedule; (c) the Contract Standard Terms; (d) the Specification; and (e) the Quality Mark Standard for Mediation.

2 The Contract will start on **1 October 2004**. It will end on **31 March 2006** (unless it is ended under its terms before then).

**Signed for us by:**

**Signed for you by:**

Name:

Name:

Signature:

Signature:

Status:

Status:

[Trustee/Director/Other (please state)]

This Contract must be signed for you by a person who can bind you to this Contract. If you are an unincorporated charity, a trustee must sign. If you are a company, a Director must sign.

This Contract is valid only if it is signed by one of our Regional Directors or another person with the specific written authority of our Chief Executive.



**Legal Services Commission**

**General Family Mediation Contract (Not for Profit)  
Provisionally Quality Marked Office  
Contract No. [ ] Between:**

**A. The Legal Services Commission** (“us”) whose head office is at :  
85 Gray’s Inn Road, LONDON WC1X 8TX

- and -

**B. [XXXXXXXXXX XXXXXX]** (“you”) whose Office is at:  
[XXXXXXXXXXXXXXXXXXXXXXXXX X XXXXXXXXXXXXXXXXXXXXX XXX]

**General**

- 1 The terms of this Contract are set out in the Contract Documents, which comprise: (a) this Provisionally Quality Marked Office Contract; (b) the Schedule; (c) the Contract Standard Terms; (d) the Specification; and (e) the Quality Mark Standard for Mediation.
- 2 The Contract will start on **1 October 2004**. It will end on **31 March 2005** (unless it is ended or extended under its terms before then).

**Signed for us by:**

**Signed for you by:**

Name:

Name:

Signature

Signature:

Status:

Status:

[Trustee/Director/Other (please state)]

This Contract must be signed for you by a person who can bind you to this Contract. If you are an unincorporated charity, a trustee must sign. If you are a company, a Director must sign.

This Contract is valid only if it is signed by one of our Regional Directors or another person with the specific written authority of our Chief Executive.



# Legal Services Commission - General Family Mediation Contract

Mediation Contract Number  
Schedule Amendment Notice Number

Schedule No.  
Date

Name of Contractor			
Address of Office			
Address(es) of any Linked Office(s)		Number of Outreach services	
LSC Regional Office			
VAT Registration Number (if applicable)			

TABLE 1 – SCHEDULE START AND END DATES			
Start Date		End Date	

TABLE 2 – CONTRACT WORK					
1. Category of work	Numbers of Matter Starts (Expected)				
	2. Volume				
Willingness Tests					
Assessment Meetings – Together (Number of couples)					
Assessment Meetings – Separate (Number of individual clients)					
Assessment Meetings – Alone					
	3. Volume	4. Percentage Multi Session	5. Percentage Agreed Proposals	6. Percentage Publicly Funded work	
<i>Mediation Type</i>					
Child only – Sole					
Child only – Co					
Property & Finance only - sole					
Property & Finance only - Co					
All Issues Mediation – Sole					
All Issues Mediation - Co					

TABLE 3 – PAYMENTS (amounts are inclusive of VAT where applicable)			
Schedule Payment Limit (SPL)		Payband	
Maximum amount you may spend on disbursements		Total monthly payment	

Signed for us by:

Name:

Signature:

Status:

Signed for you by:

Name:

Signature:

Status:

[Partner/Principal/Director/Other (please state)]

This Schedule is valid only if it is signed by one of our Regional Directors or another person with the specific written authority of our Chief Executive. Signature of this Schedule for you is to acknowledge

## Legal Services Commission

### General Family Mediation Contract (Not for Profit)

Contract Number [ ] Schedule Number [ ]

## Outreach Work Authority

You are authorised to perform Outreach Work in accordance with the terms below. This Outreach Work Authority does **not** authorise any Matter Starts **additional** to those specified in your Schedule. If you require more Matter Starts than those specified in your Schedule, you should apply to us for an increase.

**Duration of Authority**

**Location**

**Opening Hours**

**Categories of Work and Types of Work:** As marked yes in the table below

OUTREACH WORK CATEGORIES AND TYPES				
	Maximum Numbers of Matter Starts			
1. Category of work	2. Single Sessions	3. Multi Session	4. Percentage Agreed Proposals	5. Percentage Publicly funded Work
Sole - All Issues				
Co – All Issues				
<b>Sole - Property &amp; Finance only</b>				
Co – Property & Finance only				
<b>Sole – Child only</b>				
Co – Child only				
	Maximum Numbers of Matter Starts			
Assessment Meetings(separate)				
Assessment Meetings (joint)				
Willingness Tests				

You must ensure that you identify all Outreach Work on your Contract Work Report Forms. We will not pay for any unauthorised Outreach Work.

**Signed for us by:**

Name:

Signature:

Status:

This Outreach Work Authority is valid only if it is signed by one of our Regional Directors or another person with the specific written authority of our Chief Executive.

## **Legal Services Commission**

### **General Family Mediation Contract (Not for Profit)**

### **Contract Standard Terms**

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## **Part A - Introduction**

### **1. Definitions etc.**

1. In this Contract the following words and expressions have the following meanings.

“Access to Justice Legislation” includes any Acts of Parliament, Statutory Instruments, directions of the Lord Chancellor applying to this Contract, Arrangements and the Funding Code;

“the Act” means the Access to Justice Act 1999;

“Approved Supplier” means any person, firm or company approved by you to supply services to you in accordance with the Quality Mark Standard for Mediation;

“Arrangements” means any arrangements made under the Act by us;

“Assessed Work” means Contract Work which has been subject to a Work Assessment;

“Assessment Meeting” has the meaning given in the Funding Code;

“BACS” means BACS Ltd (formerly known as Bankers’ Automated Clearing Services);

“Category of Work” means work that may be provided under the Act within a category specified by us in the Specification;

“Change of Control” means a change of control (as defined by section 416 of the Income and Corporation Taxes Act 1988) in you or your Parent Company;

“Children and Family Services Acting Head ” means the member of our personnel who is responsible for running Children and Family Services;

“Clause” means a clause of these Contract Standard Terms;

“Client” means an individual for whom you are performing (or have performed) Contract Work;

“Code of Practice” means the code of practice specified in the Specification;

“Consultative Body” means the UK College of Family Mediators, NCH Action for Children and such other body as we may recognise as such from time to time;

“Contract” means this Contract between you and us which shall be known as the General Family Mediation Contract;

“Contract Documents” means the documents (including any schedules and annexes to them) comprising this Contract which are (a) the Quality Marked Office Contract or Provisionally Quality Marked Office Contract; (b) the Schedule (c) the Contract Standard Terms; (d) the Specification; and (e) the Quality Mark Standard for Mediation;

“Contract Representative” means the member of your personnel responsible for liaison with us regarding this Contract;

“Contract Review Body” means the body appointed by us for the purpose of determining reviews under this Contract. It comprises two members nominated by us and a nominee of your Consultative Body. At our option, the Contract Review Body may also include a further member of an organisation holding a contract with us for the provision of legal or mediation services;

“Contract Schedule” and “Schedule” mean a schedule to this Contract;

“Contract Standard Terms” means these Legal Services Commission General Family Mediation Contract (Not for Profit) standard terms;

“Contract Work” is all the Family Mediation work you may perform under this Contract;

“Contract Work Report Form” means any of our forms for providing information about Contract Work;

“Contractor” means a party (except us) to a General Family Mediation Contract (Not for Profit);

“Costs Appeals Committee” means the committee of the Legal Services Commission appointed for the purpose of determining appeals against Assessments on Points of Principle of General Importance;

“Costs Committee” means a committee appointed under Arrangements to consider appeals and applications for reviews of Assessments in accordance with this Contract;

“Devolved Powers” means the powers and functions listed as such in the Specification that we have authorised you to exercise and discharge under this Contract (and which you must exercise and discharge unless we have directed you otherwise and which we may modify, suspend or terminate on notice to you in accordance with this Contract);

“Disbursement” means interpreters’ fees and other out of pocket expenses properly incurred by you (and which, apart from this Contract, would be properly chargeable to a client) in performing Contract Work;

“Family Mediation” has the meaning given in the Funding Code;

“Funding Code” means the code under Clause 9 of the Act;

“Guidance” means such guidance as we may issue from time to time, to form part of the Specification (and which you and we must follow) on the completion of forms, on how Contract sanctions may be applied, on the extent of Contract Work, on the scope of Categories of Work and (without limitation) on other issues relating to the meaning and operation of (and compliance with) this Contract;

“Key Personnel” means your Contract Representatives, your supervisors under the Quality Mark Standard for Mediation and all your Mediators;

“Linked Office” means an office designated as such in a Schedule;

“the Logo” means our logo for use by Contractors in accordance with this Contract;

“Matter End” means the end of a Type of Work for a Client;

“Matter Start” means the start of a Type of Work for a Client;

“Mediator” means a family mediator recognised as such by us in a Category of Work (and such a Mediator is a “recognised mediator” or “mediator” for the purposes of the Funding Code);

“Notice to Terminate” means a notice to that effect;

“Office” means your Office described in your Schedule from which you may perform Contract Work;

“Official Investigation” means any investigation (of which you are aware) (a) into suspected serious professional misconduct, breaches of the Act (or the Legal Aid Act 1988) or regulations, or dishonesty by you or your personnel, being carried out by or authorised by (i) any organisation which is responsible for regulating or disciplining you or your personnel or (ii) the Legal Services Commission’s Investigation Section; or (b) any investigation (of which you are aware) by the police into suspected criminal offences relevant to your operations;

“Outreach Work” means work that, by an Outreach Work Authority, we have authorised you to perform at a location away from your Office;

“Outreach Work Authority” means our form for authorising Outreach Work;

“Parent Company” means any company which is your ultimate holding company and any company which has the same ultimate holding company as you;

“Performance Indicators” means such measures of your performance as we may specify (and may include transaction criteria, case outcome measures, fundamental case issues measures, time spent measures and case cost measures);

“Points of Principle of General Importance” means decisions on appeals against Assessments that are determined by the Costs Appeals Committee to be such;

“Pre-Quality Mark Audit” means an audit by us, and designated as such by us, of a Provisionally Quality Marked Office;

“Promotional Items” means the Logo and the Quality Mark Standard for Mediation Certificate and any or all of such other logos, signs, display materials, information, literature and other promotional items, supplied or approved by us in connection with this Contract;

“Provisionally Quality Marked Office” means an office which has applied for (but has not yet been granted) approval of that Office as a Quality Marked Office;

“Provisionally Quality Marked Office Contract” means a Contract designated as such by us;

“Qualifying Client” means an individual whom you have assessed as a person for whom, under Access to Justice Legislation, Contract Work may be performed;

“Quality Mark Standard for Mediation” means our quality assurance standard;

“Quality Mark Standard for Mediation Certificate” means the certificate described as such as Clause 7.1;

“Quality Marked Office” means an Office that has passed a Pre-Quality Mark Audit and which holds a current Quality Mark Standard for Mediation Certificate;

“Quality Marked Office Contract” means a Contract designated as such by us;

“Region” and “Regional Office” have the meanings given in the Legal Services Commission Regional Arrangements 2000;

“Regional Director” has the meaning given in the Legal Services Commission Regional Arrangements 2000 but also includes the Children and Families Services Acting Head (or anyone nominated on their behalf);

“Regulation” means a regulation under the Act;

“Remainder Work” means Contract Work which, in accordance with this Contract, we permit you to continue after this Contract (or part of it) has ended;

“Report” means a report about you or your personnel from one or more of the organisations which may carry out an Official Investigation;

“Researcher” means a person appointed by us to carry out research into the operation of this Contract;

“Schedule” and “Contract Schedule” mean a Schedule to this Contract;

“Schedule Payment Limit” means the maximum sum we will pay you for Contract Work while a Schedule is in force;

“Schedule Amendment Notice” means a notice issued by us amending a Schedule;

“Serious Arrestable Offence” has the meaning given by section 116 of the Police and Criminal Evidence Act 1984;

“Specification” means the specification designated as such by us (which may include rules and Guidance) which we may amend from time to time in accordance with this Contract;

“Standard Opening Hours” means from 0900 to 1700 on every working day;

“Supplier Development Group” means our head office function responsible for the consideration of requests for internal reviews;

“Type of Work” means one of the types of work (within a Category of Work) described in the Specification.

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“we” and “us” mean the Legal Services Commission (and “our” has the associated meaning);

“Willingness Test” has the meaning given in the Funding Code;

“Work Assessment” means an assessment, under this Contract, of the amount which is due in respect of any Contract Work (on an appeal or otherwise) and “Assess” “Assessments” have the associated meaning;

“you” means the Contractor which has entered into this Contract with us (and “your” has the associated meaning).

## **Interpretation**

2. Clause headings in this Contract are inserted for convenience only and do not affect its interpretation.
3. Words denoting the masculine include the feminine and the neuter and words denoting the singular include the plural and vice versa.
4. Reference to “day”, “week”, “month” or “year” means a calendar day, week, month or year, as appropriate and reference to a working day means any day except Saturday, Sunday and any bank holiday.

