

DATED

2008

VERY HIGH COST CASE (CRIME) PANEL

~~DRAFT~~ CONTRACT FOR PANEL ADVOCATES

between

THE LEGAL SERVICES COMMISSION

and

THE PANEL ADVOCATE

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PARTIES

(1) **THE LEGAL SERVICES COMMISSION** whose head office is at 85 Gray’s Inn Road, London WC1X 8TX; and

(2) **THE PANEL ADVOCATE** whose details appear in the box below.

RECITAL

The Very High Cost Case (Crime) Panel has been established in accordance with the Criminal Defence Service (General) (No. 2) Regulations 2001 as amended by the Criminal Defence Service (General) (No. 2) (Amendment No. 2) Regulations 2007 ~~to be completed when new Regulations in force~~.

Successful applicants in the 2007 tendering exercise have been selected to be members of the Very High Cost Case (Crime) Panel (“Panel Members”) and contracted to provide criminal defence work to clients on Very High Cost Cases (“VHCCs”). In order for those successful applicants to become Panel Members they are required to sign up to the contract for Panel Members.

The Advocates nominated by the successful applicants in the 2007 tendering exercise have also been selected to provide criminal defence work to clients on VHCCs as part of the Defence Team of one or more Panel Members. Such Advocates must provide these services either as employees of a Panel Member (in which case they do not have to sign a contract) or as self-employed Advocates.

Self-employed Advocates are required to sign up to this Contract in order to become Panel Advocates. The term ‘Advocates’ means barristers or solicitors having rights of audience in the Crown Court. All Panel Advocates are Advocates but not all Advocates are Panel Advocates; only self-employed Advocates are Panel Advocates.

Panel Members are responsible for allocating Defence Teams to carry out work on individual VHCCs. Where a Panel Member wishes to instruct a self-employed Advocate to act on a VHCC (and become a member of the Defence Team), it will instruct a Panel Advocate. Both the Panel Member’s contract and this Panel Advocate’s Contract place various obligations on the Defence Team, rather than on the Panel Member or the Panel Advocate. Where this is the case, Panel Members and Panel Advocates are required to act jointly, as members of the Defence Team, to ensure that the obligations are complied with.

Name of Panel Advocate	
LSC account number (if applicable)	

DEFINITIONS

1.1 In this Contract the words and expressions below will be interpreted to have the meanings adjacent to them:

“Act” means the Access to Justice Act 1999;

“Advocate” means a Barrister or solicitor having rights of audience in the Crown Court;

“Audit Bundle” means the documents that the Defence Team must collate and provide to the CCU to enable the CCU to assess the payment due for completed VHCC Work;

“Barrister” means someone who is registered with The Bar Council of England and Wales as a practising barrister;

“Best Value Protocol” means the document attached to this Contract as Annex {4};

“Billing Guides” means any method of recording time or work done that can be or is used to prepare a bill and provide evidence to substantiate the bill;

“Case Category Assessment Sheet” means the document submitted by the Defence Team to the CCU with the first Case Plan, which contains the team’s detailed representations on the category of case;

“Case Manager” means the litigator or Advocate nominated by the Panel Member to lead members of the Defence Team on any particular VHCC;

“Case Plan” means the document to be submitted to the CCU at the start of Stage 1 with the Stage 1 Task List;

“Category Criteria” means the criteria used by the CCU to determine the category of VHCC by which remuneration is determined;

“CCU” means the Complex Crime Unit, the department within the Legal Services Commission responsible for managing VHCCs;

“Closed VHCC” means a VHCC in respect of which all work by all Defence Teams working on that VHCC has been claimed, assessed, paid accordingly and concluded on the CCU finance system;

“Consultative Bodies” means The Law Society, the Legal Aid Practitioners Group, The Bar Council, the London Criminal Law Solicitors Association, the Criminal Bar Association and the London Criminal Courts Solicitors Association (and any other body we may agree with you to consult in accordance with this Contract);

“Contract” means this Very High Cost Case (Crime) Panel Contract for Panel Advocates;

“Contract Amendment Notice” means the notice setting out any amendments to this Contract, as contained at Annex ~~{12}~~;

“Contract Decision Letter” means the letter that the CCU will send the Defence Team if the CCU agrees that a notified case falls within the definition of a VHCC;

“Contract Manager” means the nominated CCU representative who will be responsible for the day-to-day running of this Contract;

“Counsel” means an Advocate;

“Defence Team” means the team of lawyers put forward by the Panel Member as being available to carry out VHCC Work;

“General Criminal Contract” means the [General Criminal Contract \(January 2008\)](#) (including its Specification and any annexes) between the LSC and its providers of publicly funded criminal defence work;

“Guidance” means guidance issued by the CCU to Panel Advocates following Contract award and from time to time in connection with VHCC Work;

“Individual Case Contract” means the contract between the LSC and its (non-Panel) VHCC providers in the previous VHCC contracting scheme;

“Key Members of ~~{the}~~ Defence Team” means level A litigators, level B litigators and Advocates (including Panel Advocates) (i.e. every member of the Defence Team apart from level C fee earners or pupils);

“LSC” means the Legal Services Commission;

“Panel” means the Very High Cost Case (Crime) Panel, comprising Panel Members and Panel Advocates contracted to provide criminal defence work to clients in relation to VHCCs;

“Panel Advocates” means self-employed Advocates appointed to the Panel, responsible for carrying out VHCC Work as part of a Panel Member’s Defence Team;

“Panel Members” means the organisations appointed to the Panel, responsible for allocating Defence Teams (comprising their own employees and Panel Advocates) to carry out VHCC Work-;

“Panel Start Date” means ~~1 October 2007~~ [14 January 2008](#);

“Panel Term” means the period from the Panel Start Date to the date on which this Contract is terminated in accordance with its terms (whether by effluxion of time or otherwise);

“Plea and Case Management Hearing” means the hearing at which a defendant enters his/her plea where appropriate and at which directions are given for the future conduct of the VHCC including, if appropriate, fixing a trial date or warned period;

“Representation Order” means a document issued by a court or the LSC granting a right to representation to an individual under Schedule 3 of the Act;

“Senior Executive” in the case of the LSC means the Head of the CCU.

