

Client terms and conditions

THESE TERMS AND CONDITIONS apply in relation to any medical services provided by Key Medical Services (UK company no. 10028640) a company incorporated in England and Wales whose registered office is at Suite B, Second Floor, 400 Capability Green, Luton, Bedfordshire, LU1 3LU (“**KMS LTD**”). KMS LTD is part of the Celsus Group and provides medical services for Healthcare providers through a team of clinicians that meet a KMS LTD standard.

The Terms and Conditions apply to you where you are a primary healthcare provider such as a GP practice agreeing or seeking to use KMS LTD to provide certain medical services involving the treatment and management of patients due to gaps in service provision. These Terms and Conditions are incorporated and form part of the terms of the Medical Services Agreement agreed with KMS LTD.

By using KMS LTD you as the Client agree that you have read, understood and agreed to these Terms.

1. DEFINITIONS:

"Assignment"	Means each instance where KMS LTD and the Client have agreed that KMS will provide the Services.
"Celsus Group":	Celsus Group Limited (UK Company no. 09266684) a company incorporated in England and Wales whose registered office is at Suite B, Second Floor, 400 Capability Green, Luton, Bedfordshire, LU1 3LU. Celsus Group Limited is the parent company of KMS LTD.
"Celsus Group Companies":	Celsus Group, its subsidiaries or subsidiary undertakings, any holding company of Celsus Group from time to time, and any subsidiary or subsidiary undertaking from time to time of a holding company of Celsus Group. Celsus Group includes previously or currently owned by Celsus Group (whether active or inactive).
"Client":	The Primary healthcare provider receiving medical services from KMS LTD as specified in the Medical Services Assignment Agreement.
"Client Personal Data":	All data which is defined as ' <i>personal data</i> ' under Data Protection Laws which is accessed, stored or otherwise processed by KMS LTD on behalf of the Client in connection with the Services and in respect of which Client may be a controller under Data Protection Laws.
"controller", "data subject", "processor", "supervisory authority":	Shall have the meanings ascribed to them in the Data Protection Laws.
"Contract":	Shall have the following meanings: (i) If the Client has entered into any Medical Services Assignment Agreement, the term shall mean the relevant Medical Services Assignment Agreement(s); (ii) If the circumstances in clause 2 apply, the term shall mean these Terms as set out in clause 2.

"Data Protection Laws":	All data protection and privacy laws applicable to any personal data processed under or in connection with these Terms, including , without limitation, the General Data Protection Regulation 2016/679 (the "GDPR") and all national legislation implementing, supplementing or replacing the foregoing, including in the UK the Data Protection Act 2018, and all associated codes of practice and other guidance issued by any applicable supervisory authority, all as amended, re-enacted and/or replaced and in force from time to time.
"Data Subject Request":	A request from or on behalf of a data subject relating to access to, or rectification, erasure or data portability in respect of that person's personal data or an objection from or on behalf of a data subject to the processing of his personal data.
"KMS Clinicians(s)":	<p>An individual that holds, and maintains:</p> <ol style="list-style-type: none">1. a current professional registration with the General Medical Council [GMC] and is registered with the National Performers List [NPL]; or2. a current professional registration with the Nursing & Midwifery Council [NMC]; or3. a current professional registration with the Health & Care Professions Council [HCPC] or4. a current professional registration with the GPhC Professional Standards Authority
"KMS LTD Contact":	The KMS LTD representative responsible for liaising with the Client regarding the obligations and performance of the Services as identified in the Medical Services Assignment Agreement.
"KMS LTD team":	KMS LTD clinical team members involved in the performance of the Services for the Client, including any KMS Clinician(s).
"Medical Services Assignment Agreement":	<p>Means:</p> <ol style="list-style-type: none">(i) The agreement between KMS LTD and the Client which sets out the agreed Services, duration and agreed fee, and incorporates these Terms.(ii) In the event that the agreement in (i) has not been signed by either or both Parties, the scope, duration and fee for the Services agreed by the Parties by email, provided the aforesaid is agreed by a director of KMS LTD.
"Parties":	KMS LTD and the Client, and a "Party" is either one of them.
"Primary Care Contract(s)"	Any contract between the Client and NHS England regarding primary medical care or services.
"Services":	The treatment and management of the Client's patients by KMS LTD as agreed in the Medical Services Assignment Agreement.
"Terms":	These terms and conditions as amended from time to time.