5. Reference to any legislation or Arrangements is, as the context requires, a reference to any substitute for, or re-enactment of, such legislation or Arrangements and includes any new legislation or Arrangements arising at any time.
6. Reference to approving or approval means approving or approval as provided by this Contract or, if no express provision is made by this Contract, to approving or approval in writing.
7. Reference to authorising or authority means authorising or authority as provided by this Contract or, if no express provision is made by this Contract, to authorising or authority in writing.
8. Reference to directing or direction means directing or direction as provided by this Contract or, if no express provision is made by this Contract, to directing or direction in writing.
9. Reference to notifying, notification or notice means notifying, notification or notice as provided by this Contract or, if no express provision is made by this Contract, to notifying, notification or notice in writing.
10. Any obligation relating to the completion and submission of any form designated or specified by us, or to “our form”, includes the obligation properly to complete and submit the form in such a format (electronic, paper or otherwise) as we may specify.
11. Unless otherwise specified, reference to any Contract Document or to any “current” document or other provision means the Contract Document, document or other provision in its current form from time to time and not merely as at the date this Contract comes into force.
12. Reference to a “current” payment rate or other provision means a payment rate or other provision in its current rate or provision from time to time and not merely as at the date this Contract comes into force.

13. Where this Contract imposes an obligation on you, you must comply with it and must use reasonable endeavours to ensure that your personnel and contractors comply with it. Similarly, where this Contract imposes an obligation on us, we must comply with it and must use reasonable endeavours to ensure that our personnel and contractors comply with it.
14. Any obligation on you to have systems, procedures or controls includes the obligation effectively to operate them.
15. Where, in relation to any options available to us under any Clause, those options are joined by the word “and” (as in we may “a”, “b” and “c”), our choice is not restricted to selecting all options or no options but extends to selecting any one or more of them.
16. Any reference to this Contract, or any part of it, ending or terminating means (unless otherwise stated) ending in any manner and not merely by effluxion of time or otherwise.
17. Any reference to this Contract, or any part of it, expiring means (unless otherwise stated) expiring by effluxion of time (and “expiry” has the associated meaning).
18. This Contract is governed by English Law.

#### **Precedence of Contract Documents**

19. Unless one provision is stated expressly to override, or to be subject to, another then, in the event of any conflict between any of the provisions of the Contract Documents, the conflict will be resolved according to the following order of priority: (a) the Quality Marked Office Contract or the Provisionally Quality Marked Office Contract; (b) the Schedule; (c) the Contract Standard Terms; (d) the Specification; and (e) the Quality Mark Standard for Mediation.

#### **Scope of Standard Terms**

20. Unless any Quality Marked Office Contract or Provisionally Quality Marked Office Contract or a Schedule expressly provides otherwise, all these Contract Standard Terms apply to all Contract Work.

## **2. Relationship**

### **Reasonableness and good faith**

1. In complying with this Contract, in exercising your rights under it and in performing Contract Work, you must act reasonably and in good faith.
2. In exercising our rights under this Contract, and in complying with it, we must act in good faith and as a responsible public body required to discharge its functions under the Act, having regard to the professional duties owed by you to your Clients.
3. Clauses 2.1 and 2.2 above do not relieve either you or us from the requirement to comply with express provisions of this Contract and are subject to all such express provisions.

### **Are you our employee, agent or partner?**

4. In performing Contract Work or other services, you are, and acknowledge that you are, an independent provider of services. You are not an employee of ours, or an agent or partner of ours, and must not act as such or conduct your activities so as to give the impression that you are our employee, agent or partner.
5. We shall not incur any contractual liability to any other person as a result of anything done by you in connection with the performance of this Contract.

### **Do you have to perform this Contract yourself?**

6. This Contract is personal to you. You must not give, bargain, sell, assign (or otherwise dispose of) the benefit of any of its rights, or sub-contract (or otherwise delegate) any of your obligations under this Contract. This Contract does not prohibit you from instructing Approved Suppliers in accordance with normal practice and in compliance with this Contract.

### **Does this Contract create any third party rights?**

7. This Contract does not create any right enforceable by any person not a party to it.

### **3. Your main rights and obligations**

#### **What work may be performed and who may perform it?**

1. You may perform, for Qualifying Clients, the Contract Work specified in your Schedule, while it is in force. Unless the Specification or the Funding Code provides otherwise in respect of any Contract Work, Contract Work may be performed only by Mediators who are members of your personnel.

#### **How must you perform the Contract Work?**

2. You must perform all Contract Work in a timely manner and with all reasonable skill, care and diligence. You must perform your obligations to record and report data accurately.
3. In performing Contract Work, in exercising any Devolved Powers and in complying with the Quality Mark Standard for Mediation you must achieve such level of performance, as measured by the Performance Indicators, as we may require.

#### **What must you comply with?**

4. You must comply with the Contract Documents, with all relevant legislation, including all Access to Justice Legislation, and with any relevant Points of Principle of General Importance.

#### **How must you demonstrate compliance?**

5. You must demonstrate to our reasonable satisfaction that you are complying with, and have at all times while this Contract has been in force complied with, the provisions of this Clause 3. You must demonstrate this when you are being audited by our representatives and at such other times as we may require.

**What access to your premises do you have to give us?**

6. You must allow our representatives to have prompt access to your premises: (a) in order to audit or assess whether you are complying with this Contract; (b) to perform Assessments or otherwise discharge our functions under the Act; and (c) to facilitate an Official Investigation.
7. Unless an Official Investigation is being conducted (when, if we request it, you must give immediate access) we will require access for our representatives only during normal business hours and we will give you five working days notice of the date when we require such access (unless you agree a shorter period of notice).

**What facilities and documents do you have to make available to us?**

8. You must make available to our representatives such information, assistance and facilities (including, without limitation, photocopying and interviewing facilities) and such documents or parts of documents, including the files and file records of any Clients, as we may require.
9. You must comply with Clause 3.8:
  - (a) as quickly as reasonably practicable (and, in any event, within 24 hours or such longer period as we may agree with you) if an Official Investigation is being conducted;
  - (b) without unreasonable delay (and in any event within 14 days) during an audit or assessment by our representatives, or for the purposes of an Assessment;
  - (c) within such period as we may specify (being not less than 14 days) on such other occasions as we may require for the purposes set out in this Contract.

**Do you have to co-operate with Researchers?**

10. You must co-operate with any Researchers and provide such information to them as they may reasonably require. Such co-operation includes permitting the Researchers, on reasonable notice, to have access to your premises during normal office hours and to review, on the premises, the files of Clients. It also includes, occasionally, discussing with the Researchers issues relating to the operation of this Contract.

**What forms do you have to complete?**

11. You must complete and return to us, in accordance with the Specification, such Contract Work Report Forms as we may specify. We will give at least 28 days notice of the introduction of any new Contract Work Report Forms or of any amendments to any Contract Work Report Forms.

**Do you have to tell us of any change in your ability to perform Contract Work?**

12. You must notify us of any significant changes in your personnel deployed in Contract Work and of any other changes affecting you that might reasonably be expected significantly to affect your ability to perform Contract Work.

**Are you bound, by this Contract to comply with the requirements of your professional body?**

13. In performing Contract Work, you must comply with the conduct and practice rules (including, where any of your personnel practise as solicitors, the Solicitors' Practice Rules) of your professional body.

**Can we require you not to remove documents?**

14. Once you have been given notice that we require access to your premises you must not remove from those premises any documents or parts of documents (including files and file records of Clients) unless their removal is required in Clients' interests (in which case a written record of any removed document or part of a document must be provided to our representatives on their exercising access) or otherwise in accordance with our prior agreement.

**May we remove documents or require you to send them to us or to store them securely?**

15. When required for the purposes of this Clause 3 (except for Clause 3.10), we may remove, require you to send us or require the secure, sealed retention of (in such manner and for such period as we may specify) documents or parts of documents (including the files and file records of Clients).

**How long must you keep closed Case files for?**

16. For the purposes of this Clause 3, you must securely retain, for six years after closure, all the files (and file records) of all Clients for whom you have performed work under the Act where that work has included the start of a mediation. Where the work was a Willingness Test or Assessment Meeting which did not lead to a mediation then the files must be securely retained for a period of two years. Files and records may be retained in any manner (for example, on microfiche) which enables them to be audited without undue difficulty. Closed files and records or copies of them need not be retained if they have been transferred elsewhere at a Client's request, for example, because the Client has changed mediators.

**May we carry out Client satisfaction surveys?**

17. You must permit us to carry out surveys of Clients and must provide us with such information as we may require for such purpose.
18. If you request it, we will provide you with the information we obtain in any of the surveys of Clients for whom you have performed Contract Work.

**What material changes do you have to tell us about?**

19. Without prejudice to Clause 18, you must notify us of any material alteration:
- (a) to any material information you have provided to us (including information which you provided in seeking to become a Contractor); and
  - (b) to the manner in which you perform the Contract Work (including material alterations to your management systems).

For the purposes of this Clause, material alterations include any decision to stop providing Contract Work in any Category of Work or any fundamental change in the management of your Office.

**Do you have to tell us about disciplinary and other proceedings?**

20. Immediately you become aware of them, you must notify us (and provide details) of (a) any professional disciplinary proceedings and (b) any criminal charges in relation to any alleged Serious Arrestable Offence that might be relevant to the performance of Contract Work or any alleged offence of dishonesty or deception concerning (i) you, (ii) any of your personnel who have been, or may be, involved in Contract Work (iii) any of your trustees, or (iv) any of your directors.

**Do you have to tell us about events which entitle us to apply a Contract sanction?**

21. You must notify us (and provide details) if you become aware of any event which would entitle us to terminate this Contract, or to apply any other Contract sanction.

**Are we authorised by you to obtain a Report?**

22. By signing this Contract, you authorise us to obtain a Report if at any time we have good reason to suspect serious professional misconduct, breaches of Regulations or dishonesty by (i) you (whether or not you are under Official Investigation); (ii) any of your personnel who have been, or may be, involved in Contract Work (iii) any of your trustees, or (iv) any of your directors and must use all reasonable endeavours to ensure that such of them as may be required to give consent to enable such Reports to be given to us, must do so.

23. We may require you to provide us with a Report on any new Key Personnel whom you employ.

## **Part B - The Quality Mark Standard for Mediation**

### **4. Quality Marked Offices and Provisionally Quality Marked Offices**

#### **Contract Type**

1. Quality Marked Offices will have Quality Marked Office Contracts. Provisionally Quality Marked Offices will have Provisionally Quality Marked Office Contracts.
2. When a Provisionally Quality Marked Office becomes a Quality Marked Office, its Contract will convert from a Provisionally Quality Marked Office Contract to a Quality Marked Office Contract and the terms of a Quality Marked Office Contract will then apply.

#### **Contract Length**

2. Subject to Clause 20.1, a Provisionally Quality Marked Office Contract will usually be in force for no longer than one year.
4. Subject to Clause 20.1, a Quality Marked Office Contract will be in force until 31 March 2006 unless we have given at least a year's notice otherwise, or we have grounds for terminating it.

## **5. Advertising and promotion**

### **Are there any restrictions on how you may advertise?**

1. If your Office is a Provisionally Quality Marked Office, you must not hold your Office out as (or imply that your Office is, or will be) a Quality Marked Office unless we grant you prior written permission. If we do grant such prior written permission, you must comply with such terms as to publicity as we may specify.
2. You may publicise and promote your status as a Quality Marked Office, or Provisionally Quality Marked Office, in any reasonable manner consistent with the spirit and intention of this Contract.
3. You must not say or do anything which is or is likely to be misleading to Clients or potential Clients regarding your Office's status as a Quality Marked Office or a Provisionally Quality Marked Office.
4. If we consider that you are publicising or promoting in a manner which is not consistent with the spirit and intention of this Contract, or may be misleading to Clients (or potential Clients), we may direct you to cease such publicity or promotion. If we do so direct, you must comply with such direction without delay.

### **Are there any restrictions on your use of Promotional Items?**

5. You acknowledge that we own all rights in the Promotional Items.
6. You must not alter or amend any Promotional Items without our prior written permission.
7. You acknowledge that any Promotional Items which are owned by us, and designated as such, at all times remain in our ownership.
8. In any of your promotional material referring to Contract Work, leaflets or other information referring to Contract Work, you must make use of our Logo in such manner as may be required by us in Guidance.

9. If your Office is either a Provisionally Quality Marked Office or a Quality Marked Office you may make use of the Logo in accordance with our conditions as to use.

## **6. The Quality Mark Standard for Mediation**

### **What is the Quality Mark Standard for Mediation?**

1. The Quality Mark Standard for Mediation is our quality assurance standard.
2. The Quality Mark Standard for Mediation includes requirements with which you must demonstrate compliance before we will issue a Quality Mark Standard for Mediation certificate for an Office and with which you must continue to comply, and demonstrate compliance, as required by this Contract.