“Serious Fraud Office” means the government department that investigates and prosecutes serious or complex fraud;

“Stage 0” means the period between the date the Representation Order is granted and the start of Stage 1;

“Stage 1” means the first period of a VHCC (normally 12 weeks) for which the LSC and the Defence Team will agree a plan of VHCC Work;

“Stage 1 Task List” means the document prepared by the Defence Team detailing, on an item by item basis, the VHCC Work to be undertaken by that team during Stage 1 of the VHCC;

“Substitute Advocate” means any Advocate who attends court on behalf of a client on a VHCC in place of the instructed Advocate;

“Task List” means the document prepared by the Defence Team detailing, on an item by item basis, the VHCC Work in each stage;

“Terrorism Case” means a case in which the main offence with which the defendant or defendants is or are charged, whether at common law or under any statutory enactment, is primarily, or substantially, founded on allegations of terrorism as defined in the Terrorism Act 2000;

“Unified Contract” means the contract between the LSC and its civil legal aid providers, which came into effect on 1 April 2007 and replaced the General Civil Contract;

“VHCC” means a Very High Cost Case as defined in the [Criminal Defence Service \(General\) \(No. 2\) Regulations 2001 as amended by the Criminal Defence Service \(General\) \(No. 2\) \(Amendment No. 2\) Regulations 2007](#) ~~to be completed when new Regulations in force~~];

“VHCC Advocate List” means the list of the names of all the Panel Advocates;

“VHCC Appeals Committee” means the committee established to adjudicate on issues relating to payment and funding under this Contract;

“VHCC Notification Request Form” means the form provided by the CCU for Panel Members to use when notifying the CCU as soon as it appears that a case will be, or is likely to be, a VHCC;

“VHCC Work” means criminal defence work conducted for clients on VHCCs according to the terms of this Contract;

“We” and “us” means the CCU (on behalf of the LSC) (and “our” has the associated meaning); and

“You” means the Panel Advocate named at the beginning of this Contract (and “your”) has the associated meaning).

- 1.2 Clause and paragraph headings in this Contract are inserted for convenience only and do not affect its interpretation.
- 1.3 Words denoting any particular gender include all other genders. Words denoting the singular include the plural and vice versa.
- 1.4 In this Contract, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto.
- 1.5 References to “approval” means approval as provided by this Contract or, if no express provision is made by this Contract, to approval in writing.

2. **CONTRACT DOCUMENTS**

- 2.1 All Annexes referred to in this Contract form part of the Contract.
- 2.2 The terms of the LSC's General Criminal Contract ([January 2008](#)) specified in Annex ~~[13]~~ apply to the VHCC Work delivered under this Contract and will continue to be incorporated into this Contract notwithstanding the termination of the General Criminal Contract (January 2008) as the main contract governing the provision of non VHCC publicly funded criminal defence work.
- 2.3 Where there is any conflict between the terms of this Contract and those of the General Criminal Contract, the terms of this Contract will prevail. A copy of the terms of the General Criminal Contract ~~which that~~ apply to this Contract are included in this Contract as Annex ~~[13]~~.

~~2.4 In the event that the General Criminal Contract becomes a schedule to the LSC's Unified Contract, this Contract (and Annex [13]) will be amended to reflect that fact.~~

3. **MEMBERSHIP OF THE PANEL**

- 3.1 Only Panel Members and Panel Advocates will be permitted to carry out VHCC Work on cases where the Representation Order is granted on or after the Panel Start Date, ~~(save for the exceptions set out in clause 7.2 below), in the [to be completed when new Regulations in force]).~~
- 3.2 All VHCCs (fraud and non-fraud) where the Representation Order is granted on or after the Panel Start Date will operate under and be subject to the terms and conditions of this Contract. VHCCs where the Representation Order is granted prior to the Panel Start Date (irrespective of the fact that the VHCC is continuing at or after the Panel Start Date) will operate under the previous VHCC contracting system. Some Panel Advocates may, therefore, operate under two different schemes at the same time for different VHCCs.

4 **HOW THE VHCC SCHEME WILL OPERATE**

- 4.1 The CCU will manage all VHCCs and will be responsible for ensuring that Panel Advocates conduct VHCCs according to this Contract.
- 4.2 ~~VHCCs are not allocated to Panel Advocates by the CCU~~ The CCU does not allocate VHCCs to Panel Members; it is up to clients to nominate their preferred Panel Member (subject to their availability) and for the Panel Member to instruct an Advocate or Advocates (who may also be a Panel Advocate(s)) in accordance with the Representation Order.
- 4.3 Panel Members are responsible for allocating Defence Teams to carry out VHCC Work. Having allocated the VHCC Work, Panel Members are responsible and accountable for the VHCC Work carried out by their Defence Teams.
- 4.4 Panel Members must appoint a Case Manager to lead the members of a Defence Team on every VHCC. This person would normally, but not exclusively, be a level A litigator or an Advocate nominated to act in a leading role.
- 4.5 Panel Members may allocate a different Case Manager and different Defence Teams to different VHCCs. The Defence Team on any VHCC may consist of a number of litigators, other fee earners and Advocates (including Panel Advocates). Certain members of the Defence Team (including Advocates) are Key Members of the Defence Team'.