Other defined terms shall have the meaning given to them as they appear in the Clauses.

2. APPLICATION OF THE TERMS

- 2.1 In the event that a primary healthcare provider or other entity ("**User**") seeks to use KMS LTD services or signs a new client form and KMS LTD has provided details of a KMS Clinician but such User does not engage KMS LTD, the following clauses of these Terms shall apply as if such User were the Client: 1 (Definitions), 6 (Non-Solicitation), 11 (Data Protection), 12 (Confidentiality), 13 (Notices), 14 (Entire Agreement), 15 (Variation), 17 (Third Party Rights), 18 (Governing Law and Jurisdiction) and any indemnities in clause 7 that relate to the User's breach of the aforementioned clauses.

3. KMS LTD OBLIGATIONS

- 3.1 In providing the Services, KMS LTD shall at all times:
- 3.1.1 perform the Services promptly, accurately and without interruption and in accordance with the Medical Services Assignment Agreement;
 - 3.1.2 ensure that the Services are performed by appropriately qualified, experienced and trained personnel in a professional and courteous manner, with a reasonable standard of skill, care and diligence;
 - 3.1.3 ensure that any KMS Clinician(s) engaged in providing the Services are appropriately equipped;
 - 3.1.4 comply with all legislation and statutory requirements applicable to the Services;
 - 3.1.5 have the right to choose which KMS LTD team members provide the Services and have the right to replace KMS LTD team members without notice;
 - 3.1.6 ensure that any complaints from the Client relating to the Services are investigated promptly and fairly with appropriate feedback provided in accordance with KMS LTD's own complaints policy;
 - 3.1.7 provide such reasonable co-operation and information in relation to the Services to the Client as they may reasonably require;
 - 3.1.8 notify the Client as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services;
 - 3.1.9 ensure that members of the KMS LTD team hold adequate insurance to cover the Services the relevant person delivers;
 - 3.1.10 put in place and/or maintain in force at its own cost appropriate insurance in respect of: (1) employer's liability; (2) professional indemnity insurance covering KMS LTD, its directors, officers and employees; and (3) public liability insurance;
 - 3.1.11 hold adequate insurance against liability arising from negligent performance of the Services. KMS LTD shall be regarded as holding adequate insurance if insurance is held by a person employed or engaged by it in connection with the clinical services which that person provides.
- 3.2 The Client acknowledges and agrees that the KMS LTD team providing the Services may comprise personnel who are not be employees of KMS LTD.

4. CLIENT OBLIGATIONS

- 4.1 The Client shall be solely responsible for performing its obligations under the relevant Primary Care Contract(s). KMS LTD shall reasonably co-operate fully and promptly with the Client so as to enable the Client to fulfil its obligations under the Primary Care Contract(s).
- 4.2 The Client shall maintain all required authorisations, approvals, registrations, licenses and consents as may be required to perform its obligations under the relevant Primary Care Contracts. Where the Client

reasonably believes that any of the Primary Care Contracts may be terminated, it will notify KMS LTD in writing at the earliest opportunity of this fact so that the Parties can prepare for any consequential termination of the Contract.