### **The Quality Mark Standard for Mediation – amendments to parts that do not impose obligations**

3. Except when this Contract expressly provides otherwise, we have complete discretion to amend any part of the Quality Mark Standard for Mediation which does not impose obligations or requirements on you.

### **The Quality Mark Standard for Mediation - Amendments to parts that impose obligations**

4. We may, from time to time, amend any part of the Quality Mark Standard for Mediation which imposes obligations or requirements on you. In doing so, we will have regard to the professional duties owed by you to Clients.
5. Before we amend any part of the Quality Mark Standard for Mediation which imposes obligations or requirements on you, we must consult with the Consultative Bodies.

### **What about urgent amendments to parts that impose obligations?**

6. If we consider that there is an urgent need to amend any part of the Quality Mark Standard for Mediation which imposes obligations or requirements on you:
  - (a) consultation need last no longer than 21 days; and

- (b) after consultation has concluded, we will give you no less than six weeks' notice of the date when the amendment will come into effect.

**What about non-urgent amendments to parts that impose obligations?**

- 7. If we wish to amend any part of the Quality Mark Standard for Mediation which imposes obligations or requirements on you but do not consider that there is an urgent need to do so:
  - (a) consultation need last no longer than six weeks; and
  - (b) after consultation has concluded, we will give you no less than eight weeks' notice of the date when the amendment will come into effect.

## **7. The Quality Mark Standard for Mediation Certificates**

### **The Quality Mark Standard for Mediation Certificate**

1. A Quality Mark Standard for Mediation Certificate is a Certificate issued by us showing that the Office identified in it is a Quality Marked Office.

### **When will we issue a Quality Mark Standard for Mediation Certificate?**

2. We will issue a Quality Mark Standard for Mediation Certificate within a reasonable period after your Office has passed a Pre-Quality Mark Audit. The Quality Mark Standard for Mediation Certificates remain our property and must be dealt with as directed by us.

### **What information will a Quality Mark Standard for Mediation Certificate include?**

3. Each Quality Mark Standard for Mediation Certificate will state your name, the address of your Office and such other information as we consider appropriate. If any of this information changes, we will issue a replacement Quality Mark Standard for Mediation Certificate within a reasonable period afterwards.

## **8. Performance Indicators**

### **What are Performance Indicators for?**

1. Performance Indicators are a way of assessing how you are performing, and the results of, Contract Work.

### **When may we amend the Performance Indicators?**

2. We may, from time to time, amend the Performance Indicators and introduce new Performance Indicators. In doing so, we will have regard to the professional duties owed by you to Clients.
3. Before we amend the Performance Indicators or introduce new Performance Indicators, we will consult with the Consultative Bodies.

### **What about urgent amendments?**

4. If we consider that there is an urgent need to amend the Performance Indicators or to introduce new Performance Indicators:
  - (a) consultation need last no longer than 21 days; and
  - (b) after consultation has concluded, we will give you no less than six weeks' notice of the date when the amendment will come into effect.

### **What about non-urgent amendments?**

5. If we wish to amend the Performance Indicators or to introduce new Performance Indicators but do not consider that there is an urgent need to do so:
  - (a) consultation need last no longer than ten weeks; and
  - (b) after consultation has concluded, we will give you no less than ten weeks' notice of the date when the amendment will come into effect.

## **9. Devolved Powers**

### **What Devolved Powers do you have?**

1. The Devolved Powers capable of being exercised by Contractors are set out in the Specification. Your Quality Mark Standard for Mediation Certificate will specify any of these Devolved Powers that have not been granted to you or which have been withdrawn under this Contract.

### **May we amend the Devolved Powers?**

2. We may, from time to time, amend, increase or reduce the Devolved Powers that we may grant under this Contract. In doing so, we will have regard to the professional duties owed by you to your Clients.
3. Before we amend, increase or reduce the Devolved Powers that we may grant under this Contract, we will consult with the Consultative Bodies.

### **What about urgent amendments?**

4. If we consider that there is an urgent need to amend the Devolved Powers:
  - (a) consultation need last no longer than 21 days; and
  - (b) after consultation has concluded, we will give you no less than four weeks' notice of the date when the amendment will come into effect.

### **What about non-urgent amendments?**

5. If we wish to amend the Devolved Powers but do not consider that there is an urgent need to do so:
  - (a) consultation need last no longer than six weeks; and
  - (b) after consultation has concluded, we will give you no less than six weeks' notice of the date when the amendment will come into effect.

## **Part C – Contract Work**

### **10A. Contract Schedules - General**

#### **What are Contract Schedules?**

1. Contract Schedules are what we use to authorise you to carry out Contract Work.

#### **Length of Contract Schedules**

2. Contract Schedules will normally end on 31 March in each year and, unless they start after 1 April, will normally be in force for one year, from 1 April.

#### **Content and extension of Contract Schedules**

3. Contract Schedules will specify the Categories of Work authorised (and any restrictions on them) the number of Matter Starts authorised, your monthly payment and your Schedule Payment Limit. They may also include other terms relating to Contract Work (for example, any amendments to the Standard Opening Hours).
4. With your agreement, we may, by written notice to you, extend the period for which any Contract Schedule is in force.

#### **Scope of Terms in Contract Schedules**

5. If, in accordance with this Contract, we amend any provision in a Contract Schedule, we will issue a Schedule Amendment Notice specifying the amendment.
6. We may amend the general content of a Contract Schedule, but will not do so without prior consultation with the Consultative Body. The “general content” of a Contract Schedule does not include contents that relate only to you.

## **10B. Contract Schedules – Specific terms**

### **Introduction**

1. This Clause 10B sets out the terms of your Schedule, apart from terms that apply specifically to you i.e. they do not apply to Contractors generally. Those specific terms are set out in your Schedule. Mainly (or entirely) those specific terms are set out in three tables specifying the start and end dates of the Schedule (Table 1), Contract Work that you may do (Table 2) and Payments that we will make (Table 3). Although they are located in the Contract Standard Terms, the terms set out in this Clause 10B have effect as if they were located in your Schedule and may be amended accordingly.

### **Offices and locations**

2. You may perform Contract Work from your Office and from any Linked Office(s) named in your Schedule. If we authorise it, you may also perform Outreach Work at locations specified by us.

### **Matter Starts**

3. Table 2 in your Schedule shows (by Type of Work) your expected numbers of Matter Starts in the Categories of Work in which we have authorised you to perform Contract Work. If we have not authorised you to perform Contract Work in a Category of Work, it is marked N/A in Table 2.
4. The numbers of Matter Starts may be “expected” numbers i.e. the numbers we expect you will start while this Schedule is in force. If so, they are not limits on the numbers of Matter Starts you may make and you may make as many Matter Starts as you wish in any Category of Work in Table 2 that is not marked N/A provided that this has first been agreed with your Regional Office. The numbers of Matter Starts may instead be “Limited”. If so, you may not make any more Matter Starts than the specified numbers.

## **Payments**

5. Table 3 shows your Schedule Payment Limit, your monthly payment (based on the information in Table 2).
6. Your Schedule Payment Limit is the amount that we expect will be payable to you for Contract Work until 31 March. It may be set at an amount to take account of any Work Assessments and any sums due to us from you, or to you from us, under any previous Schedule.

## **Amending Matter Starts and payments**

7. At any time, you may apply to us to amend Tables 2 and 3. Normally, we will consider such applications within 30 days before or after 1 October in each year. However we may consider applications at other times if we consider it is appropriate to do so.
8. Whether or not you apply to us, we may also review and amend Tables 2 and 3 to reflect the number and type of Matter Starts you make and their value. Unless we consider it appropriate to carry out such reviews more frequently, we anticipate doing so once during each Schedule in October.

## **Outreach Work**

9. You may not perform Outreach Work unless we have authorised you to do so by an Outreach Work Authority. An Outreach Work Authority will be subject to conditions e.g. it may specify the location from which you may perform Outreach Work, the number of hours that you must be available at the location and the number of Matter Starts you may make from the location.

## **11. Specification**

### **What is the Specification?**

1. The Specification requires compliance with the Code of Practice, rules and Guidance. It also specifies the payment rates for different types of Contract Work.
2. The rules in the Specification are concerned, generally, with how you must (and must not) perform, record and report Contract Work.
3. Guidance in the Specification may be Guidance on the rules in it or Guidance on the completion of forms, on how Contract sanctions may be applied, on the extent of Contract Work, on the scope of Categories of Work and (without limitation) on other issues relating to the meaning and operation of (and compliance with) this Contract. Like you, we must comply with Guidance.

### **May we amend the Specification?**

4. Subject to Clauses 11.5 to 11.9 below, we may, at our discretion, add to and otherwise amend the Specification from time to time. If justified in local or individual circumstances, amendments may be such as affect not all Contractors, but just some Contractors or individual Contractors.

### **What must we do before we amend the Specification?**

5. We may not amend the Specification without prior consultation. If the amendment affects only one Contractor, we will consult with that Contractor. If the amendment affects more than one Contractor, consultation will be with the Consultative Body and will be subject to the provisions of Clauses 11.6 and 11.7 below.
6. Unless we consider that there is an urgent need to amend the Specification, consultation with the Consultative Body need last no longer than six weeks.

7. If we consider that there is an urgent need to amend the Specification, consultation with the Consultative Body need last no longer than 21 days.

**When must you comply with amendments to the Specification?**

8. Unless we consider that there is an urgent need for the affected Contractors to comply with the amendment, each affected Contractor must comply with the amendment within six weeks after we have given them notice of it.
9. If we consider that there is an urgent need for the affected Contractors to comply with the amendment, each affected Contractor must comply with the amendment within such period (not shorter than four weeks) as we may specify when we give them notice of the amendment.

## **12A. – Payment – General**

### **What payments are you entitled to?**

1. We will pay you in accordance with this Contract for performing Contract Work. For the avoidance of doubt, the payment provisions in this Contract are subject to the provisions for Contract sanctions.

### **What payments are you not entitled to?**

2. You are not entitled to any payment in respect of any Contract Work except in accordance with this Contract.
3. For the avoidance of doubt, you are entitled to payment by us under this Contract only for the performance of Contract Work that consists of the provision of services to a Qualifying Client and (except where this Contract expressly provides otherwise) you are not otherwise entitled to any payment in respect of complying with this Contract.

### **Are we entitled to assess your Contract Work?**

4. We are entitled to Assess your Contract Work. Subject to your rights of appeal, where Contract Work is assessed, the amount due from us in respect of it is (subject to the provisions of this Contract) the amount allowed on the Assessment, whether or not payment in respect of the work done has already been made by us.

### **How will we pay you?**

5. We will pay you by BACS, unless we direct otherwise.

### **Do payments include VAT?**

6. We will pay you, in addition to the amount prescribed, a sum equal to the Value Added Tax that properly arises on such payment. Any reference to an amount “plus VAT” means the amount plus a sum equal to the VAT that properly arises on it.
7. You must, if so requested by us, provide us with such information as we may require as to the amount of Value Added Tax properly arising under this Contract

and payable by us to you in addition to the amounts otherwise prescribed by this Contract.

**What if you owe us any money?**

8. We may set-off against any amount payable by us to you under this Contract or otherwise, any amount payable by you to us, under this Contract or otherwise. For the avoidance of doubt, when this Contract ends, any obligation to make payment is subject to this right of set-off.

**When must you pay third parties?**

9. Subject to Clause 12A.11, you must pay any third parties whom you instruct in connection with Contract Work in accordance with the terms of your agreement with them and, in any event, within three months of submitting any Contract Work Report Form to us that includes their charges.

**Can we specify payment rates for third parties?**

10. We may specify the maximum payments (by way of hourly rates and otherwise) which Contractors may agree with experts and other third parties whom they instruct. Any such rates will be included in the Specification and may be exceeded only in accordance with Specification and Guidance or on a case by case basis with our specific written permission.

**When may you delay payment to third parties?**

11. You need not pay third parties in accordance with Clause 12A.9 if there is a good reason that would justify non-payment.

**Initial Payment**

11. If, before this Contract starts, we have given you written notice that we will make an initial payment to you under this Contract, we will make that payment within 30 days after the date this Contract starts. The payment will be subject to such conditions as we may have specified in writing.

## **12B. – Payment - Specific**

### **How frequently and what sums will we pay you for Contract Work?**

1. We will make monthly payments to you on account of your Contract Work. Unless your Schedule specifies otherwise, these payments are inclusive of amounts reported, or to be reported, for Disbursements.
2. The amount of the monthly payments is based on our determination of the monthly amount payable in respect of your reported Contract Work under your Schedule plus an allowance for any monies owed by us to you, or by you to us, in respect of any previous Schedule.

### **When and how may your monthly payments be amended while a Schedule is in force?**

3. We may redetermine and amend your monthly payments at any time but, unless we consider it appropriate to amend them more frequently, will normally do so once during each Schedule, in October. We will not reduce your monthly payments unless we calculate that (without a reduction), at the end of the Schedule, we will have overpaid you.
4. You may apply to us to amend your monthly payments in accordance with Clause 10.B.
5. If we amend your monthly payments, we will send you a Schedule Amendment Notice specifying the new monthly payments and the new Schedule Payment Limit.