5. VHCC CONTRACTING PROCESS TIMETABLE

- 5.1 The timetable at Annex {2} sets out all the stages of the VHCC contracting process from the identification of a potential VHCC and notification stage through to the conclusion of a VHCC.
- 5.2 Each stage of the timetable includes a number of tasks to be carried out by the CCU and the Defence Team and the deadlines imposed.

6. NOTIFICATION OF VHCCs TO THE CCU

- 6.1 You must ensure that the Panel Member that instructs you in any case has authority to do so under the Representation Order.
- 6.2 The Defence Team is required to notify the CCU of any case where the trial is likely to last for ~~no fewer than 25 days, more than 25 days.~~
- 6.3 The Defence Team must notify the CCU by submitting a VHCC Notification Request Form as soon as it appears that the case will be, or is likely to be, a VHCC and, in any event, within five working days of the sooner of (a) the Plea and Case Management Hearing or (b) the Defence Team having identified that the case will be or is likely to be a VHCC. A template VHCC Notification Request Form will be issued to Panel Advocates. This is the only form of notification that will be accepted by the CCU.
- 6.4 Failure to notify and delay in notifying the CCU of a potential VHCC may constitute a breach of contract (see Annex {9} for further information on breaches of contract and the likely consequences).

7. CONTRACTING DECISION: IS THE CASE A VHCC OR NOT?

7.1 After notification, the CCU will decide whether a case falls within the definition of a VHCC and, therefore, whether it can be conducted under the terms of this Contract.

7.2 On and from the Panel Start Date, a case will be deemed to be a VHCC where: ~~the trial is:~~

~~7.2.1 if the case were to proceed to trial, the trial would in the opinion of the CCU be likely to last for more than 40 days and the Commission considers that there are no exceptional circumstances which make it unsuitable to be dealt with under this Contract; or~~

~~7.2.2 if the case were to proceed to trial, the trial would in the opinion of the Commission be likely to last no fewer than 25 and no more than 40 days inclusive, and:~~

~~7.2.2.1. the case is prosecuted by the Serious Fraud Office; or~~

~~7.2.2.2. the case is a Terrorism Case; or~~

~~7.2.2.3 at least 2 of the following criteria (i) to (iv) apply;~~

~~(i) there are more than five defendants;~~

~~(ii) there are at least 10,000 pages of served prosecution evidence;~~

~~(iii) there are at least 10,000 pages of unused or third party material;~~

~~(iv) the case is a Fraud Case or one primarily involving serious drugs offences (as covered by Part 6 Class B of the Criminal Defence Service (Funding) Order 2007) and the value of the fraud (as described in the indictment or prosecution case statement/summary) or drugs (as estimated by the prosecution authority) exceeds £1 million.~~

~~7.2.3 Where paragraph 7.2.2 applies to a case, we reserve the right not to classify this case as a VHCC if exceptional circumstances apply which make it unsuitable to be dealt with under this Contract.~~

~~7.2.1 likely to last for more than 40 days; or~~

~~7.2.2 a Terrorism Case; or~~

~~7.2.3 a case prosecuted by the Serious Fraud Office; or~~

~~7.2.4 there are more than five defendants.~~

~~7.3 On and from the Panel Start Date, a case which does not fall within the categories described in clauses [7.2.1, 7.2.2, 7.2.3 or 7.2.4] above will be deemed to be a VHCC where two or more of the following elements apply to the case:~~

- ~~7.3.1 the prosecution evidence served is at least 10,000 pages;~~
- ~~7.3.2 the unused material is expected to be 10,000 pages or more;~~
- ~~7.3.3 the Representation Order has been granted for a QC and junior Advocate;
or~~
- ~~7.3.4 the expenditure on obtaining expert opinion is likely to be £10,000 or more.~~
- 7.34 ————When making its decision, the CCU will consider (a) the VHCC Notification ————Request Form and any supporting information it may hold at that time; and (b) in relation to cases which are not those referred to in clauses [7.2.1, 7.2.2, 7.2.3 and 7.2.4], the criteria for 25 to 40 day cases set out at clause [7.3].
- 7.45 If the CCU agrees that a notified case falls within the definition of a VHCC, the CCU will send the Panel Member a Contract Decision Letter. This letter will state whether the Panel Member (and its Defence Team) may carry out that individual case as a VHCC under this Contract. The letter will also confirm the date that the —notified case became a VHCC.
- 7.56 Once the CCU has decided that the notified case is a VHCC, and confirmed this in the Contract Decision Letter, this letter is sufficient for the Defence Team to be able to conduct the case as a VHCC in accordance with (in the case of Panel Advocates) the terms of this Contract. Once the Contract Decision Letter has been issued, the Contract terms apply to any VHCC Work conducted on the VHCC. There is no separate document to sign for every new VHCC.
- 7.67 The Contract Decision Letter will confirm the particular VHCC's number. Some VHCCs will involve more than one defendant but may still be dealt with under one VHCC number.
- 7.78 As set out in Annex [2] under 'case planning', the Defence Team must submit a Case Category Assessment Sheet to the CCU with its Case Plan and Stage 1 Task List. Once in receipt of these documents, the CCU will decide which category the case falls into, according to the Category Criteria set out in Annex [3].

