

2010 VHCC Accreditation Process

INFORMATION FOR APPLICANTS (for organisations)

Version 2 - 27 July 2010

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Section 1: Overview

What are we inviting applications for?

- 1.1 The Legal Services Commission (LSC) is inviting interested parties to submit an application for a Very High Cost (Crime) Case (VHCC) Accreditation. The Accreditation will enable the Applicant Organisation to enter into a VHCC Contract (the VHCC Contract) to carry out publicly funded very high cost criminal defence services (VHCC services) for eligible clients where their case is classified as a VHCC and their representation order is/has been granted on or after 14 July 2010.

What does this Information for Applicants (IFA) cover?

- 1.2 This IFA contains the information, instructions, rules and conditions that will govern the application process for the VHCC Accreditation for organisations (see **Section 3** for documents related to this application). Applicant Organisations must read and comply with all instructions and rules contained in the Application Documents and the Terms and Conditions of Application (see **Section 9**).
- 1.3 It is important to highlight at the outset that whilst we use procurement terminology (eg pre-qualification questionnaire, invitation to tender etc) throughout the VHCC Accreditation documents, the 2010 VHCC Accreditation Process is a registration exercise and not a tendering exercise. We use this terminology in order to be consistent with the use of the terms in the E-accreditation System and for this reason only.

Who may submit applications?

- 1.4 This is an open process and Applicant Organisations do not need to be current contract holders with the LSC to apply. Any Applicant Organisation interested in undertaking VHCC services in England and Wales may apply subject to **paragraph 1.17**.

How do Applicant Organisations submit applications?

- 1.5 We will only accept applications submitted through our E-accreditation System which can be accessed at www.legalservices.bravosolution.co.uk (see **Section 7**).
- 1.6 There are two application forms (one for organisations and one for self-employed advocates) covering VHCC work which will be published on our E-accreditation System. Applicant Organisations must use the application form for organisations.
- 1.7 The organisation application form can cover multiple offices run by the same organisation. Advocates employed by organisations would be covered by the organisation application form.

What does a completed application consist of?

- 1.8 A completed application consists of a response to the Pre-Qualification Questionnaire (which, if applying for the SQM must include submission of the Applicant Organisation's Office Manual) **and** a response to the VHCC ITT (for those Applicant Organisations submitting evidence of their experience (see **paragraph 7.5**), this includes the Experience Information Form which, for these Applicant Organisations, is a Mandatory Form).

When can Applicant Organisations submit applications from?

- 1.9 Applicant Organisations may submit their application from **Wednesday 14 July 2010**.

When is the deadline for submitting applications?

- 1.10 There is no closing date or time for submitting an application as this is an open accreditation process. Applicant Organisations can submit applications at any time. However, it is important to note that only those organisations that have gained accreditation will be offered a VHCC Contract. Applicant Organisations are therefore encouraged to apply early to minimise the risk of delay.

How will applications be assessed?

- 1.11 Applications will be assessed by the LSC in accordance with the process set out in **Section 8**.

What happens if an application is successful?

- 1.12 The purpose of the application process is to accredit those providers able to deliver VHCC services. The outcome for those successful Applicant Organisations is obtaining an Accreditation Notice. The award of the VHCC Contract is not an outcome of this application process.
- 1.13 The award of a VHCC Contract will only take place when an Applicant Organisation, in possession of a VHCC Accreditation Notice, is instructed on a case that is classified by the LSC as a VHCC. Unless exceptional circumstances apply, only those organisations that are in possession of a VHCC Accreditation Notice will be eligible for a VHCC Contract.
- 1.14 A VHCC Accreditation Notice is issued in two stages: a Conditional Accreditation Notice and a Full Accreditation Notice. If an application is successful, the LSC will issue a Conditional Accreditation Notice. This Notice is confirmation that the Applicant Organisation satisfies Criteria 1 to 16 inclusive of the Eligibility Criteria in Annex A and that they have committed to have a VHCC Supervisor in post at the start of the VHCC Contract (Criteria 17 and 18 of the Eligibility Criteria in Annex A).

- 1.15 The Conditional Accreditation Notice becomes a Full Accreditation Notice for a case when, at the start of the VHCC Contract, the LSC confirms that the VHCC Supervisor is in post.
- 1.16 The Full Accreditation Notice will only apply to that case. Therefore, the Accreditation Notice remains conditional for any future VHCC, ie. the organisation will be asked to confirm the status of their VHCC Supervisor each time they are offered a VHCC Contract.

What happens if an application is unsuccessful?