### **How will we balance the payments we have made and the Contract Work you have submitted at the end of a Schedule?**

6. Normally within the two months before or after the end of a Schedule, we will perform a reconciliation of the value of your Claims (whether or not Assessed) and of the value of the payments we have made to you under this Contract.

7. If, following a reconciliation under Clause 12B.6 above, there has been an underpayment, we will make good the underpayment within three months. If there has been an overpayment, we may adjust subsequent monthly payments to recover it within no fewer than three of them. However, if it appears unlikely that we will be able to recover an overpayment in this way, within six months, we may (at any time) send you a debit note, specifying the amount of the overpayment (or the balance of the overpayment that has not been recovered) and that amount then becomes due from you to us.
8. The fact that we have made a payment to you does not mean that any Claim has been Assessed. We reserve the right to Assess a Claim at any time within the two years following its submission to us (or within six years if: (a) an Official Investigation is underway; or (b) we have received a Report that we reasonably consider requires us to Assess such Claims).

**Are monthly payments dependent upon the submission of Contract Work Report Forms?**

9. On one occasion only for each month, you must complete and submit to the Regional Office nominated by us, Contract Work Report Forms for the Claims you are ready to submit.
10. Your Contract Work Report Forms for each month must be received by the appropriate Regional Office within ten days of the start of the following month (i.e. by 10<sup>th</sup> of the month). We expect you not to make your submission until after the month has ended, but you may do so earlier in exceptional circumstances. The receipt of Contract Work Report Forms triggers your monthly payment and your monthly payment is payable only if we receive these forms in accordance with this Clause 12.B.

**May you place monthly payments in Office Account?**

11. If you are required to comply with the Solicitors' Accounts Rules then (unless we direct otherwise) you may place monthly payments in your office account (as defined in those Rules).

**Is there a right of review against the amount of monthly payments?**

12. If you do not agree the amount of your initial monthly payment or any subsequent amendment to it, you may, within 14 days of notification of the initial monthly payment or subsequent amendment to it, apply for a written review by the Regional Director.

## **12C. – Payment - Remainder Work**

### **Will we allow Remainder Work?**

1. Subject to Clause 12C.2, we will agree that you may perform Remainder Work unless we have any grounds for applying a Contract sanction.

### **What information must you provide before we will permit you to perform Remainder Work?**

2. It will be a condition of permitting any Remainder Work that you provide us with details of all cases that have not yet been the subject of a Claim. No payment will be made in respect of any case for which these details have not been provided within one month of the date when we permitted you to perform Remainder Work. Details that we will require will include numbers of Matter Starts and Matter Ends, by Type of Work, that you have not yet reported to us as required by the Specification.

### **What if we do permit Remainder Work?**

3. When we permit you to perform Remainder Work then, subject to the provisions of this Contract (including our right of set off), provided you comply with such requirements as we may specify, we will either:
  - (a) continue to make monthly payments to you (and may appropriately amend your monthly payments, from time to time, to reflect the fact that you will not be starting any new cases under the Contract and to make good any underpayments or overpayments); or
  - (b) pay you on a case by case basis within six weeks of receipt of each Claim or, if it is Assessed, within six weeks of the date of the Assessment, also making good any underpayments or overpayments.

### **What if we do not permit Remainder Work?**

4. Unless we agree that you may perform any Remainder Work, we are obliged to pay only for Contract Work performed while this Contract was in force.
5. If you are not permitted to perform Remainder Work, you must send us all your remaining Claims within one month of the date this Contract ended. We will Assess the Claims and (unless we give you notice that we intend to Assess previously submitted Claims) we will make payment to you in respect of them within three months of receipt of the last Claim or within four months of the date this Contract ceased to be in force, whichever is later. We have no obligation to make any payment in respect of any Claim received by us more than one month after this Contract ceased to be in force.

## **Part D - General Terms**

### **13. Confidential information**

#### **What information must we keep confidential?**

1. Subject to Clause 16.24, we and any Researchers shall keep all information of a confidential nature concerning your or your Clients' affairs or business strictly confidential and shall not use such information for any purpose other than those purposes required or authorised by the Act or this Contract or in respect of research being carried out on our behalf.
2. We shall be under a duty to ensure that in any report provided to us by Researchers and intended to be published, no information shall be included which will disclose details which will identify you (or any Client of yours) or enable you (or any Client of yours) to be identified.

#### **What information must you keep confidential?**

3. You must keep strictly confidential all information of a confidential nature concerning the affairs or business of any other Contractor (or former Contractor) or their Clients which you might obtain from our personnel or representatives through inadvertent or wrongful disclosure. If you do obtain any such information, you must inform us without delay and must return to us any written information without taking copies of it.
4. You must keep strictly confidential all information which you may obtain from us which is designated as confidential. Provided you have not (outside the terms of this Contract) agreed otherwise with us, in respect of any information obtained from us which is designated as confidential, you may disclose such information to your Consultative Body provided you secure from them an agreement to treat it as strictly confidential.

### **What information is not covered by this Clause?**

5. For the purposes of this Contract, none of the following is information of a confidential nature:
  - (a) information which, before its receipt directly or indirectly from the other party, was in the possession of the receiving party and at its free disposal;
  - (b) information which is subsequently disclosed to the receiving party, without any obligation of confidentiality, by a third party who has not derived it directly or indirectly from the other party, or in any unlawful manner, or in breach of any obligation of confidentiality;
  - (c) information which is required by legislation to be disclosed but only to the extent that it must be so disclosed;
  - (d) information which, to the extent that it must be so disclosed, is required to be disclosed by any court, tribunal or other administrative body with such power or which is disclosed by us for the purposes of providing information to Parliament;
  - (e) information which we reasonably consider necessary to be disclosed for the purposes of an Official Investigation; or
  - (f) information which is already in the public domain.
  
6. For the avoidance of doubt, the obligation of confidentiality set out in Clauses 13.1 and 13.2 above does not apply to information about the award of this Contract to you, about the terms of this Contract, about your status as a Provisionally Quality Marked Office or a Quality Marked Office or about contract decisions concerning you, taken by us; and we may disclose any or all of the information referred to in this Clause 13.6.

### **Disclosure in the public interest**

7. We may disclose confidential information concerning you, your affairs and business if we consider that the public interest in making the disclosure outweighs the duty of confidentiality.

**What information about this Contract may we publish?**

8. Except in respect of any information which we are bound by this Clause 13 to treat as confidential, we are entitled to publish at our discretion such information in relation to this Contract as we may consider appropriate for publication from time to time.

**Does the obligation to keep information confidential end when this Contract ends?**

9. Both your and our obligations and rights under this Clause 13 continue after this Contract has ended.

## **14. Warranties**

### **What warranties do you give?**

1. You warrant that, to the best of your knowledge and belief:
  - (a) all information in writing provided to us in your seeking to become a Contractor was, when given, true and accurate in all material respects;
  - (b) no information has been omitted which would make that which has been provided materially misleading or inaccurate;
  - (c) no circumstances have since arisen which materially affect the truth and accuracy of such information.

### **What warranties do we give?**

2. We warrant that, to the best of our knowledge and belief:
  - (a) all information which we have provided to you in writing specifically to assist you in seeking to become a Contractor was, when given, true and accurate in all material respects;
  - (b) no information has been omitted which would make that which has been provided misleading or inaccurate;
  - (c) no circumstances have since arisen which materially affect the truth and accuracy of such information.
3. As a condition of entering into this Contract, both you and we are entitled to rely upon, and shall be deemed accordingly to have relied upon, such information referred to in Clauses 14.1 or 14.2 above as was provided to the other.

## **15. Indemnity**

### **What indemnity must you give us?**

1. You must indemnify us and keep us indemnified, without delay, against all losses, costs, claims, damages, actions, expenses and other liabilities of whatever nature incurred by us as a result of:
  - (a) any injury (fatal or otherwise) sustained by, or any loss or damage to the property of any of our personnel or authorised representatives arising in the course of our exercising any of our rights, or performing any of our obligations, under this Contract, where such injury, loss or damage arises as a consequence of any act or default committed by you or by any of your personnel (save to the extent that such injury or damage arose, or was incurred as a result of the wilful default or negligence of our personnel or authorised representatives);
  - (b) any claim made by or on behalf of a third party arising out of any act or default committed by you or on your behalf (save for any such act or default which may have been committed by us, and any wrongful termination or breach of this Contract by us) in connection with:
    - (i) their employment, loss of employment or non-employment; or
    - (ii) your provision of, or failure to provide, Contract Work or other services or other information to any person or organisation; or
    - (iii) your failure to comply with any legislation.

### **What expenses are not covered by the indemnity?**

2. For the avoidance of doubt, we are not entitled to indemnity in respect of administrative costs of following procedures prescribed by this Contract.

## **16. General**

### **Entire agreement**

1. This Contract represents the entire agreement and understanding between the parties in connection with its subject matter.
2. This Contract supersedes any previous agreement between the parties relating to its subject matter. It supersedes all prior negotiations, representations and undertakings, whether written or oral. It does not exclude any liability for fraudulent misrepresentation.

### **What if you or we waive, delay or omit to exercise rights?**

3. No failure by you or us to exercise any power (or to insist upon strict compliance by you with any obligation or condition) shall constitute a waiver of any of your or our rights under this Contract.
4. No waiver by you or us of any particular default by you or us shall affect or impair your or our rights in respect of any other default (of any kind) by you or us.
5. No delay or omission by you or us to exercise any rights arising from any particular default by you or us shall affect or impair your or our rights in respect of such default or any other default (of any kind) by you or us.

### **What if you or we are prevented from complying with this Contract?**

6. Neither of the parties to this Contract is responsible to the other for any delay in performance, or for any non-performance, of its obligations and duties under this Contract due to any cause beyond its reasonable control. However, the affected party must promptly upon the occurrence of such cause:
  - (a) inform the other party in writing of such cause and of what obligation or duty it has delayed or prevented being performed; and
  - (b) take all action within its power to comply with the terms of this Contract as fully and promptly as possible;

and, unless the affected party takes such steps, this Clause shall not have the effect of absolving it from its obligations under this Contract. For the avoidance of doubt, any actions or non-actions of either party's personnel or any failures of either party's systems, procedures, premises or equipment shall not be deemed to be causes beyond the reasonable control of the relevant party, for the purposes of this Clause (unless the cause of failure was beyond reasonable control).

7. If the circumstances described in Clause 16.6 above arise, but do not appear to be of a temporary nature, either party may give the other notice of termination of this Contract within such period as is reasonable in the circumstances (which shall be no shorter than one month).
8. Any notice under Clause 16.7 above shall not take effect if the party that was prevented from complying with this Contract (or complying with it in a timely manner) is able, to the other party's satisfaction, to comply with its obligations and duties under this Contract within the period of notice specified in accordance with Clause 16.7 above.

**What general provisions limit Contract Work and payment for it?**

9. You can do work under this Contract only if we have authorised you to do so by issuing a Schedule.
10. You are not entitled to any payment under this Contract for any work that you perform outside this Contract.
11. Payment for Contract Work is governed solely by the provisions of this Contract and you are not entitled to any payment for it outside this Contract.
12. Only cases started under this Contract are Contract Work. Any cases that you started under a previous contract are not Contract Work.

**What happens if any part of this Contract is held to be void?**

13. Subject to Clauses 16.14 and 16.15 below, if any term of this Contract is held by any competent authority to be invalid, illegal or unenforceable in whole or in part, the other terms of this Contract and the remainder of the affected term so far as practicable shall continue to be valid and enforceable.
14. If, in our reasonable opinion, the effect of a decision of a competent authority that a term of this Contract (or the same - or very similar - term in another of our contracts) is invalid, illegal or unenforceable in whole or in part, is such that the purpose of this Contract is undermined or our position is materially prejudiced, we are entitled:
  - (a) with the agreement of your Consultative Body, or without it if such agreement is unreasonably withheld, to substitute for such term (or part of a term) such further term (or part of a term) the meaning of which has been advised by leading counsel instructed by us and your Consultative Body (if they agree to joint instruction) to be as close as permissible to that of the invalid, illegal or unenforceable term (or part of a term); or
  - (b) to terminate this Contract.
15. If, in your reasonable opinion, the effect of Clause 16.13 above (following a decision of a competent authority) is such that your position is prejudiced, you may ask us to agree a suitable amendment to this Contract.

**What if Access to Justice Legislation affects what can be performed as Contract Work?**

16. If any Access to Justice Legislation, either when it comes into force or subsequently, affects this Contract, we are entitled to make such amendments to this Contract as we consider necessary in the circumstances.

**What if other legislation affects this Contract?**

17. We have the right to revise or vary the terms of this Contract to comply with any U.K. legislation or any EC legislation having direct effect, or as a result of any

decision of a U.K. court or tribunal, or a decision of the European Court of Human Rights or of the European Court of Justice or any other institution of the European Union, or to comply with the requirements of any regulatory body or tax or similar authority.