8 CONFLICTS OF INTEREST

- 8.1 Panel Advocates must check for conflicts of interest at the outset of a VHCC and as the VHCC progresses. In the event that a conflict appears during the progression of a VHCC, the conflicted party is obliged to notify the CCU in writing immediately and to cease work on the VHCC immediately.
- 8.2 In addition to notifying the CCU, if a Panel Advocate is the conflicted party, it has an obligation to inform the client that it has ceased work and to inform the court.

~~8.3 The CCU has the right to transfer an individual VHCC from one Panel Advocate to another Panel Advocate if a conflict arises, provided that the client (and not the CCU) shall nominate the Panel Advocate to whom the VHCC is transferred.~~

9 PANEL TERM

- 9.1 Subject to the termination provisions set out in clause ~~{33}~~, this Contract will commence on the Panel Start Date (~~1 October 2007~~ 14 January 2008) and will run for 18 months, expiring on the Panel End Date (~~31 March 2009~~ 13 July 2009) (unless it is extended as set out in clauses ~~{9.2 and 9.3}~~).
- 9.2 We may extend this Contract on its current terms or such other terms as we may agree with you by a maximum of a further 12 months from the Panel End Date. We will give you at least three months' written notice prior to the Panel End Date if we wish to do so - i.e. we will give you written notice of our intention any time prior to ~~31-13 December April 2009~~.
- 9.3 Any extension will be subject to your written agreement. You must notify us in writing within one month of the date of our communication whether you agree to the extension. If we do not hear from you within this period, you will be deemed to have declined the extension.
- 9.3 If we wish a VHCC panel to continue after this extended period, we will run a fresh tendering exercise for a new VHCC panel – i.e. the maximum term of the Panel (and this Contract) will be 30 months (or 2.5 years) from the Panel Start Date.
- 9.5 If a VHCC has commenced prior to the Panel End Date, whether or not you are appointed to any subsequent VHCC panel, you may continue to conduct the VHCC on the terms of this Contract.
- 9.6 We may, at any time, serve no less than six months' notice on you terminating this Contract. We will exercise our rights under this clause ~~{9.6}~~ only when we consider it necessary or desirable to do so in order to facilitate a change in government policy. For the avoidance of doubt, this Clause takes precedence over any other clause in this Contract.

9.7 You may, at any time, serve no less than three months' written notice on us terminating this Contract. We may be willing to consider a request from you to terminate this Contract on less than three months' written notice, provided your client/s is/are able to find another Panel Member and/or Panel Advocate to take on your VHCC(s) within a timescale agreed by all parties. See the provisions on transfer of VHCCs between Panel Advocates at clause {34}.

10 RELATIONSHIP

10.1 In funding services as part of the Criminal Defence Service we are bound by section 18(3) of the Act to aim and obtain the best possible value for money. Without prejudice to more specific provisions of this Contract and to your professional obligations in respect of clients, you and we agree to work together in mutual trust and co-operation to achieve this aim.

10.2 In relation to this Contract, you and we will act in good faith and we will act as a responsible public body required to discharge functions under the Act.

11 CONTINUOUS IMPROVEMENT

11.1 You will use your reasonable endeavours to improve the VHCC advice and representation provided by you during the term of this Contract, in:

- 11.1.1 VHCC turnaround time;
- 11.1.2 VHCC handling;
- 11.1.3 the way VHCC advice is delivered;
- 11.1.4 use of your IT systems; and
- 11.1.5 procedures/ working practices.

11.2 You will use your reasonable endeavours, if reasonably requested by the CCU, to make proposals to increase efficiency within the VHCC contracting scheme; including the development of the Best Value Protocol.

12 GENERAL CONDITIONS OF CARRYING OUT VHCC WORK

12.1 Please see Annex {7} for specific provisions for Advocates relating to VHCC Work.

12.2 In addition to other requirements set out in this Contract, you will:

12.2.1 comply with all relevant legislation, including any Acts of Parliament, Statutory Instruments and directions of the Lord Chancellor applying to this Contract;

12.2.2 perform the VHCC Work with reasonable skill, care and diligence;

12.2.3 perform your obligations to record and report data accurately;

- 12.2.4 monitor the quality of the VHCC Work you are providing in such a way that you are able to report back to us in accordance with our reporting requirements (see Annex {2});
- 12.2.5 inform us immediately in writing if you discover that the quality of the VHCC Work you are providing is falling or has fallen below what is expected and put in place an appropriate action plan to improve the quality (subject to approval by the CCU);
- 12.2.6 meet the minimum essential criteria as set out in the Selection Criteria at Annex {1}, as it applies to you as an Advocate and a member of the Defence Team, at the Panel Start Date and continue to meet the criteria throughout the Panel Term; and
- 12.2.7 notify us immediately in writing if, at any time, you cease to meet any of the minimum essential criteria set out in the Selection Criteria (at Annex {1}), as they apply to you as an Advocate and a member of the Defence Team.
- 12.3 Your claims must be true, accurate and reasonable.
- 12.4 Members of the Defence Team, including Panel Advocates, are expected to be suitably experienced to carry out VHCC Work on a daily basis.
- 12.5 Where Defence Teams are conducting VHCCs in relation to fraud cases, they ——— must ensure that appropriately skilled and experienced Advocates only work on such cases.
- 12.6 The Case Manager on any fraud VHCC must have experience of two fraud VHCCs where the Individual Case Contract was signed after 20 May 2004 (at least one of which should have been prepared to trial) or 300 hours of work on a fraud VHCC. A “fraud VHCC” means a VHCC where the defendant is charged with fraud or with serious financial impropriety.
- 12.7 If at any time during the Panel Term, you cease to meet any of the criteria set out in the Application Form, as they apply to you as an Advocate and a member of the Defence Team, when you notify us, you must provide details of the action you propose to take to enable you to meet those criteria. Unless a different time limit is stipulated elsewhere in this Contract, we will allow you a reasonable time to meet the criteria, normally up to a maximum of three months. If you have not taken satisfactory action within the agreed timescale, the CCU may, at its option, and depending on how serious the failure is, suspend your membership of the Panel until you have taken such action. During this period you will not be permitted to carry out any further VHCC Work.
- 12.8 Where the CCU suspends your membership, you will inform the Court and the client(s) in writing of the suspension.