- 4.3 In order to receive the Services, the Client shall at all times remain a party to a Primary Care Contract and be accountable to NHS England during the term of the Medical Services Assignment Agreement. The Client shall immediately notify KMS Limited in the event that the Client ceases to be a party to such Primary Care Contract. The Client further acknowledges and agrees that KMS Limited shall not be obliged to provide any Services in the event that the Primary Care Contracts expire, is terminated or the Client is no longer a party for whatsoever reason.
- 4.4 Where the Client is: (a) a partnership, it must provide KMS LTD with advance notice of at least ninety (90) days prior to any change in, potential dissolution of, or dissolution of, the partnership. Any new partner that the Client admits must be eligible to hold the relevant Primary Care Contract(s) in accordance with the relevant Regulations; (b) a company, it shall immediately notify KMS LTD in writing in the event that any of the following events occur with respect to the Client: (i) it becomes insolvent or unable to pay its debts as and when they become due; or (ii) a petition is advertised, an order is made or a resolution is passed or an order being made for: (a) for the winding up of the Client or (b) to appoint a liquidator, administrator, administrative receiver, receiver, or trustee, or any of the same are appointed in respect of or in connection with the liquidation, administration or dissolution of the Client or the whole or any part of the Client's assets or business; or (iii) the Client makes or proposes to make any composition or enters or proposes to enter into any other arrangements with or for the benefit of its creditors; or (iv) the Client ceases to continue its business or a substantial part of it or threatens to cease to continue its business or a substantial part of it; or (v) the Client takes or suffers any similar or analogous action in any jurisdiction.
- 4.5 The Client must have the relevant insurance to cover its liability under the Contract and generally to perform its obligations under the Primary Care Contract(s), including without limitation employer's liability insurance, professional indemnity insurance (including medical malpractice insurance), and public indemnity insurance.
- 4.6 The Client agrees it does not direct, control or supervise any member of the KMS LTD team beyond ensuring compliance with the Client's essential policies and procedures like those related to locally determined referral pathways and health and safety rules related to the Client's premises.
- 4.7 The Client shall inform the KMS LTD team of any other security requirements that apply at any premises where the Services may be provided from.
- 4.8 The Client must inform KMS LTD in writing as soon as is reasonably practical if the Client has any issues with how KMS LTD is delivering the Services.
- 4.9 Should a KMS LTD team member be removed from the provision of the Services for whatever reason, KMS LTD shall appoint another team member to carry on providing medical services as required. Neither the Assignment or the Contract shall terminate as a result.
- 4.10 Either Party shall notify the other immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a member of the KMS LTD team providing the Services is unsuitable to carry out the Services.
- 4.11 The Client shall at all times during this Contract:
 - 4.11.1 co-operate with KMS LTD in all matters relating to the Services;
 - 4.11.2 provide such information as KMS LTD may reasonably request, in order to carry out the Services and ensure that it is accurate in all material respects;

4.11.3 inform KMS LTD (providing copies) of all policies, health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises to which KMS LTD requires access or the Client's local community and/or the provision of the Services at such premises; and

4.11.4 regularly monitor KMS LTD's performance.

4.12 The Client shall be solely responsible for ensuring that the KMS LTD team is aware of all relevant Client policies and procedures and ensuring compliance with such policies and procedures. KMS LTD accepts no liability for the failure of the KMS LTD team to comply with such policies and procedures.

5. **VERIFICATION OF THE EXECUTION OF SERVICES AND PAYMENT TERMS**

5.1 In consideration of the provision of the Services, the Client shall pay KMS LTD fees at the rates agreed in the Medical Services Assignment Agreement.

5.2 At the end of each week the Client shall sign a KMS LTD timesheet (a copy of which will be provided to the Client), verifying the number of hours (and home visits) of Services provided in that week.

5.3 Signature (or email acknowledgement) of the timesheet is confirmation that the number of hours of Services stated in the timesheet is correct and that the Services have been provided on a satisfactory basis.

5.4 If the Client disputes the number of hours provided or has serious concerns about how the Services were delivered, the Client must inform KMS LTD in writing as soon as reasonably practicable and shall cooperate fully with KMS LTD to establish what hours were provided.

5.5 Failure to sign the timesheet does not absolve the Client's obligations to pay KMS LTD's fees in respect of the Services.

5.6 The Client shall pay KMS LTD (via a bank account nominated by KMS LTD) for the Services KMS LTD provides calculated in accordance with the Scope of Work, within 14 days of the date of the invoice.

5.7 If the Client disputes the validity of any invoice the Client must put this in writing to KMS LTD within 7 days of receipt of the disputed invoice, otherwise the invoice shall be deemed as valid and payable in accordance with this contract.

5.8 If the Client fails to make any payment due to KMS LTD under this Contract by the due date for payment, the Client shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

5.9 All amounts due under the Contract to KMS LTD shall be paid by the Client in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5.10 Any sums referred to in this Contract for payment by the Client are exclusive of VAT.