18. Where you and we are in dispute as to whether a proposed revision or variation of this Contract is necessary pursuant to Clause 16.17 above, we will not make the revision or variation unless we have consulted with your Consultative Body and have obtained an opinion of leading counsel stating that it is necessary.

#### **Data Protection Act 1998**

19. Under the Data Protection Act 1998, for the purposes of this Contract, we are a data controller and you are a data processor. You must comply with your obligations as a data processor and must allow us to audit your compliance. You must also give us, and we must also give you, such reasonable assistance as may be necessary to enable you and us to comply with our respective obligations under the Data Protection Act 1998.

#### **What amendments to Contract Documents may we make after consultation?**

20. In all cases where we are required to consult, we have, after such consultation, complete discretion to issue, delete, implement and amend in the form originally proposed or in a modified form.

#### **May we amend Contract Documents for some Contractors and not others?**

21. When we are entitled to make amendments to the Contract Documents, we may make amendments which affect all, or only some, Contractors.

#### **Do you have to provide information under the National Audit Act 1983?**

22. For the purpose of examination and certification of our accounts, or any examination under section 6(1) of the National Audit Act 1983 as to the economy, efficiency and effectiveness with which we have used our resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within your control and

may require you to provide such oral or written explanations as he may reasonably require for those purposes. You must give all reasonable assistance to the Comptroller and Auditor General for those purposes.

23. We will pay you, for time properly spent by you in giving required assistance to the Comptroller and Auditor General, at the rate of the current fee for an Assessment Meeting per hour.

**Do you have to provide information under any other legislation?**

24. Under the Code of Practice on Access to Government Information (or any similar code), under the Data Protection Act 1998, under any freedom of information or other legislation, we may be required to provide information which is held by you. If we ask you to give us such information, you must do so without delay.

**In what form may information be required?**

25. Where either you are required to provide information to us or we are required to provide information to you, we may specify that such information shall be provided in electronic form.

**Can you claim payment from Clients or Former Clients?**

26. Except where this Contract or Regulations so provide, you must not claim or seek to claim any payment from any Client for any Contract Work or for any work that was performed in your or your Client's reasonable belief that it was Contract Work.

**Who has rights in work and files?**

27. By virtue of performing Contract Work you do not obtain any lien over any case files or any other rights in the work or documents relating to them.
28. All rights, which are not exclusively Clients' (or other parties') rights, in any product of Contract Work (including, without limitation, any experts' reports and any work by any third parties, any legal (or other) research or other legal work and any counsel's opinions) and in any information gathered in performing

Contract Work and in any documents relating to Contract Work, vest in us. This provision does not extend to information which you have properly gathered for your own purposes through performing Contract Work - such as the development of a case management system and where one party to an Assessment Meeting or a Mediation has paid you (privately) for your services, this clause does not affect their or your rights in respect of the work that they have paid for.

**When might we ask for a Report and what do you have to do?**

29. We may request a Report at any time when we suspect professional misconduct, breaches of any legislation or dishonesty by any of your personnel which may affect the performance of Contract Work and you must use all reasonable endeavours to ensure that such of your personnel as may be required to give consent to enable such Reports to be provided to us shall do so. You must co-operate in, and provide such information as may be reasonably required for the purposes of, any Official Investigation. You must ensure that your personnel are available when reasonably required for the purposes of an Official Investigation and must use all reasonable endeavours to ensure that your personnel co-operate in any investigation.

**What if we commission research on this Contract?**

30. At any time, we may commission research on the operation of our contracts with some Contractors. The fruits of such research and all rights in it are our property. To the extent that they exist, we will make available to you, if requested, (subject to our rights) any research findings which may have been derived from your operations.

**Are you obliged to check any certificates or authorities in connection with Contract Work?**

31. It is your responsibility to check any certificates or authorities that any of our Regional Offices or courts issue to you in connection with Contract Work. If after checking a certificate or authority you have any concerns, you may raise them with the relevant court or Regional Office.

**Will these Contract Standard Terms be reviewed?**

32. We will review these Contract Standard Terms in operation and, after consultation with your Consultative Body, may from time to time amend them with effect from no sooner than 1 April 2005 to enable them to be harmonised with the terms of other of our General Contracts e.g. our General Civil Contract. We will give you at least two months' notice of the date when any new Contract Standard Terms come into effect.

## **17. Giving Contract notices**

### **What form do notices have to be in?**

1. Any notice or other information required or authorised by this Contract to be given by either party to the other must be in writing and in such current form as we may specify. If no form of notice is specified, notice shall be by properly dated and addressed letter, clearly specifying the name and address of the sender.

### **How can notice be given?**

2. Unless an Official Investigation is being conducted, when notice may be given by any means reasonably effective to bring it to the attention of a partner, director or sole principal, notice or other information required or authorised by this Contract to be given by either party to the other may be given only by hand, by document exchange, by FAX or by first class pre-paid post. Any notice or other information given by document exchange, FAX or by first class pre-paid post is deemed to have been given on the second working day after it was committed to the document exchange, FAXed or posted, whether or not received.

### **What if a notice is given in the wrong form or given wrongly?**

3. Any notice or other information (or purported notice or other information) required or authorised by this Contract to be given by either party to the other which is not given in the medium, form or manner required by this Contract is invalid unless the party receiving it elects, in writing, to treat it as valid.

## **18. Constitutional and other changes**

### **Do you have to tell us of material constitutional changes?**

1. You must notify us as soon as possible before any anticipated material constitutional change, of which you are aware, which might affect you. You must notify us on, or within fourteen (14) days of, any material constitutional change which affects or might affect you. Examples of material constitutional change are:
  - (a) any sale, merger, acquisition by (or of), or transfer of your business or advisory service;
  - (b) the closure or planned closure of your Office;
  - (c) any change of Key Personnel;
  - (d) any decision on your part to cease to carry out Contract Work; and
  - (e) where you are an advisory service, any material change in the composition of your management committee.

### **Changes creating a substantially different organisation**

2. Having regard to the fact that this Contract is personal to you, if there is such a material change in your constitution or ownership that, in our reasonable opinion, you are substantially different from the organisation with which we initially contracted, we may serve notice on you terminating this Contract with effect from such date as we may specify in the notice. We will not normally exercise our rights under this Clause unless there has been what amounts to a take-over, or a sale, of the organisation with which we contracted.

**If you are a company, what else do you have to tell us about?**

3. Where you are a company you must also notify us:
- (b) before or within fourteen (14) days of any change in your members or directors which has, or may have, a material direct or indirect bearing on the performance of Contract Work;
  - (b) forthwith if you pass a resolution or the court makes an order, that you or your Parent Company be wound up;
  - (c) forthwith if a receiver, manager or administrator is appointed for you or your Parent Company on behalf of a creditor;
  - (c) forthwith if circumstances arise which might entitle a creditor or a court to appoint a receiver, manager or administrator for you or your Parent Company;
  - (d) forthwith if circumstances arise which enable the court to make a winding up order in respect of you or your Parent Company.
  - (e) forthwith if you or your Parent Company are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.
  - (f) forthwith if there is a Change of Control.

**What if you are not sure whether to tell us about something?**

4. If you have any reasonable doubt as to whether a particular event is covered by this Clause, you must notify us of the event in question before or within 14 days of its happening.

## **19. Prohibited gifts**

### **What must you not do?**

1. You must not try to bribe any of our personnel or any person who may perform services for, or who is associated (in any way) with, the Legal Services Commission.

### **What may happen if you breach this Clause?**

2. Any breach of this Clause 19 by you or by anyone employed, or otherwise engaged, by you acting on your behalf (whether with or without your knowledge) entitles us forthwith to terminate this Contract.

## **Part E - Ending the Contract, Sanctions and Reviews**

### **20. How the Contract can be ended**

#### **How can you end this Contract?**

1. You may, at any time, serve no less than three months' notice on us terminating this Contract.

#### **How can we end this Contract?**

2. We may, without limitation, end this Contract as provided by its terms. The main provisions for termination are set out in this Clause 20.

#### **When will this Contract terminate immediately?**

3. If, at any time after you have signed this Contract, but before its start date:
  - (a) your application for approval of your Office as a Quality Marked Office is suspended, withdrawn, refused, lapses or otherwise ends; or
  - (b) your Office fails a Preliminary Quality Mark Audit or a Pre-Quality Mark Audit

this Contract immediately lapses and shall not come into force on its start date.

#### **When might there be urgent termination on notice?**

4. We are entitled, at any time, to serve notice on you terminating this Contract (or any part of it) with effect from such date as may be specified by us in such notice if:
  - (a) your Office is a Provisionally Quality Marked Office and:

- (i) your application for approval as a Quality Marked Office is suspended, withdrawn, refused, lapses or otherwise ends; or
- (ii) you fail a Pre-Quality Mark Audit; or
- (b) you are under Official Investigation or we receive a Report and, in either case, consider that termination is required to protect Clients or us from possible serious harm or to protect public funds or Clients' interests;
- (c) your financial situation is such that we consider that we or Clients are at risk of financial loss or other material prejudice;
- (d) you are in breach of Clause 19 (prohibited gifts);
- (e) you are in breach of your warranty in Clause 14;
- (f) you have failed to provide documents or access to premises in accordance with Clauses 3.6 to 3.9;
- (g) you have not reported starting any new matters for at least 12 months; or
- (h) you cease to have any Mediators for at least three months.

**When might there be termination on notice and how will this work?**

5. If you have breached this Contract and the breach is capable of remedy, we are entitled to serve a rectification notice on you, at any time, requiring you to remedy the breach within such period as we may specify, being not less than 28 days. If you fail to remedy the breach to our reasonable satisfaction, we may serve notice on you terminating this Contract (or any part of it) with effect from such date as we may specify in the notice.
6. If you have breached this Contract and the breach is not capable of remedy, we are entitled to serve a notice on you requiring you not to repeat the breach. If you repeat the breach or we serve you with two further notices (one or each of which may be a rectification notice) in connection with any breach, we may serve notice

on you terminating this Contract (or any part of it) with effect from such date as we may specify in the notice.

**What about termination for failure to comply with the Quality Mark Standard for Mediation?**

7. If, in accordance with procedures in the Quality Mark Standard for Mediation, you have been issued with a Notice to Terminate, we may, on the date specified in the Notice to Terminate (or on such later date as we may subsequently specify) terminate this Contract;

**Can there be termination of part or suspension of a Contract?**

8. Whenever we are entitled to terminate this Contract we may, instead, terminate part of it or may, instead, suspend it (or any part of it). We will set out the effects (which shall be less serious than termination) of any partial termination or of any suspension, or partial suspension, in a notice to you.

## **21. Consequences of termination**

### **What are the consequences of this Contract ending?**

1. Subject to Clause 21.2 below and to any direction by us, when this Contract ends all rights, authorisations and licences granted under this Contract by us to you (and to any of your personnel) end immediately.
2. Unless we otherwise agree in respect of any Contract Work, when this Contract ends you must stop all work on cases that you were performing under it as Contract Work and must stop holding yourself out as able to perform Contract Work.
3. Subject to Clause 21.4 and Clause 21.6 below, when this Contract ends our obligation to make payments to you under it ceases.
4. Subject to the provisions of this Contract, the ending of this Contract is without prejudice to any of your or our accrued rights (including, without limitation, our rights to assess your Claims and to recover any overpayments to you and your rights to recover in respect of any underpayments by us).
5. Upon termination of this Contract under Clause 20.4(b) (Official Investigations and Reports), neither you nor any of your trustees, , directors, executive officers or senior personnel who, we determine, were responsible for the circumstances leading to the termination, may (for such period of up to two years as we may prescribe) apply to us for a contract under the Act. This prohibition continues to have effect after this Contract has ended.
6. Any provision of this Contract which relates to, or governs your or our acts after it ends, remains in full force and effect and is enforceable even though the Contract has ended.

### **What happens to Clients and files if this Contract ends?**

7. We will make reasonable endeavours to make arrangements, with which both you and we must comply, to enable any matters that you may not continue after any

suspension or ending of this Contract to be transferred to one or more other Contractors.

8. Arrangements under Clause 21.7 will allow you to continue to perform such work as may be required by the rules of your professional body and may require you to provide reasonable information about individual matters so as to enable an orderly transfer.
9. Arrangements under Clause 21.7 above may require you to transfer the Clients' files to such other Contractors as we may specify.

### **Financial Arrangements**

10. When this Contract ends, we will perform a reconciliation of the payments that we have made to you and the value of the Contract Work that you have done and will give you details of that reconciliation. The reconciliation will not include any Remainder Work you may do as, subject to our rights of set off, this is payable separately. If you do not agree with our reconciliation, you have the same rights of internal review etc as apply to alleged breaches of Contract. Subject to our rights of set off, each party must, within three months of the reconciliation (or the conclusion of any internal review etc) pay the other any monies due.

### **What if part of the Contract ends?**

11. When part of this Contract ends (for example your ability to perform a particular Category of Work ends) this Clause 21 has effect in respect of that part, unless we direct otherwise.