13 **PROVISION OF INFORMATION**

- 13.1 You agree to give us information we request relating to VHCC Work to enable us to manage this Contract as soon as reasonably practicable,

subject to confidentiality constraints as specified herein and applicable at law (including but not limited to advocate-client privilege).

13.2 Notwithstanding clause {13.1}, if requested by the LSC you will provide to any person authorised by the LSC to request it such information or documentation as the LSC may from time to time require for the purpose of discharging its functions under the Act or the Legal Aid Act 1988 or under the Legal Services Commission (Disclosure of Information) Regulations 2000, subject to the restrictions on disclosure contained in the Legal Services Commission (Disclosure of Information) (Amendment) Regulations 2001.

13.3 Subject to clause {13.4}, the information we may request under clause {13.1} includes access to your records, work diaries and electronic diaries.

13.4 You are not required to provide information on any client not in receipt of legal aid. If your records, diaries or electronic diaries contain details regarding both legally aided and non-legally aided clients, you will edit the records/ diary so as to remove any reference to any non-legally aided party.

13.5 We agree to give you any information you reasonably request as soon as reasonably practicable, subject to confidentiality constraints (see clause {31} on 'Confidentiality').

14 **ACCEPTING INSTRUCTIONS TO ACT PRIVATELY**

Where you have been carrying out VHCC Work on behalf of a client, you may not accept instructions to act privately in respect of the same matter for that client unless that client has first been advised by you in writing of the consequences of ceasing to be in receipt of services under this Contract and as to the further services which may be available under the Criminal Defence Service, whether from you or another supplier, and has nevertheless elected to instruct you privately. In such circumstances you shall withdraw, with the client's consent, at the earliest opportunity.

15 **PREVIOUS WORK CONDUCTED FOR THE SAME CLIENT ON THE SAME MATTER**

15.1 Where you have previously advised the client on the same matter, you must make all records relating to that matter (including any records of work carried out under insurance contracts and Billing Guides) available to the CCU.

15.2 This clause applies to work for which payment has already been received and for which you have yet to submit a claim for payment.

16 **QUALITY STANDARDS**

16.1 You must comply with any professional rules and guidance issued by the Bar Council (if you are a Barrister) or the Law Society (if you are a

solicitor-advocate) relating to quality standards throughout the Panel Term.

- 16.2 If, during the Panel Term, the CCU or the LSC implements any specific quality standards in relation to Advocates (e.g. a new quality mark for the Bar), you must also comply with these.

17 **BEST VALUE PROTOCOL**

- 17.1 The Best Value Protocol forms part of this Contract and must be adhered to, unless you have agreed otherwise in writing with your Contract Manager – i.e. the Best Value Protocol is not simply a guide to best practice when carrying out VHCC Work; it is a binding document that must be followed, except where it has been varied by agreement in writing by both parties. A Panel Advocate wishing to vary any element of the Best Value Protocol must make representations to the Contract Manager as part of their stage negotiations. Any agreed variations to the Best Value Protocol will apply only to the individual VHCC in respect of which the variation has been agreed.

- 17.2 We will monitor your performance against the Best Value Protocol.

18 **RATES OF PAY**

The provisions relating to the rates of pay for VHCC Work are set out in Annex {5}.

19 **PAYMENT AND DISBURSEMENTS**

- 19.1 The provisions relating to payment for VHCC Work and disbursements are set out in Annex {6}. Provisions on auditing your claims for payment are set out in Annex {2}.

- 19.2 The CCU will not pay for VHCC Work that is not agreed in advance and confirmed as such as set out in this Contract, unless one of the exceptions set out in Annex {6} applies.

- 19.3 For the avoidance of doubt, notwithstanding any delay by us in confirming that a case is a VHCC or in agreeing to the relevant Case Plan, Task List or any other document or fact requiring our confirmation, the Panel Advocate shall be entitled to payment for all VHCC Work from the date of the Representation Order, in accordance with the provisions set out in Annex {2}.

20 **COMMUNICATION AND KEY CONTACTS**

- 20.1 During the Panel Term we will agree with you a list of key contacts that will manage this Contract.

- 20.2 The CCU will name a Contract Manager, who will be responsible for the day-to-day running of the Contract. The Contract Manager will liaise with

the Defence Team's Case Manager. The details of the Contract Manager and Case Manager are set out in Annex {8} (key contacts).

21 IT REQUIREMENTS

21.1 All Defence Team members, including Panel Advocates, –must have access to the necessary IT resources during the Panel Term in order to:

21.1.1 adequately prepare a VHCC;

21.1.2 keep electronic diaries or computerised time recording systems detailing time spent preparing both VHCCs and other cases; and

21.1.3 transact with the CCU in an efficient manner.