- 1.17 If an application is unsuccessful (following the outcome of any reassessment), unless exceptional circumstances apply, the Applicant Organisation must not submit a new application within six months of the date of an unsuccessful application.
- 1.18 Where **paragraph 1.17** applies, Applicant Organisations may seek prior authorisation from the LSC to reapply during this six month period by providing exceptional circumstances in writing through the online secure messaging tool (see **Section 2**) before submission of the new application.
- 1.19 Where **paragraph 1.17** applies, we will not consider any application submitted where you have not obtained prior authorisation from the LSC in accordance with **paragraph 1.18**.

Section 2: About this IFA and the application process timetable

Structure

- 2.1 This IFA sets out information about the documentation required for this application as well as information about the LSC, legal aid, quality standards, the CDS, how to respond to the PQQ and VHCC ITT and the assessment and reassessment process.

Terms and Conditions of Application and Definitions

- 2.2 **Section 10** explains the definitions of key phrases used throughout this IFA and the Application Documents. **Section 9** contains the Terms and Conditions of Application governing the application process. Applicant Organisations should familiarise themselves with these terms and conditions.

Asking questions

- 2.3 During the application process there will be two different channels through which to direct questions depending on the nature of the query. The two different question types are:
- Questions about the content of this IFA, the PQQ or the VHCC ITT.
 - Technical questions about how to use the e-accreditation system.

Questions about this IFA, the PQQ or the VHCC ITT

- 2.4 If Applicant Organisations have any questions about this IFA, the VHCC ITT or the PQQ they may submit them at any time on the E-accreditation System.
- 2.5 All questions must be submitted using the online secure messaging tool within the E-accreditation System (see **Section 7** for more detail about e-accreditation).
- 2.6 Questions that we consider to be of wider interest will be collated and answered centrally in writing to ensure that all interested parties have equal access to information in the answers. These questions and answers will be published on the VHCC Accreditation pages of our website in a Questions & Answers (Q&A) document.

Questions about how to use the E-accreditation System

- 2.7 We will offer a helpdesk to provide technical support to Applicant Organisations using the E-accreditation System. However, the helpdesk is **unable** to assist with problems with Applicant Organisations' own computer hardware or systems - for these types of issues Applicant Organisations should contact their usual IT support.

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- 2.8 Questions should be emailed to the following email address: lscsupport@bravosolution.co.uk. Alternatively, the telephone number for the helpdesk is 0203 3496610 (charged at a local rate from any national destination).
- 2.9 We recommend that Applicant Organisations complete their applications early so that they can identify any areas where they need help as soon possible.

Timelines

- 2.10 The following timetable is provided by way of a **guide** to the VHCC Accreditation Process and the planned turnaround times. Please note however that submission of a significant number of applications at any one time may delay the assessment process.

Activity	Guide time
VHCC Accreditation Process opens	14 July 2010
Applicant Organisations submit response to PQQ and VHCC ITT	At any point from 14 July 2010 onwards
LSC assess PQQ and VHCC ITT	One week
LSC email Applicant Organisations to seek clarification where required	Upon completion of assessment period
Time for Applicant Organisation to consider and provide response to clarification email	One week
LSC to consider response to clarification email	48 hours
LSC to notify Applicant Organisation of decision: <ul style="list-style-type: none">• Successful Applicant Organisations to receive a Conditional Accreditation Notice• Unsuccessful Applicant Organisation to receive a letter setting out the LSC's decision	Upon completion of assessment period or following consideration of response to clarification email

Section 3: Documents related to this IFA

Application Documents – Applicant Organisations MUST read these before submitting their application

Name	Description	Location
Rules for Applicant Organisations (IFA)	Sets out the information, instructions, rules and Terms and Conditions of Application relating to the VHCC Accreditation.	VHCC Accreditation page of the LSC Website.
Pre-Qualification Questionnaire (PQQ)	Includes: (1) Series of questions (2) Applicant Organisation Information Form; <u>and</u> <i>If applying for the SQM as part of the PQQ you must submit your Office Manual. You may also submit a QM1form.</i>	PQQ pages on the e-accreditation portal accessed via the VHCC Accreditation page of the LSC Website
Invitation to Tender (ITT)	Includes: (1) VHCC ITT questions (2) Experience Information Form (where applicable)	ITT pages on the e-accreditation portal accessed via the VHCC Accreditation page of the LSC Website

Supporting documents

Name	Description	Location
VHCC Contract	All Contract documentation: – Contract for Signature – Standard Terms – Specification	VHCC Accreditation page of the LSC Website.
VHCC Standard Forms and Documents	All template documents used to notify, make requests, claim and report data to CCU.	Complex Crime Unit page of the LSC Website.
Application Q&A document	Questions and answers of wider interest to Applicant Organisations.	VHCC Accreditation page of the LSC Website.
e-accreditation guidance ¹	Guidance on how to use the E-accreditation System	“Technical Support and Guidance” section on the e-accreditation portal accessed via the VHCC Accreditation page of the LSC Website.