## **22. Other Contract Sanctions**

### **When may we apply the sanctions in this Clause?**

1. If you are in breach of this Contract or if we may terminate this Contract under Clause 20 then, without prejudice to any of our other rights, we may apply one or more of the sanctions set out in this Clause.
2. Such sanctions shall come into force on such date, and be subject to such conditions, as we may state in the notice of sanctions which we will serve on you.

### **What is a payment suspension order?**

3. If you are under Official Investigation or your financial situation is such that we consider that there is a risk to Clients or to public funds, we may serve you with a payment suspension order which has the effect of suspending some or all payments due from us to you under this Contract for such period as may be stated in the order.

### **What is a constraint order?**

4. If you are under Official Investigation, we may serve you with a constraint order which has the effect of prohibiting you (and your personnel) from starting any new Cases under this Contract, unless we otherwise direct.

### **What is a payment reduction or non payment order?**

5. We may serve you with a notice declaring that you will not be paid for specified work.

### **What is a monthly payment amendment order?**

6. We may serve you with a notice reducing the amount of, or suspending, your monthly payments.

**What is a promotional restraint order?**

7. We may serve notice on you suspending (with effect from such date as we may specify) your entitlement under this Contract to use Promotional Items and to hold your Office out or to promote your Office as a Quality Marked Office, for such period as:
- (a) any of your solicitors engaged in Contract Work and required under the Solicitors' Act 1974 to have a valid practising certificate, ceases to have one;
  - (b) you are under Official Investigation; or
  - (c) an internal review, review (or mediation) or arbitration under this Contract is under way.

**Can your Devolved Powers be taken away?**

8. We may serve notice on you suspending (with effect from such date as we may specify) approval of your Devolved Powers if we consider either that:
- (a) you have not been exercising the Devolved Powers appropriately; or
  - (b) suspension is necessary to protect Clients (or potential Clients) or public funds.

**Can Classes of Work be curtailed and restrictions imposed?**

9. We may issue a Schedule Amendment Notice so as to curtail the Categories of Work in which you may perform Contract Work and so as to impose restrictions on the Contract Work that you may perform.

**Can individuals be excluded from performing Contract Work?**

10. If any of your personnel (including trustees and directors) is, or has been, a cause or subject of an Official Investigation or a Report while they were with you, or the cause or subject of any similar investigation or report while they were with any other Contractor (whether or not you or the other Contractor were a Contractor at the relevant time) we may, if we reasonably consider that such a step is necessary to protect Clients interests or to protect us from material harm, require that the person concerned: (a) shall not be a supervisor of Contract Work; or (b) shall not be involved in your performance of Contract Work for such period as we may reasonably specify.

## **23. Internal review, review, mediation and arbitration**

### **What matters are subject to internal review?**

1. All disputes between you and us concerning:
  - (a) alleged breaches of this Contract;
  - (b) Contract sanctions;
  - (c) decisions by us on the scope of Contract Work authorised by a Schedule;  
and
  - (d) notices by us under Clauses 22.7 and 22.8;

are subject to internal review. (For the avoidance of doubt, decisions on individual Client Cases, Matters or Claims are excluded from this Clause 23). For the purposes of this Clause 23, Contract sanctions comprise termination and suspension under Clauses 20.4 to 20.8, and any Contract sanctions specified in Clauses 22.3 to 22.6 and 22.9 to 22.10 (and include any notice of intention to apply such a sanction).

### **What matters are subject to internal review, review and arbitration?**

2. All disputes between you and us concerning:
  - (a) alleged breaches of this Contract;
  - (b) Contract sanctions; and
  - (c) decisions by us on the scope of Contract Work authorised by a Schedule

are subject to internal review, review (mediation by agreement) and arbitration. We will give written reasons for any decision we make to apply a Contract sanction (and for any decision we make to issue a notice under Clauses 22.7 or 22.8). If requested by you, we will give written reasons for any decision as to the scope of Contract Work authorised by a Schedule.

**Must you apply promptly for internal review etc?**

3. If you dispute any decision that we have made concerning this Contract but do not pursue your rights under this Clause 23 within the periods of time specified (or such longer periods of time as we may agree) you thereby accept the decision and lose your right to dispute it.

**Will sanctions be applied immediately?**

4. Pending any internal review, review (mediation by agreement) or arbitration any Contract sanction applied, or to be applied, by us shall be suspended unless we consider that, because of a risk to Clients or to public funds, such sanction must have effect pending any internal review, review (mediation by agreement) or arbitration.
5. Whenever we have determined that any Contract sanction shall continue to have effect pending any internal review, review (mediation by agreement) and arbitration you may apply in writing for a review direct to the Contract Review Body without first applying for an internal review.

**What is the internal review procedure?**

6. If you have a dispute with us within the scope of Clause 23.1 above, you may write to the Regional Director setting out your reasons and requesting an internal review of our decision. Your reasons must be received by the Regional Director within 21 days (or such longer period as we may agree) of the decision and may include any further information that you wish to be taken into account.
7. If the Regional Director receives a written request for an internal review pursuant to Clause 23.6 above, he will, within 7 days, forward it to the Supplier

Development Group which will, within 14 days, review the decision in the light of the information available including the reasons for the decision and your reasons for disagreeing with it. The Supplier Development Group will not consider any documents that you have not already seen.

8. Neither you nor we have a right to make oral representations on an internal review.
9. On an internal review, the Supplier Development Group may uphold the original decision, overturn the original decision or substitute a fresh decision for the original decision. The Supplier Development Group will give written reasons for its decision.

**What is the review procedure?**

10. If you have a dispute with us within the scope of Clause 23.2 above, you may within 21 days of the Supplier Development Group giving its decision and reasons following an internal review (or, where you are applying for a review pursuant to Clause 23.5 above, within 21 days of the original decision) apply in writing for a review by the Contract Review Body.
11. The application for review must be submitted to the Regional Director. It may include any further information that you wish to be taken into account.
12. The application for review must state your grounds for disagreeing with the decision(s). When your application for a review is received by the Regional Director, it will be forwarded to the secretary to the Contract Review Body, within 7 days, with the original decision and the reasons for it and (unless your application is pursuant to Clause 23.5 above) with your reasons for requesting an internal review and the Supplier Development Group's internal review decision and reasons.
13. The secretary to the Contract Review Body will consider the information received within 14 days of receipt and, if the secretary considers that the Contract Review Body would be assisted by further written information, the secretary will forthwith seek to obtain it from the Regional Director, from you and from such

other person as he considers appropriate, within 14 days thereafter. Any further information received from the Regional Director, from you or from any other person will be disclosed to the Regional Director and to you in writing and you and the Regional Director will be given the option to comment in writing on it within seven days. The secretary to the Contract Review Body will also ask you whether you will wish to make oral representations to the Contract review Body.

14. On a review, you have the right to make oral representations, for a maximum of fifteen minutes or such longer period as may be permitted by the Contract Review Body. We have a similar right to make oral representations to the Contract Review Body, but only when you exercise your right to do so.
15. The Contract Review Body may allow the review, dismiss the review or make a different decision. The Contract Review Body may give directions to the Regional Director. The Contract Review Body may also recommend that a fresh decision is made after a specified period. The Contract Review Body will give written reasons for its decision. The Contract Review Body may award interest (from the date of suspension) at the judgment debt rate if a decision for review was to suspend payment and the review is allowed.

#### **Can mediation be agreed to?**

16. If either you or we disagree with the decision of the Contract Review Body the decision shall (if both you and we agree) be referred to a neutral mediator within 14 days of the decision of the Contract Review Body.
17. The neutral mediator will be chosen by agreement between you and us. If you and we are unable to agree on the choice of a mediator (or if any chosen mediator will not act) both you and we will apply jointly to a nationally recognised mediation body to appoint a mediator.
18. Within 14 days of the appointment of a mediator, you and we must meet him to agree a programme for the exchange of information and a timetable and structure for discussions. If you and we are unable to agree on any issue at the meeting, the

mediator may give directions or seek assistance from a nationally recognised mediation body.

19. Unless otherwise agreed, all negotiations connected with the dispute and any settlement or agreement relating to it must be conducted in confidence and are without prejudice to either your or our rights in any future proceedings.
20. If agreement is reached on the dispute, it shall be put in writing by the mediator for signature by you and us. Once a written agreement has been signed by both you and us it is binding.
21. If you and we are unable to reach agreement on the dispute, either party may ask the mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and must not be used in evidence in any proceedings relating to this Contract without both your and our prior written consent.
22. If no agreement (or no full agreement) is reached within 60 days of the appointment of the mediator (or such longer period as you and we may agree) the dispute, or any remaining part of it must be referred to arbitration under Clause 23.23 below.

**When are disputes subject to arbitration?**

23. If either you or we disagree with the decision of the Contract Review Body (or if Clause 23.22 applies) the decision of the Contract Review Body shall be referred to arbitration to be decided under the Arbitration Act 1996. The arbitration shall be in accordance with the relevant arbitration scheme run by the Chartered Institute of Arbitrators and shall be final and binding. Notice of intention to enter arbitration must be given within 21 days of the decision of the Contract Review Body or (if later) the date when Clause 23.22 applies.
24. Both you and we must use reasonable endeavours to ensure that any arbitration is concluded within three months or as soon as practicable thereafter and must provide in a timely manner all reasonable information, assistance, co-operation and responses that may be required.

25. We reserve the right to apply any Contract sanction we consider appropriate if:
- (a) the arbitration has not been concluded within three months of the appointment of an arbitrator; or
  - (b) for any reason an arbitrator is not appointed within one month of the date of the notice to enter arbitration; or
  - (c) after one month has elapsed since the date of the relevant decision, we consider that you are failing to comply with Clause 23.24 above.

# **Legal Services Commission**

## **General Family Mediation Contract**

### **Specification**

*NB The Funding Code Guidance includes important information about what you must do both before beginning a mediation and during a mediation.*

#### **1 Introduction**

1.1 This Specification, which is one of your Contract Documents, sets out rules and information about the conduct of, and payment for, mediations. Terms that are defined in this Specification are set out in Annex A.

1.2 This Specification sets out the amounts payable for Contract Work and explains what they are based on and how they apply. It sets out how we will exercise our right to Assess your contract work. It specifies organisational requirements, which include maintaining information and providing reports. It also includes some requirements relating to clients. We may amend this Specification from time to time in accordance with clause 11 of the Contract Standard Terms.

1.3 All payments specified are exclusive of VAT. We will add on VAT to all payments we make to contractors who are registered for VAT. You must tell us straight away if your VAT status changes. There are no additional payments for any retrospective liability for VAT.

#### **2. General Rules**

##### **Information to clients**

2.1 We may require you to provide specified information to clients, or to other persons contacting your office, in such form as we may direct. For example, we may require you to provide them with standard information leaflets supplied to

you by us. These might be general guides to the services funded by the Commission but may also cover other topics.

### **Information to us**

- 2.2 Where you have carried out Contract Work for a client, you must promptly provide such information or documents in relation to that Contract Work as we may require for the purpose of exercising functions under legislation or under this contract. We will normally require such information for the purpose of assessment or audit. To be able to provide this information, you must record on each client's file both the service, or services, you provided and the time you spent on each service.
- 2.3 Information that we require must be sent to the appropriate Regional Director, unless we direct otherwise.

### **Marketing your Services**

- 2.4. You must not advertise, or otherwise market, **contracted** services via leafleting, letters or circulars except with our express permission. Subject to this, general permission is granted for:
- (a) leaflets which are given to existing clients or to other agencies or organisations in order to explain the services offered by the supplier; and
  - (b) publication of material which is intended to inform the public about alternative dispute resolution.

### **Reference numbers for cases**

- 2.5 You must allocate a reference number to each case on your first contact with the client. You may use your own reference number system, provided it distinguishes

between cases and enables us to identify cases for the purposes of audit, or for the purpose of any of our other functions under the contract.

### **3 Payment**

#### **The Payment Structure**

- 3.1 The payment structure consists of two elements: a fixed annual payment and fixed fees. This is a tiered payment structure and services will receive different annual payments and fixed fees dependent upon which one of three Paybands they are in.(see Table 1 below ).
- 3.2 Services will be placed in a Payband by us. This will be based on the volume of publicly funded family mediations (not Assessment Meetings or Willingness Tests) that were reported by the service to us in the last year. We anticipate that the period to be used will be August 2003 to July 2004. The number of mediations reported will fall within the minimum and maximum volumes of a particular Payband and this will then indicate the Payband that a service should be in e.g. a service that reported 69 mediations last year will be in Payband B.
- 3.3 Services may, in discussion with us, elect to be placed in a higher Payband than that in which we have placed them. Services may not elect to be placed in a lower Payband. Payband A is the lowest Payband and Payband C is the highest.  
  
Example. If a service is placed in Payband B, they can request to be in Payband C. However they cannot request to be in Payband A.
- 3.5 Services may only move between Paybands at the beginning of each financial year (i.e. April). If a service moves up a Payband then they will receive a transitional one off payment. Services moving from Payband A to Payband B will receive a payment of £5,000 and services moving from Payband B to Payband C will receive a payment of £7,500. This additional payment will only be available at the beginning of the second contract schedule (i.e. April 2005).