21.2 The minimum necessary IT resources required are:

21.2.1 a PC with CD ROM / DVD capabilities;

21.2.2 Microsoft Word and Excel (or comparable);

21.2.3 access to email and the internet (to communicate with the CCU and prosecution agencies); and

21.2.4 access to trained personnel who can use IT skills to achieve great efficiencies in searching large amounts of prosecution material.

22 BREACH OF CONTRACT

Annex {9} sets out what will happen if you breach this Contract in any way and contains examples of what constitutes a breach of contract under this Contract.

23 APPEALS AND DISPUTE RESOLUTION

23.1 Any disputes under this Contract concerning payment and funding issues will be dealt with by the VHCC Appeals Committee, as set out in Annex {10}.

23.2 A system for handling complaints made by the Panel Advocate or the CCU about the other is set out in Annex {11} on complaints.

23.3 Any disputes that do not fall within either clause {23.1} or clause {23.2} and which cannot be resolved between the CCU and the Panel Advocate will be dealt with according to the disputes resolution procedure set out in the General Criminal Contract at Annex {13}, in particular clauses 23 and 24 of the General Criminal Contract's Standard Terms.

24 GUIDANCE

We may issue Panel Advocates with Guidance under this Contract following Contract award and from time to time during the Panel Term. Examples of Guidance we may issue include: standard forms and documents and notes on how to complete them; internal management manuals used by CCU Contract Managers; guideline rates for

disbursements; and (without limitation) Guidance on other issues relating to the meaning and operation of, and compliance with, this Contract. Like you, we must comply with Guidance.

25 AMENDMENTS TO THE CONTRACT

25.1 Provisions relating to changes to your Task List are set out in Annex [2].

Ongoing changes – from us

~~25.2 After reasonable notice (which shall be the longer of one month and any specific notice period specified herein) we may, with your prior written agreement, amend any term of this Contract (including its Annexes).~~

~~25.3 Subject to the provisions of this Clause [25], we have the right to amend the Contract from time to time if, (i) we consider it necessary or desirable to do so in order to facilitate a change in government policy, or (ii) our proposed amendments have been approved by Consultative Bodies, or (iii) our proposed amendments are permitted under Clause [25.4] or any other provision of this Contract authorising us to make amendments.~~

25.24 We may make such amendments to this Contract as we consider necessary in the circumstances to comply with, or take account of, any U.K. legislation or any EU 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. Such amendments may include (without limitation) changes to payment provisions, imposing controls not previously imposed, and amending procedures in the Contract.

~~25.2A Subject to the provisions of this Clause 25 we have the right to amend the Contract from time to time if the proposed amendments have been approved by the Consultative Bodies.~~

25.35 Except for amendments made under any other provision of this Contract authorising us to make amendments, we may not amend the Contract without prior consultation in accordance with this clause.

25.46 If a proposed amendment affects only one Panel Advocate, we will consult with that Panel Advocate. Otherwise, we will consult with the Consultative Bodies.

25.57 If we consider that there is an urgent need to make the amendment, consultation with the Consultative Bodies may last no longer than 21 days. Otherwise it may last no longer than 42 days.

~~25.8 We wish to use each consultation period as a period during which consultation actually takes place, and will be willing to engage with the Consultative Bodies during this period to ensure that we are able to take full account of their views. After consultation, we will explain what decisions we have made, and why.~~

~~25.9 After consultation, we may amend the document as originally proposed, or in a modified form, or leave it un-amended and any amendment made by us shall be binding on you.~~

25.640 You must comply with any amendment from such date as we may specify for it. Subject to any other provision of this Contract authorising us to make amendments on other notice, such date shall not be less than 28 days after notice of the amendment is given if we consider that there is an urgent need for compliance with it and shall not be less than 42 days after notice of the amendment is given in any other case.

~~25.511 When we are entitled to amend the Contract, we may make amendments that affect all, or fewer, Panel Advocates.~~

25.742 If you wish to terminate this Contract following an amendment you may do so at any time before the amendment comes into effect and any such notice shall take effect on the day before the day on which the amendment would otherwise have come into effect.

25.843 Any changes to this Contract will be recorded by means of a Contract Amendment Notice (see Annex [12]). On such occasions, where it is appropriate, we will amend and re-issue the relevant Annex. Any new Annex issued will replace the earlier version.

25.944 Such changes will come into effect on the 'effective date' set out in the Contract Amendment Notice.

~~Ongoing changes – from you~~

~~25.915 Subject to different time limits being stipulated elsewhere in this Contract, you must notify us in writing of any change to the way in which you perform VHCC Work (as set out in this Contract) within five working days of the change. This clause [25.159] does not affect clauses which prohibit you from making certain changes without having first obtained our prior written consent.~~

~~25.106 Subject to our agreeing that the change does not affect in any way your ability to continue to provide VHCC Work in accordance with this Contract, we will issue a Contract Amendment Notice in respect of such changes within four weeks of receipt of notice from you.~~

~~25.117 If we consider that the change means that your proposals for advising in respect of a VHCC are no longer satisfactory, we may require you to send us an amended Task List (as set out in Annex [2]).~~

26 COMPLIANCE WITH LEGAL AND REGULATORY RULES

26.1 You must comply with the rules of your relevant regulatory bodies including, as they apply to you, The Law Society, the Solicitors Regulation Authority, the Bar Council and the Bar Standards Board. Panel Advocates who are solicitor-advocates must have a current practising certificate. Panel Advocates who are Barristers must be registered with The Bar Council of England and Wales as practising barristers.