6. **NON-SOLICITATION**

6.1 In order to protect KMS LTD's confidential information, including details of its clinicians and business connections, to which the Client has access as a result of the provision of the Services, the Client covenants with KMS LTD that the Client shall not:

6.1.1 during the period of this Contract and for a period of six months thereafter, offer to employ or engage or to entice away (or attempt to entice away) any person who is, or has been, engaged or employed by KMS LTD or any other Celsus Group Company involved in the provision of the Services

provided by KMS LTD or any other Celsus Group Company or presented to the Client by KMS LTD or any other Celsus Group company (the "**KMS LTD Personnel**"). This shall apply regardless of whether the Client asserts that KMS LTD Personnel have responded to an advert independently, approached the Client directly or discovered a vacancy through an intermediary or any other provider; or

- 6.1.2 during the period of this Contract and for a period of six months thereafter, employ or engage any KMS LTD Personnel. This shall apply regardless of whether the Client asserts that KMS LTD Personnel have responded to an advert independently, approached the Client directly or discovered a vacancy through an intermediary.
- 6.2 The Parties may agree to waive the obligations set out in clause 6.1 but any such waiver must be made in writing and signed by both Parties by a Partner or Director of Client (as appropriate) and a Director (KMS LTD).
- 6.3 If the Client or any of their employees, agents, contractors or workers commits any breach of clause 6.1, the Client shall, on demand, pay KMS LTD the greater of a sum equal to one year's basic salary or the annual fee that was usually payable by KMS LTD to that employee, worker or independent contractor (based on an average of the annual fees payable over the preceding 24 month period prior to the breach) plus the recruitment costs.

7. **LIABILITY AND INDEMNITY**

- 7.1 Subject to this clause 7, KMS LTD shall indemnify and keep indemnified the Client against reasonable liability, loss, damages, costs, expenses, claims or proceedings incurred by the Client under the Primary Care Contract(s) in respect of any damage or liability incurred by the Client that results from or arises out of KMS LTD's negligence in connection with the performance of the Services, except in so far as the aforesaid is attributable to any act or omission by, or on behalf of, or in connection with the instructions of, the Client, its employees or agents.
- 7.2 The Client shall indemnify and keep indemnified KMS LTD and the Celsus Group Companies against any liability, loss, damages, costs, expenses, claims or proceedings arising as a result or in connection with:
- 7.2.1 any claim made by a third party arising out of or in connection with the Client's performance of a Primary Care Contract save to the extent that such claim is attributable KMS LTD's negligence in performing the Services and such negligence was not attributable to the Client, its employees or agents;
- 7.2.2 breach of its obligations under clause 4 (Client Obligations), clause 12 (Confidentiality) and clause 11 (Data Protection);and
- 7.2.3 to the extent not covered in Clause 7.2.1 or 7.2.2, (i) Client's or its employees' and agents' negligence, wilful misconduct, or acts and omissions; (ii) the operation or condition of the Client's premises or services; (iii) the Client's policies and procedures; and/or (iv) any other circumstances within the control of the Client
- 7.3 The indemnifying Party's obligations under this clause 7 shall be conditional on the indemnified Party:
- 7.3.1 immediately giving written notice to the indemnifying Party;
- 7.3.2 providing reasonable assistance to the indemnifying Party; and
- 7.3.3 giving the indemnifying Party express authority to have the sole conduct of any defence or settlement,
- 7.4 Without prejudice to clause 11.4.1 the Client acknowledges that KMS LTD is reliant on the Client for direction as to the extent to which KMS LTD is entitled to use and process Client Personal Data.

Consequently, KMS LTD will not be liable for any claim brought by a Data Subject arising from any act or omission by KMS LTD, to the extent that such action or omission resulted directly from the Client's instructions.

7.5 Save for the indemnities given in clause 7.2 and liability under clause 6.3, each Party's total liability arising from or in connection with the Contract (and whether the liability arises in contract, tort (including negligence), or otherwise) shall be limited, in respect of all events occurring in any Year, to the lower of:

7.5.1 the value of the Fees paid or payable under the Contract during such Year; or

7.5.2 £1 million (British pounds)

In this clause 7.5, "Year" means each successive 12-month period commencing from the start of the Services or any anniversary thereof.

7.6 Nothing in these Terms (or any Contract) will operate to exclude or restrict one Party's liability (if any) to the other for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability. Neither Party shall be liable to the other for indirect or consequential losses.

8. COMPLAINTS

8.1 Any complaints by the Client about any matters under a Medical Services Assignment Agreement or the Services provided should be addressed in the first instance to the KMS LTD Contact.

8.2 Any complaint received by a patient should be addressed to the relevant KMS LTD Contact, no later than 7 days from the date of receipt by the Client.

9. TERMINATION

9.1 Termination of an Assignment does not amount to termination of the Contract. The Client shall not terminate the Contract during any Assignment.