### **How the Payment Structure works**

- 3.6 Services will receive a fixed annual payment. The size of this payment will be dependent on the Payband that they are in. Services in Payband A will receive the largest annual payment and services in Payband C the smallest. This annual payment will be made in equal monthly instalments. This payment will be made to services irrespective of the amount of work that they undertake. These payments are set out in Table 1 below.
- 3.7 In addition to the fixed monthly payment providers will also receive fixed fees for the work that they actually undertake and report to us. The average times, on which the fixed fees are based for each Category of Contract Work, are set out in Tables 2A, B and C below. Table 2 sets out the fixed fees for Mediation Work, for Assessment Meetings and Willingness Tests. The Co-Mediation rate will only be paid in respect of face to face mediation and not the administration associated with the case.
- 3.8 The hourly rates that are paid differ according to the Payband that a service is in (see Table 1). The services in Payband A receive the lowest hourly rate , and thus the lowest fixed fees and the services in Payband C receive the highest hourly rates and thus the highest fixed fees.

### **The Paybands – Annual payments and hourly rates**

<b>Table 1</b>			
	<b>Pay band A</b>	<b>Pay band B</b>	<b>Pay band C</b>
Hourly rate for Sole Mediation	£44	£68	£84
Hourly rate for Co -Mediation	£64	£88	£104
Minimum mediation volumes p.a.	0	69	110
Maximum mediation volumes p.a.	68	109	None
Fixed payment per annum	£36,000	£24,000	£9,500
Fixed monthly payment	£3,000	£2,000	£792
One-off transitional payment when service go up a pay band	-	£5,000	£7,500

### **How the Fixed fees are calculated**

3.9 The information in Tables 2A, B and C explain the basis for the fixed fees and to illustrate how much time, on average, we anticipate that you will spend in providing the service. Of course, some cases will take longer than average and some will take less time. This is something that we will monitor and, if necessary, we may amend the fee structure.

### Fixed fees for Mediation

#### Payband A

Table 2 A						
Category of Work	Single Session		Multi Session		Agreed Proposals	
	Hours	Rate A	Hours	Rate A	Hours	Rate A
Sole All Issues Mediation	2	£88	9	£396	2.25	£99
Co- All Issues Mediation	2	£118	9	£546	2.25	£99
Sole Property & Finance	2	£88	7	£308	1.75	£77
Co- Property & Finance	2	£118	7	£428	1.75	£77
Sole Child Only	2	£88	5	£220	1.5	£66
Co- Child Only	2	£118	5	£310	1.5	£66
Willingness Test	0.5	£22				
Assessment Meeting – Separate	1	£44				
Assessment Meeting –Joint	1.25	£55				

#### Payband B

Table 2 B						
Category of Work	Single Session		Multi Session		Agreed Proposals	
	Hours	Rate B	Hours	Rate B	Hours	Rate B
Sole All Issues Mediation	2	£136	9	£612	2.25	£153
Co- All Issues Mediation	2	£166	9	£762	2.25	£153
Sole Property & Finance	2	£136	7	£476	1.75	£119
Co- Property & Finance	2	£166	7	£596	1.75	£119
Sole Child Only	2	£136	5	£340	1.5	£102
Co- Child Only	2	£166	5	£430	1.5	£102
Willingness Test	0.5	£34				
Assessment Meeting – Separate	1	£68				

Assessment Meeting –Joint	1.25	£85				
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**Payband C**

<b>Table 2 C</b>						
<b>Category of Work</b>	<b>Single Session</b>		<b>Multi Session</b>		<b>Agreed Proposals</b>	
	<b>Hours</b>	<b>Rate C</b>	<b>Hours</b>	<b>Rate C</b>	<b>Hours</b>	<b>Rate C</b>
Sole All Issues Mediation	2	£168	9	£756	2.25	£189
Co- All Issues Mediation	2	£198	9	£906	2.25	£189
Sole Property & Finance	2	£168	7	£588	1.75	£147
Co- Property & Finance	2	£198	7	£708	1.75	£147
Sole Child Only	2	£168	5	£420	1.5	£126
Co- Child Only	2	£198	5	£510	1.5	£126
Willingness Test	0.5	£42				
Assessment Meeting – Separate	1	£84				
Assessment Meeting –Joint	1.25	£105				

**Fixed fees for Willingness Tests and Assessment Meetings**

**Assessment Meetings and Willingness Tests**

*Funding Code*

- 3.10 The Funding Code provides that, before beginning a mediation, you must determine whether mediation is suitable to the dispute. Only if it is, may you begin the mediation. Part of determining whether mediation is suitable to the dispute may involve contacting the other party to first find out whether they would be prepared to attend an Assessment Meeting and consider mediation. In the Funding Code, this is called the “Willingness Test”.
- 3.11 Usually, you will carry out the Willingness Test before holding an Assessment Meeting because, if the other party is not willing to consider mediation, there will be little point in going further. However, the Funding Code Guidance provides that, in some circumstances, even where it appears that the other party is not willing to consider mediation, you may hold an Assessment Meeting with the first

party (the party who contacted you first). At this meeting you will be able to give the first party information about mediation and its benefits and then contact the other party afterwards. You should refer to the Funding Code Guidance for more information about this.

*Fixed fees and clients' right to choose*

- 3.12 There is a fixed fee for carrying out a Willingness Test and it is payable only once, even if you contact the other party more than once. There are also fixed fees for Assessment Meetings which, subject to paragraph 3.13, are also payable only once (even if you have met the first party, the other party or both more than once, to carry out the assessment). The Funding Code Decision Making Guidance sets out what is required in respect of a Willingness Test.
- 3.13 Clients have the right to choose whether to attend a Joint or a Separate Assessment Meeting. If you have two Separate Assessment Meetings - one with the first party and one with the other party – then a fixed fee for a Separate Assessment Meeting is payable for each meeting. If you have a joint Assessment Meeting then the fixed fee for a Joint Assessment Meeting is payable.
- 3.14 The fixed fees cover all associated work and no additional payments will be made e.g. for letters you may need to write or for telephone calls you may need to make.

*When is a Willingness Test fee payable?*

- 3.15 The Willingness Test fee is payable for all Willingness Tests undertaken whether or not a subsequent Assessment Meeting takes place.
- 3.16 This means that you must report, using our forms, all Willingness Tests that you carry out, whether or not a subsequent Assessment Meeting takes place.

- 3.17 The Contract Work Report Forms are the Mediation Work Start Form and the Mediation Consolidated Work Report Form. Guidance will be issued on how to report work with these forms.
- 3.18 The Funding Code Guidance provides that Assessment Meetings must be conducted by mediators, but the Willingness Test may be undertaken either by mediators or by appropriately trained and qualified support staff. It goes on to say that the Willingness Test may be undertaken by “suitable experienced support staff employed by the mediation service”.

## **Mediations**

### *Types of mediation*

- 3.19 Mediations may be Sole Mediations (where one mediator is present) or Co-Mediations (where two mediators are present). They may be All Issues mediations, Child mediations or Property and Finance mediations. A mediation may be a Single Session or Multi Session. At any stage in a mediation Agreed Proposals may be reached.

### *Fixed fees and when they are payable*

- 3.20 The fees cover all associated work and no additional payments will be made e.g. for letters you may need to write or for telephone calls you may need to make.
- 3.21 If a Single Session is all that takes place, the appropriate session payment for that Single Session is all that is payable, and all that you should report (Table 2 ). If more than one session takes place, the session payment for a Single Session is **not** payable, and should not be reported. Instead, the appropriate higher case payment specified in the Multi Session column (Table 2) is payable and that outcome should be reported.

- 3.22 You must report a Single Session or a Multi Session only in two circumstances. The first is if you are **sure** that the parties will either not continue with the mediation or that the mediation has been completed. The second is if you are **reasonably sure** that the parties will either not continue with the mediation or that the mediation has been completed **and** three months have elapsed since the Single Session, or the last session.
- 3.23 If, at the end of a mediation, Agreed Proposal/s are reached and you produce a Mediation Summary reflecting this, you should report this and the appropriate agreement payment specified in the Agreed Proposal column (Table 1 ) will be payable. We expect Agreed Proposal/s to be concluded at the end of a mediation. If the mediation concludes without any Agreed Proposals but the parties return to you at a later date to request that a Mediation Summary be prepared, you should treat the return visit as an entirely new application.

*What is the “appropriate” payment if everything is not agreed?*

- 3.24 If you are conducting a mediation on All Issues but reach Agreed Proposal/s only on some issues e.g. Property and Finance, then only the Property and Finance Agreed Proposal fee is payable or if agreement reached only on the Child Only issues, only the Child Only Agreed Proposal Fee is payable.

*What if only one party is receiving public funding?*

- 3.25 When only one party is receiving public funding for mediation, only half the specified fee is payable. The amount you charge the other party depends upon the terms of your agreement with them. The Mediation Contract Work Report Form requires you to show which clients are receiving public funding.
- 3.26 The hourly rate for Sole and Co-Mediations (where two mediators are present) varies dependent on which Payband a service is in. The hourly rate for Co-Mediations is not double the rate for Sole Mediations. This is because the rates include an amount towards your overheads or fixed costs (not merely the overheads or fixed costs of the individual mediator) and case administration.

Therefore, these elements of the rate are not doubled just because you deploy two mediators. This approach is reflected in the fixed fees, where the fees for Co-Mediations are not double the fees for Sole Mediations.

### *Examples*

- 3.27 A Child Only sole mediation by a service in Payband B that finishes in one session and that results in Agreed Proposals being produced will attract a payment of £238. This is made up of a payment of £136 for the single session and a payment of £102 for the Agreed Proposals. Both parties are publicly funded.
- 3.28 An All Issues sole mediation by a service in Payband A that lasts for seven sessions and results in Agreed Proposals being produced on the financial issues but not the children issues will attract a payment of £495. This is made up of a payment of £396 for the mediation itself and a payment of £99 for the Agreed Proposals. Both parties are publicly funded.

### **Fixed Fees – Monitoring and Auditing**

#### *Possible effect of fee structure*

- 3.29 The fee structure for Contract Work is based on the results of research into mediation in operation. However fee structures themselves can create incentives with sometimes undesirable outcomes e.g. holding more than a Single Session per couple when it has become clear during that session that mediation was not feasible, holding Sole Mediations in preference to Co-Mediations and concluding Child Only Mediations before Property and Finance Mediations instead of holding one All Issues Mediation.
- 3.30 We will monitor and audit mediation services with this in mind. If we consider that the fee structure is adversely affecting the service – either because it is leading to increased costs or because it is affecting the way in which services are provided, or the type of services provided - we may issue further guidance or may

consult with Contractors and the Consultative Bodies with a view to amending the fee structure under Clause 11 of the Contract Standard Terms.

- 3.31 We will also address this issue when assessing Contract Work for the purposes of payment. For example, if in assessing a Multi Session case, we consider that the matter should have been dealt with in a Single Session, we will disallow the unnecessary session or sessions. This will mean that only the amount specified as the session payment for a Single Session will be payable. Please see the section on assessments below.

*What we will we pay each month*

- 3.32 We will pay you on a monthly basis (see clause 12 of the Contract Standard Terms). The amount of your monthly payment will be based on our assessment of the amount that will be payable to you under the contract for the period to 31 March in each year. For example, if you began work on 1 April, we will set your monthly payment at one twelfth of our assessment of the amount that will be payable to you for the one year period to 31 March.

*How we may amend the monthly payments and deal with overpayments*

- 3.33 We may amend your monthly payments if it appears that we are either paying you too little or too much (see clause 12 of the Contract Standard Terms). We may make such an amendment either (a) by making an equal adjustment to all subsequent monthly payments or (b) by amending the next monthly payment (or the next few monthly payments) and, if necessary, by making equal adjustments to all monthly payments thereafter.
- 3.34 If we have paid you too much, but it appears to us that we will not be able to recover the excess in accordance with Clause 12 of the Contract Standard Terms e.g. because you have ceased to perform Contract Work (or are performing only a small amount) by amending your monthly payments, we may issue you with a debit note specifying the amount of the overpayment. A debit note means that the

amount specified in it is payable to us. However if we consider that there is a risk to public monies will we require you immediately to repay the overpayment to us.

#### *Contract Work Report Forms*

- 3.35 To ensure that you receive each monthly payment, you must send us properly completed contract work report forms every month. These will normally be, or include, a Mediation Work Start Form (giving details of the matters you have started) and a Mediation Consolidated Work Report Form (giving details of your completed cases).
- 3.36 You must send these together so that we receive them within ten days of the end of each month. For example, you must send us your report forms for July so that we receive them by 10 August. If you fail to do so, the monthly payment that would have been triggered by the receipt of these documents will not be made and your monthly payments may be adjusted downwards. If you fail to do so on time that payment will be made late.
- 3.37 If you fail to include a concluded case in your Mediation Contract Work Report Form, you may submit it up to three months late but, if it is more than three months late, we may decline to pay all or some of it. For example, if you fail to include a case concluded in July, you may send it with your August, September or October Mediation Contract Work Report Forms. However, if there is a delay, the value of the work that you are carrying out will appear lower than it really is and this may lead to a downward amendment to your monthly payments.