26.2 It is your responsibility to ensure you are complying with any relevant regulatory and legal rules and requirements relating to carrying out work on VHCCs.

27 SUB-CONTRACTORS

27.1 VHCC Work may only be carried out by employees of the Panel Member or Key Members of the Defence Team (including Panel Advocates), which may include solicitor-advocates and Barristers. No other person who is self-employed may conduct VHCC Work without the CCU's express prior written permission.

27.2 You may use sub-contractors only if we agreed to this during the tendering exercise (in which case they will be named on the front page of this Contract) or if we agree to it in writing during the Panel Term.

27.3 If you are using sub-contractors (as agreed by us) to provide work under this Contract, you accept that this Contract is between you and us and that, notwithstanding that all or any of the VHCC Work may be carried out by a sub-contractor, you remain solely responsible for the performance of all VHCC Work.

27.4 You will remain our contractor throughout the Panel Term. If any authorised sub-contractor ceases providing services to you in connection with this Contract:

27.4.1 you must also notify us in writing of this fact immediately; and

27.4.2 you are responsible for ensuring that you continue to carry out VHCC Work in accordance with this Contract.

27.5 If you are using sub-contractors (as agreed by us) to provide work under this Contract, the nature of your relationship with them and the work conducted under such an arrangement may necessitate you to ~~Panel Advocates are not permitted to~~ supervise the non-Panel Advocate(s) to carry out VHCC Work. Any supervisory arrangements must be discussed with the Contract Manager as part of the case planning requirements set out in Annex 4 'VHCC Contracting Process Timetable'.

28 NON-ASSIGNMENT

This Contract is personal to you. You must not give, bargain, sell, assign (or otherwise dispose of) the benefit of its rights, or sub-contract (or otherwise delegate) any of your obligations under this Contract (other than as specified in clause {27}) without our written consent.

29 INSURANCE

29.1 Self-employed solicitor advocate Panel Advocates must have current professional indemnity insurance as required pursuant to section 37 of the Solicitors Act 1974 and comply with current Solicitors' Indemnity Insurance Rules (as evidenced by indemnity insurance that complies with minimum terms and conditions, and, where appropriate, a current practising certificate).

29.2 All practising barristers are required to obtain appropriate professional indemnity insurance through the Bar Mutual Indemnity Fund, as required under paragraph 204 (b) of the 8th Code of Conduct of the Bar of England and Wales, or any subsequent amendment to the Code of Conduct

30 NOTICES

30.1 Any notice or other communication given under this Contract shall be in writing and shall be served by delivering it personally, sending it by DX, by pre-paid first-class post, recorded delivery or registered post, sending it by fax, or sending it by email to the address and for the attention of the key contact set out in Annex {8} (unless otherwise specifically stated). Any such notice shall be deemed to have been received:

30.1.1 if delivered personally, at the time of delivery;

30.1.2 in the case of DX, pre-paid first-class post, recorded delivery or registered post, 48 hours from the date of posting;

30.1.3 in the case of fax, at the time of transmission (as verified by the fax transmission report);

30.1.4 in the case of email, **four** hours after the email was sent, provided no automatic response email denoting non-receipt is received by the party sending the original email within 12 hours.

30.2 Notices terminating this Contract (from us or you) shall not be validly served if sent solely by e-mail. If either party elects to give notice of termination (see clause {33}) by email, they must also give notice by another method set out in this clause (e.g. by recorded delivery or registered post).

31 CONFIDENTIALITY

31.1 You and we:

31.1.1 shall treat all confidential information belonging to the other as confidential and safeguard it accordingly;

31.1.2 shall not disclose any confidential information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of this Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract; and

31.1.3 shall not use any confidential information received from the other party otherwise than for the purposes of this Contract.

31.2 The provisions of clause {31.1} shall not apply to any confidential information received by one party from the other which:

31.2.1 is or becomes public knowledge (otherwise than by breach of this clause);

- 31.2.2 was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- 31.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 31.2.4 is -independently developed without access to the confidential information; or
- 31.2.5 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 (“the FOIA”), unless it is exempt under the FOIA.

32 FREEDOM OF INFORMATION

- 32.1 You acknowledge that we are obliged to act openly and transparently and are subject to the requirements of the FOIA and shall assist and cooperate with us to enable us to comply with these information disclosure requirements.
- 32.2 You further acknowledge and agree that we are responsible for determining at our absolute discretion whether any information in our possession or under our control is either exempt from disclosure or is to be disclosed. If the information that we propose to disclose relates to you and, in our view, could be subject to any of the FOIA exemptions referred to in Clauses {32.4.1} to {32.4.5}, we will give you five working days’ written notice prior to disclosure to enable you to make representations under clause {32.4}.
- 32.3 You shall and shall procure that your sub-contractors (if any) shall:
 - 32.3.1 transfer any request for information to us as soon as practicable after receipt and in any event within four working days of receiving it;
 - 32.3.2 provide us with a copy of all information in your possession or power in the form that we require within five working days (or such other period as we may reasonably specify) of us requesting it; and
 - 32.3.3 provide all necessary assistance as reasonably requested by us to enable us to respond to a request for information within the time for compliance set out in the FOIA.
- 32.4 If you object to the disclosure of any information held by us then, having been given notice under Clause {32.2} you must, within three working days, write to us identifying the information that you do not wish us to disclose, setting out your full and detailed reasons for objecting to the disclosure. You should specifically refer to the relevant FOIA exemption(s), which may be one or more of the following:
 - 32.4.1 that the information is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under section 42(1) of the FOIA;
 - 32.4.2 that the information constitutes a trade secret and is eligible for exemption under section 43(1) of the FOIA;