9.2 Unless otherwise stated in a Medical Services Assignment Agreement, any Assignment may be terminated by a Party on giving the other Party written notice. In the event that an Assignment is terminated by the Client prior to expiry of such Assignment, the Client acknowledges and agrees that KMS LTD may charge (and the Client will pay) 100% of the remaining fees payable under such Assignment. Termination of an Assignment does not affect any other ongoing Assignments or Medical Services Assignment Agreements and does not amount to termination of the Contract.

9.3 Either Party may terminate the Contract, provided there are no ongoing Assignments, at any time by providing the other Party with no less than 10 days' written notice of its intention to terminate.

9.4 Any payment made under this clause will be without prejudice to any other rights and remedies of KMS LTD. Both parties agree that the amount payable is a genuine pre-estimate of KMS LTD's loss. The Client agrees that said payment is recoverable by KMS LTD as a debt.

9.5 Where any of the relevant Primary Care Contracts of the Client are terminated for any reason the relevant Medical Services Assignment Agreement shall automatically terminate with immediate effect and all payments will become immediately payable. Such termination shall be without prejudice to a Party's accrued rights.

9.6 Without prejudice to the terms of the Primary Care Contract(s) where applicable, either Party may terminate a Medical Services Assignment Agreement or the Contract by notice in writing with immediate effect where:

9.6.1 the other Party is in breach of any material obligation under such Medical Services Assignment Agreement provided that if the breach is capable of remedy, the other Party has failed to remedy such breach within twenty eight (28) days (or such other period as the Parties reasonably deem

necessary in the case of patient or staff safety or other urgent issues or such other period that NHS England has directed) of receipt of notice to do so;

9.6.2 the other Party(i) becomes insolvent or the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a partnership) has any partner to whom any of the foregoing apply; or (ii) a petition is advertised, an order is made or a resolution is passed or an order being made for: (a) for the winding up of the other Party or (b) to appoint a liquidator, administrator, administrative receiver, receiver, or trustee, or any of the same are appointed in respect of or in connection with the liquidation, administration or dissolution of the other Party or the whole or any part of the other Party's assets or business; or (iii) the other Party makes or proposes to make any composition or enters or proposes to enter into any other arrangements with or for the benefit of its creditors; or (iv) the other Party ceases to continue its business or a substantial part of it or threatens to cease to continue its business or a substantial part of it; or (v) the other Party takes or suffers any similar or analogous action in any jurisdiction; or

9.6.3 in order to provide the Services, KMS LTD requires any greater rights to use or occupy any specific premises over and above the Client's premises set out in the Medical Services Assignment Agreement and such further rights have been granted to KMS LTD by the Client in accordance with an occupancy document, such occupancy document is terminated.

9.7 KMS LTD may terminate the Contract other than a Medical Services Assignment Agreement at any time by providing the Client with no less than 10 days' written notice of its intention to terminate.

10. OBLIGATIONS ON TERMINATION

10.1 Termination of the Contract by either Party for whatever reason shall not affect the rights and obligations of the Parties accrued prior to the effective date of termination and the rights and obligations of the Parties to each other which continue beyond termination.

10.2 The Parties agree to observe and be bound by the post termination obligations. Any provision in the Contract that expressly or by implication is intended to continue in force on or after the termination or expiry of the Contract shall remain in full force and effect, including without limitation: clauses 4.5 (Client insurance), 6 (non-solicitation), 7 (liability and indemnity), 10 (consequences of termination), 12 (confidentiality), 13 (notices), 14 (entire agreement), 15 (variation), 17 (third party rights), 18 (governing law and jurisdiction).

10.3 Following notice of termination of any Medical Services Assignment Agreement for any reason, KMS LTD shall continue to provide the Services in accordance with the Contract until the expiry of the relevant termination period, unless the Medical Services Assignment Agreement is terminated with immediate effect.

11. DATA PROTECTION

11.1 The type of Client Personal Data processed pursuant to the Contract and the subject matter, duration, nature and purpose of the processing and the categories of data subjects are as described in the Medical Services Assignment Agreement.

11.2 Each Party warrants in relation to personal data that it will comply (and will procure that any of its personnel comply), with the Data Protection Laws. As between the Parties, the Client shall have sole responsibility for the accuracy, quality and legality of Client Personal Data and the means by which the Client acquired Client Personal Data.