#### *Insolvency and interventions*

- 3.38 If insolvency proceedings concerning you are commenced or if your regulatory body intervenes in you or your practice we may temporarily suspend future payments to you until we can ascertain whether you owe us money or we owe you money. In these circumstances, you must use all reasonable endeavours to help us ascertain this. If you do not, we are entitled to suspend payments until you do.

## **Disbursements**

- 3.39 You may incur disbursements where this is in the parties' best interests and is reasonable expenditure for the purpose of progressing the mediation. We may specify types of disbursements which may or may not be incurred and specify maximum rates and payments or give guidance on them.
- 3.40 The following disbursements may be incurred though, of course, they are not the only disbursements that you may incur:
- (a) Interpreters' fees
  - (b) Valuers' fees – e.g. surveyors' valuation fees when the value of the property e.g. the matrimonial home is in dispute.
  - (c) Counsels fees (only in exceptional circumstances)
- 3.41 The following disbursements may not be incurred:
- (a) Mediator or client travelling expenses
  - (b) The cost of room hire for outreach work
  - (c) Relate or other counselling fees
- 3.42 You must aim to secure the best possible value for money when you have to incur a disbursement, just as you would if you were acting for a private client. For example, it may often be sensible to obtain three quotations for a piece of work and you will need to be clear why incurring the disbursement is necessary and what level of expertise is required.
- 3.43 You should include disbursements that you have incurred in your Mediation Contract Work Report Forms and, so long as they are allowed on assessment, we will pay them in addition to the fixed fees. We will include an allowance for disbursements in your monthly payments but may also specify a maximum amount that you may spend on disbursements up to the following 31 March. If we

do, you may not exceed this limit without prior authority from the Regional Office. There will be some disbursements on which you will not pay VAT; you should not charge us VAT on them.

## **Assessments**

### *Samples*

- 3.44 Although we may assess every case that you report, we will normally assess a sample of your cases, instead. This is to avoid the cost and delay to both you and us that would be caused by our assessing every individual case.
- 3.45 When we assess a sample of cases, we may apply any findings (that are not simply issues relating to an individual case) to other cases of a similar type. For example, if we assess ten single session cases concerning sole and co-mediations, we may apply the findings to other such cases. If we assess a sample that is a complete mixture of cases, we may apply the findings to all cases - unless the findings relate only to a type of case, in which case we will apply them only to that type.
- 3.46 When we apply findings in this way, we may do so for all relevant cases reported in the 12 months preceding the date of the assessment. If a sample reveals a change of practice at a point in time, we will apply the findings from that point. If a sample assessment would lead to a payment reduction of no more than 5%, we will make no sample reduction but we may individually assess (and reduce) any individual cases in the sample if the reduction to them would be 10% or more.
- 3.47 If, through carrying out an assessment, we consider that the contract payment structure is undesirably affecting the way a contractor performs Contract Work, we may amend it and the rates payable – though we expect to do so rarely, if ever, because in these circumstances, termination of the contract may be more likely to be appropriate. For example, if a contractor commonly completes categories of work in less than the average time, we will consider whether this is because they

- operate more effectively than average. If so, there will be no change. However, if for example, the results they secure are less good than might be expected, we may make a change. Similarly, for example, if (compared to other contractors) a contractor reports very few Single Sessions but several Incomplete Outcome cases with two or more short attendances, we may make a change.
- 3.48 If we do wish to amend a contractor's future payment structure, our aim (unless there has been a breach of contract) will not be to penalise the contractor by the amendment but simply to ensure that, in future, we make appropriate payment for the work that will be done. Before making any amendment, we will discuss the matter with the contractor with the aim, if possible, of agreeing an amendment.
- 3.49 Whenever we make an assessment, whether by sample or otherwise, you may, within 21 days of our decision, apply for a review of our decision by the Costs Committee.
- 3.50 Applications for review by the Costs Committee should be sent to the appropriate Regional Director. The Costs Committee may confirm, increase (in accordance with the Contract) or decrease an assessment. It may also direct that further matters or samples be assessed.
- 3.51 If you are dissatisfied with the decision of the Costs Committee and believe that a point of principle of general importance is concerned, you may within 21 days of notification of the decision, apply to the Costs Committee to ask it to certify a point of principle of general importance. If it does so, you may, within 21 days of notification of the decision, appeal the Costs Committee's decision to the Costs Appeals Committee and we may make written representations to the Costs Appeals Committee.
- 3.52 If the Regional Director is dissatisfied with the decision of the Costs Committee and believes that a point of principle of general importance is concerned, they may within 21 days of notification of the decision, certify a point of principle of general importance and appeal the Costs Committee's decision to the Costs

Appeals Committee. If they do so, they will notify you and you may make written representations to the Costs Appeals Committee.

- 3.53 The Costs Appeals Committee may reverse, affirm or amend the decision of the Costs Committee. It has discretion to allow a party to attend and be represented on an appeal, provided the same right is granted to the other party.

*Quality Mark Standard for Mediation - Annual Payment for File Review*

- 3.54 In addition to the payments described earlier in this Specification, you may (subject to the conditions set out below) also claim an annual payment (at a rate of £18 for each mediation review) for carrying out such mediation reviews as are reasonably necessary to demonstrate your compliance with the mediation review requirements of the Quality Mark Standard for Mediation. The conditions are:

- (a) Mediation reviews must have been undertaken in accordance with your Documented Procedures (generally set out in your Office Manual) and the number of mediation reviews must not exceed that set out in your Documented Procedures;
- (b) No claim may be made under this provision for any mediation review that has been or will be claimed as part of the costs of the case (this condition is likely to be relevant only if the “fixed fee” structure of payments is amended);
- (c) Mediation reviews must have been undertaken in accordance with the Quality Mark Standard for Mediation and number of mediation reviews must not exceed the number reasonably necessary to demonstrate compliance with the requirements of the Quality Mark Standard for Mediation;
- (d) Payment may not be claimed for any mediation review undertaken merely to check files for inactivity at pre-determined intervals;

- (e) All mediation reviews claimable under this provision must be combined into a single claim for payment and be submitted by you on our designated report form in October or November of each year;
- (f) Your claim must include **all** claimable mediation reviews carried out in the relevant period (the 12 months up to 30 September in each year) as any omitted will not be paid for subsequently. Your first claim under this contract should be made in October or November 2005.

3.55 The annual payment you claim for mediation review may be reduced or disallowed (as appropriate) by us where we consider that you have not complied with the relevant conditions. For example, we may do so where:

- (a) the number of claimed mediation reviews exceeds either the number set out in your Documented Procedures or the number reasonably necessary to demonstrate compliance with the requirements of the Quality Mark Standard for Mediation. (We will allow some flexibility in the latter regard and may amend this Specification to include guidance on numbers of mediation reviews); and
- (b) any of the mediation reviews have not been properly carried out in accordance with the Quality Mark Standard for Mediation.

## **4 Quality Controls**

### *Quality Mark Standard for Mediation*

4.1 The Quality Mark Standard for Mediation sets out requirements and guidance that all mediation suppliers holding the Quality Mark must comply with. The following additional quality requirements apply to mediation suppliers holding this contract.

## *Our Code of Practice*

- 4.2 You must comply with our current Code of Practice. At present, this includes the U.K. College of Family Mediators' Code of Practice without amendment to that document.

## *Public liability insurance*

- 4.3 You must have for, and preferably display at, each Office (or Linked Office) from which you provide mediation, a valid public liability insurance certificate.

## *Management and financial information*

- 4.4 You must be able to demonstrate that you have the management and financial information necessary to monitor (and where necessary to take action on):

- Income
- Expenditure
- Overhead costs and their apportionment to mediation cases
- Case cost/time recording fees and costs of mediation work in progress.

This information must be maintained on an IT system, and must include:

- An annual budget covering income and expenditure and including any proposed capital expenditure
- an (at least) quarterly variance analysis of income and expenditure against budget
- an (at least) quarterly analysis of overhead costs
- an annual profit and loss account
- an annual balance sheet
- a system that maintains a running record of overhead costs on each case and ensures that time spent on Contract Work is accurately recorded (in no less than six-minute units) and attributed to the relevant case (this should include a record of number of sessions per case and number of sessions per mediator).

All information will be treated as strictly confidential.

- 4.5 If costing information is contained centrally and not on individual files, you must update it at least monthly, or when additional costs are incurred if longer than a month. We will require confirmation that this is being done. Cost information should be in a suitable format and updated to enable regular and timely return of reports to us.
- 4.6 You must have an IT system that is capable of producing separate lists of all open and closed publicly funded mediation cases by type of mediation and produce them when required.

*Your personnel*

- 4.7 We reserve the right to make such enquiries in relation to your personnel as we think fit and you must provide us with all the necessary consents.
- 4.8 You must provide a list of all key personnel, with their responsibilities, e.g. job titles, when we request it. You must report all changes of key personnel to us.

*Information for statistical purposes*

- 4.9 We may wish to collect information for statistical purposes and you must provide this information on request. Set out below is a list of information that could be required.

- Costs
- Time taken to complete cases
- Number of cases referred
- Source of referrals
- Number of mediations and outcomes
- Number of clients assessed for suitability and eligibility

- Marital status of Client
- Type of mediation conducted (e.g. child only)
- Issues mediated (e.g. childcare arrangements)
- Mediation model used (sole, anchor, co-mediation)
- Number of sessions per case
- Number of sessions per mediator
- Number of cases being referred from and to solicitors
- Participation of others in mediation
- Number of mediations where there is a history of domestic violence.

**Annex A**  
**Definitions in the Specification**

“Agreed Proposals on the Issues” means that the parties reach agreement on the issues in dispute and a written Mediation Summary is produced reflecting this agreement.

“Agreed Proposals on Some Issues” will apply only to All Issues Mediation cases where the parties reach agreement on some but not all of the issues in dispute at the start of the mediation i.e. agreement reached on children issues but not financial issues. A written Mediation Summary must be produced reflecting this agreement.

“Assessment Meeting” has the meaning given in the Funding Code. A Joint Assessment Meeting means that all parties to the mediation attend the Assessment Meeting at the same time. A Separate Assessment Meeting means that only one party attends the Assessment Meeting at any time.

“Case Administration” includes but is not limited to case preparation, the drafting of file notes, and the preparation of interim summaries

“Category of Work” means work that may be provided under the contract within a category specified by us in the Specification.

“Co-Mediation” means mediation with two mediators for all or part of the mediation. Any decision to use a co-mediator will need to be justified on the file including, where appropriate, reasons as to the complexity, legal, psychological or otherwise of the case, a risk assessment for the participants and/or mediator, any reasons as to the requirement of specialist and/or expert skills and any management issues for the mediation. No special application will need to be made to the Regional Office in this regard.

“Co-Mediation All Issues” means mediation with two mediators for all or part of the mediation where all issues pertinent to the legal, financial and emotional aspects

of separation or divorce are considered in the mediation. (This may include arrangements for divorce, the division of family assets and other financial arrangements, property and pensions and any arrangements to be made for the child/ren of the family).

“Co-Mediation Child Only” means mediation with two mediators for all or part of the mediation where all issues pertinent to any arrangements for the child/ren of a family, including extended family, are considered in the mediation (this does not include aspects relating to family assets, property and pensions other than arrangements for child support).

“Co-Mediation Property & Finance” means mediation with all two mediators for all or part of the mediation where all the issues pertinent to the financial aspects of separation or divorce are considered in the mediation.

“Mediation Summary” which may also be termed the Memorandum of Understanding means the recorded details of the proposals agreed in the mediation process in all or some of the areas identified at the start of the mediation. This may, where appropriate, include an Open Financial Summary. The Mediation Summary should be in a form approved by a Consultative Body from time to time. In order to attract the additional payment for drafting the Mediation Summary it must be evidenced as agreed by both parties either by the signature of the parties themselves or by the mediator confirming on the file that the Mediation Summary is an accurate reflection of the proposals agreed in the mediation process.

“Multi Session” is a case where mediation proceeds beyond the initial session irrespective of outcome. (See Table 2).

“Single session” means that a mediation does not proceed beyond one session, either because the mediation has broken down or because the issues in dispute have been resolved in one session.

“Sole Mediation All Issues” means mediation with one mediator where all issues pertinent to the legal, financial and emotional aspects of separation or divorce are considered in the mediation. (This may include arrangements for divorce, the division of family assets and other financial arrangements, property and pensions and any arrangements to be made for the child/ren of the family.)

“Sole Mediation Child Only” means mediation with one mediator where all issues pertinent to any arrangements for the child/ren of a family, including extended family, are considered in the mediation (this does not include aspects relating to family assets, property and pensions other than arrangements for child support).

“Sole Mediation Property & Finance” means mediation with one mediator where all the issues pertinent to the financial aspects of separation or divorce are considered in the mediation.

“Willingness Test” means the test described as such in the Funding Code.