- 32.4.3 that the disclosure of the information would prejudice the commercial interest of any person under section 43(2) of the FOIA;
- 32.4.4 that the information will be disclosed by the Panel Advocate to the LSC and that the nature of the information, or the circumstances in which it is imparted or the circumstances are otherwise such, as to justify the acceptance by the LSC of an obligation of confidence in respect of it under section 41(1) of the FOIA;
- 32.4.5 that the information is personal data or otherwise relates to the private life of an individual which is appropriate for protection under section 40 of the FOIA;
- 32.4.6 any other specific exemption under the FOIA.
- 32.5 We shall be responsible for determining at our absolute discretion whether any commercially sensitive information and/or any other information:
 - 32.5.1 is exempt from disclosure in accordance with the provisions of the FOIA;
 - 32.5.2 is to be disclosed in response to a request for information, and
 - 32.5.3 in no event shall you respond directly to a request for information unless we expressly authorise you to do so.
- 32.6 You acknowledge that we may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of Functions of Public Authorities under section 45, Part I of the FOIA, be obliged under the Code or the FOIA to disclose information:
 - 32.6.1 without consulting you, or
 - 32.6.2 following consultation with you and having taken your views into account.
- 32.7 If we determine that information must be disclosed we shall notify you of that decision at least four working days before disclosure.
- 32.8 You shall ensure that all information produced in relation to all your VHCC Work pursuant to this Contract is retained for disclosure and shall permit us to inspect such records as requested from time to time.
- 32.9 You acknowledge that any lists or schedules provided by you outlining confidential information are of indicative value only and that we may nevertheless be obliged to disclose confidential information in accordance with clause [32.6].

33 TERMINATION

- 33.1 You are entitled to terminate this Contract by giving written notice to us pursuant to:
 - 33.1.1 clause [9.7]; and

- 33.1.2 clause ~~{25.136}~~.
- 33.2 We are entitled to terminate a Panel Advocate's Contract by giving written notice in the event of a breach or breaches of this Contract by the Panel Advocate pursuant to clause ~~{22}~~ and Annex ~~{9}~~.
- 33.3 For the avoidance of doubt, we are also entitled to terminate a Panel Advocate's Contract on any of the grounds set out in the General Criminal Contract's Standard Terms (see clauses 20, 21 and 22 at Annex ~~{13}~~).
- 33.4 The express rights to terminate this Contract do not limit either party's common law rights to terminate it.
- 33.5 Where we have the right to terminate this Contract, we may, depending on the reason for deciding to terminate:
- 33.5.1 terminate your entitlement to carry out VHCC Work on an individual VHCC or VHCCs (i.e. terminate a particular VHCC number or numbers per the Contract Decision Letter); or
- 33.5.2 terminate this Contract and remove you from the Panel.
- 33.6 For the avoidance of doubt, where we terminate a Panel Member's Contract, any Panel Advocates listed as Key Members of that Panel Member's Defence Team will lose their right to perform VHCC Work as a member of that Panel Member's Defence Team. Those Panel Advocates may only continue to carry out VHCC Work (and remain on the Panel) if they are members of another Panel Member's Defence Team.
- 33.7 Where we have terminated your Contract, you have a right of internal review in accordance with the terms of the General Criminal Contract, set out in Annex ~~{13}~~ (see clauses 23 and 24 of the General Criminal Contract's Standard Terms).

34 **TRANSFER OF VHCCs BETWEEN PANEL ADVOCATES**

- 34.1 If you stop providing VHCC Work, whether through termination of this Contract at any stage, for any reason, or at the Panel End Date, we will agree an exit management strategy with you. The Case Manager (your representative) and Contract Manager (our representative) will make every effort to agree on a strategy acceptable to both us and any new Panel Advocate taking on any of your VHCC Work.
- 34.2 Issues to be addressed in determining an exit strategy will include: whether you complete any open VHCCs for clients, stop work on these VHCCs and transfer them immediately to another Panel Advocate, or perform some limited work on any open VHCCs for clients; and whether the payments we have made to you are correct.
- 34.3 If we terminate this Contract before the Panel End Date and while you have ongoing VHCCs, or if a new Panel Advocate is assigned by an amendment to the Representation Order, you must, without delay, transfer all the VHCC papers and any other material in your possession relating to the proceedings to the Panel Advocate(s) that take over conduct of the VHCCs

or, if there is no such Panel Advocate, in accordance with our direction which we will make having regard to the wishes of the client.

34.4 If the Representation Order is amended to show a new Panel Member or Panel Advocate, the original Panel Advocate will not be paid for any further VHCC Work from the date of the amendment of the Representation Order.

34.5 We will carry out a final assessment of your claims for payment as provided for in Annex {2}.

35 GENERAL

35.1 This Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this agreement.

35.2 This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

35.3 Nothing in this Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

35.4 A person who is not a party to this Contract shall not have any rights under or in connection with it.

35.5 No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

35.6 If any provision of this Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Contract which shall remain in full force and effect.

35.7 If any provision of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

Signed for the Legal Services Commission by: 	Signed by the Panel Advocate:
Name:	Name:
Status:	Status (barrister/ solicitor-advocate):
This Contract is valid only if it is signed by a person with the specific written authority of the Commission's Chief Executive.	