11.3 The Client and KMS LTD acknowledge and agree that in respect of the Parties rights and obligations under this clause **11** regarding Client Personal Data, the Client is the Controller and KMS LTD is the Processor.

11.4 With respect to all Client Personal Data, KMS LTD shall:

- 11.4.1 process the Client Personal Data only in accordance with (i) the Contract and (ii) the Client's written instructions;
 - 11.4.2 in the unlikely event that applicable law requires KMS LTD to process Client Personal Data other than pursuant to Client's instruction, KMS LTD will notify the Client (unless prohibited from so doing by applicable law);
 - 11.4.3 as soon as reasonably practicable upon becoming aware, inform Client if, any instructions provided by Client under clause 11.4.1 infringe the Data Protection Laws;
 - 11.4.4 taking into account the technology, scope and context of processing, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by the processing of Client Personal Data, in particular protection against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Client Personal Data;
 - 11.4.5 ensure that only authorised personnel have access to such Client Personal Data and that any persons authorised to have access to the Client Personal Data are under obligations of confidentiality;
 - 11.4.6 without undue delay upon becoming aware, notify Client of any actual, alleged or suspected failure to comply with clause 11.4.4 above, including any incident of unauthorised or accidental disclosure of or access to any Client Personal Data by any of its personnel, sub-processors, or any other identified or unidentified third party (a "**Security Breach**");
 - 11.4.7 promptly provide Client with cooperation and assistance in respect of a Security Breach and all information in KMS LTD's possession concerning the Security Breach insofar as it affects the Client;
 - 11.4.8 promptly notify Client if it receives a Data Subject Request. KMS LTD shall not respond to a Data Subject Request received by KMS LTD without Client's prior written consent except to confirm that such request relates to Client, to which Client hereby agrees. To the extent Client does not have the ability to address a Data Subject Request, KMS LTD shall upon Client's request provide reasonable assistance to facilitate a Data Subject Request to the extent KMS LTD is able to consistent with applicable law [provided the Client shall pay KMS LTD's charges for providing such assistance at KMS LTD's standard rates set out in the Medical Service Assignment Agreement];
 - 11.4.9 other than to the extent required to comply with applicable law, as soon as reasonably practicable following, and in any event within sixty (60) days of, termination or expiry of these Terms or completion of the Services, KMS LTD will at Client's request delete or return all Client Personal Data (including copies thereof) processed by KMS LTD pursuant to this Agreement.
 - 11.4.10 provide such assistance as the Client reasonably requests (taking into account the nature of processing and the information available to KMS LTD) in relation to Client's obligations under Data Protection Laws with respect to:
 - (i) data protection impact assessments (as such term is defined in the GDPR);
 - (ii) notifications to the supervisory authority under Data Protection Laws and/or communications to data subjects by Client in response to any Security Breach; and
 - (iii) Client's compliance with its obligations under Data Protection Laws with respect to the security of processing.
- 11.5 The Client grants a general authorisation (a) to KMS LTD to appoint other Celsus Group Companies as sub-processors and (b) to KMS LTD and other Celsus Group Companies to appoint one or more third party data centre operators, outsourced support providers, workflow and productivity software providers and analytics services providers as sub-processors to support the performance of the Services and in respect of such sub-processing KMS will:

- 11.5.1 maintain and make available to the Client a list of sub-processors and will add the names of any new and replacement sub-processors to the list prior to them starting sub-processing of Client Personal Data and shall allow the Client the opportunity to notify KMS LTD of a reasonable objection in writing within ten (10) days of the notification and the Parties will seek to resolve the matter in good faith. If KMS requires to use the sub-processor and is unable to satisfy the Client as to the suitability of the sub-processor within sixty (60) days from the Client's notification of objection, the client may within thirty (30) days of the end of the sixty (60) day period referred to above terminate the Medical Services Assignment Agreement;
- 11.5.2 ensure that any sub-processor it engages to provide an aspect of the Services in respect of Client Personal Data on its behalf in connection with these Terms does so only on the basis of a written contract which imposes on such sub-processor terms substantially no less protective of Client Personal Data as those imposed on KMS LTD in these Terms, (the "**Relevant Terms**"). KMS LTD shall procure the performance by such sub-processor of the Relevant Terms and shall be liable to the Client for any breach by such person of any of the Relevant Terms.
- 11.6 KMS LTD shall, in accordance with Data Protection Laws, make available to the Client such information in KMS LTD's possession or control, and provide all assistance in connection with audits conducted by the Client or an auditor mandated by the Client of KMS LTD's premises, systems and documentation as Client may reasonably request with a view to demonstrating KMS LTD's compliance with the obligations of processors under Data Protection Law in relation to its processing of Client Personal Data.
- 11.7 If in the performance of the Services, KMS LTD transfers any Client Personal Data to a sub-processor and without prejudice to clause 11.5 where such sub-processor will process Client Personal Data outside the EEA (except in a country or territory that is recognised by a European Commission ("**EC**") finding made under Data Protection Laws from time to time as providing adequate protection for Personal Data), KMS LTD shall in advance of any such transfer ensure that a mechanism to achieve adequacy in respect of that processing is in place such as:
- 11.7.1 the requirement for KMS to execute or procure that the third party execute on behalf of the Client, the European Commission (EC) approved standard contractual clauses for transfers of personal data to processors the approved version of which is set out in the EC Decision 2010/87/EU of 5 February 2010 ("**Model Clauses**"); or
- 11.7.2 the existence of any other specifically approved safeguard for data transfers (as recognised under the Data Protection Laws) and/or an EC finding of adequacy.
- 11.8 The following terms shall apply to the Model Clauses:
- 11.8.1 The Client may exercise its right of audit under clause 5.1(f) of the Model Clauses as set out in, and subject to the requirements of clause 11.6 of these Terms; and
- 11.8.2 KMS LTD may appoint sub-processors as set out and subject to the requirements of clause 11.5 and 11.7 of these Terms.
- 11.9 The Client acknowledges and agrees that KMS LTD may separately collect, process and share with other Celsus Group Companies, personal data including contact information of personnel at the Client in connection with its ancillary operations associated with offering, administering and invoicing its Services for which it will be a controller under Data Protection Laws and as described further in the Celsus Group Privacy Policy <https://www.keymedicalservices.co.uk/privacy/>.
12. **CONFIDENTIALITY**
- 12.1 Both Parties shall, and shall ensure that any person employed, engaged or sub-contracted by the relevant Party shall not disclose to any person any confidential information concerning the business, affairs, customers, clients, patients, contractors or suppliers of the other Party except as permitted in this clause

12. The confidential information of KMS LTD shall be deemed to include the confidential information of any Celsus Group Company.
- 12.2 Nothing in the Contract shall be deemed or construed to prevent either Party from disclosing the other Party's confidential information to its professional advisors and its insurers, provided such disclosure is made under a duty of confidentiality.
- 12.3 The provisions of clause 12.1 shall not apply to any information which:
- 12.3.1 is or becomes public knowledge other than by breach of this clause 12;
 - 12.3.2 can be shown to be in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;
 - 12.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 12.3.4 can be shown to be independently developed without access to the other Party's confidential information; or
 - 12.3.5 is required to be disclosed by law or by a court of competent jurisdiction or by the Information Commissioner, provided that:
 - (a) to the extent it is legally permitted to do so, such Party gives the other Party as much notice of such disclosure as possible; and
 - (b) where the information is required to be disclosed by the Client (and notice of disclosure is not prohibited), the Client discloses only the minimum amount of confidential information required to be disclosed, asks the court or other public body to treat the information as confidential and takes all reasonable measures to ensure, as far as it is possible to do so, the continued confidential treatment of any confidential information.

13. **NOTICES**

Any notice to be given pursuant to the terms of the Contract shall be in writing and shall be delivered by hand or sent by post to the address of the addressee as set out in the Medical Services Assignment Agreement or such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this clause, or sent by email to the addressee's email address as from time to time notified.

14. **ENTIRE AGREEMENT AND PREVIOUS CONTRACTS**

The Parties acknowledge and agree that the Contract together with any relevant documents referred to in it constitutes the entire agreement and understanding between the Client and KMS LTD and supersedes any previous agreement between them (which shall be deemed to have been terminated by mutual consent); and in entering into the Contract neither Party has relied on, nor shall it rely on in future, any pre-contractual statement.

15. **VARIATION**

No variation of these Terms, any Contract or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

16. **COUNTERPARTS**

The Medical Services Assignment Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

17. **THIRD PARTY RIGHTS**

A person who is not a Party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract is not subject to the consent of any person that is not a Party to the Contract.

18. **GOVERNING LAW AND JURISDICTION**

These Terms and any Contract, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.