¹ In addition to the LSC’s e-accreditation guidance, our provider of the E-accreditation System, has its own supplier helpdesk which can be accessed through clicking on the '?' options on the E-accreditation System. This supplier helpdesk contains technical support which may assist you further.

Section 4: About the Legal Services Commission and legal aid

About the Legal Services Commission

- 4.1 The Legal Services Commission (LSC) is responsible for delivering legal aid (publicly funded advice and representation) through high quality service providers to people with legal problems in England and Wales.
- 4.2 The LSC was established under the Access to Justice Act 1999, replacing the Legal Aid Board in April 2000. It is a non-departmental public body sponsored by the Ministry of Justice. The Lord Chancellor and the Secretary of State for Justice is accountable to Parliament for the LSC's activities and performance, and also appoints a board of non-executive Commissioners to oversee its work.

About legal aid

- 4.3 Legal aid enables people to safeguard their rights and address their legal problems. Our work is therefore essential to the fair, effective and efficient operation of the civil and criminal justice systems. It is also critical in helping to provide access to justice and fair trials (with professional representation) to over two million people each year.
- 4.4 We commission the services people need from solicitors, advice agencies, barristers and commercial organisations (known as our 'providers'). The skills and commitment of legal aid service providers are essential to helping people resolve their problems.
- 4.5 We deliver legal services through the Criminal Defence Service (CDS) and the Community Legal Service (CLS). Both have eligibility criteria in relation to the means of the client and the nature of the problem, with certain limited exceptions.

The Criminal Defence Service

- 4.6 The CDS guarantees that people under police investigation or facing criminal charges can get legal advice and representation. By ensuring that people accused of crimes have access to legal advice and representation, the CDS also helps the police and courts operate fairly and efficiently. The CDS is run by the LSC in partnership with criminal defence providers.
- 4.7 Subject to a means and merits test in certain areas, criminal legal aid offers:
- Advice and assistance from a provider on criminal matters.
 - Legal advice from a provider at the police station during questioning.
 - The cost of a provider preparing a case and initial representation for certain proceedings at a magistrates' court or Crown Court.
 - Full legal representation for defence in criminal cases at all court levels.

- Legal advice and representation at magistrates' court.
- Legal advice and representation for Prison Law and Appeals and Review work.

Client choice

- 4.8 While providers contract with the LSC to conduct criminal advice and representation services, the LSC does not control the allocation of cases or work. Clients are free to choose, from those providers with a LSC contract, a legal representative of their choice to advise or represent them.

Quality Assessment

- 4.9 It is a mandatory requirement for our 2010 contracts that all providers that deliver services under the civil or crime contract hold either the LSC's own quality standard (the Specialist Quality Mark (SQM)) or the Law Society's quality standard (Lexcel). The same requirement applies to organisations applying for a VHCC Contract. See **Section 5** for more information about these and how to apply for the SQM.
- 4.10 The LSC also operates a quality assessment tool called Peer Review. Peer Review involves independent experienced legal aid practitioners assessing a random sample of a provider's case files to determine the quality of advice and legal work provided to clients in a particular Category of Law. A standard ratings system is applied to the work as an indication of quality (1 being the highest rating and 5 being the lowest). More information about the Independent Peer Review process can be found at www.legalservices.gov.uk > CDS > Quality and Performance > Peer Review.

VHCC Arrangements 2010 and the VHCC Contract

- 4.11 The VHCC Panel Member Contract expired at midnight on 13 July 2010. All cases classified as VHCCs where the representation order is dated before 14 July 2010 will continue to operate under the VHCC Panel Member Contract.
- 4.12 The VHCC Arrangements 2010 together with the VHCC Contract govern the VHCC scheme for organisations working on cases classified as VHCCs where the representation order is dated on or after 14 July 2010.
- 4.13 The VHCC Arrangements 2010 set out the process that needs to be followed Pre-Contract for these cases and include: obligations to notify the LSC of a case likely to meet the VHCC criteria; the Eligibility Criteria for gaining the VHCC Accreditation; the classification and contracting process; and the rules and conditions relating to work conducted during the Pre-Contract stage of the case.
- 4.14 Upon a case being classified as a VHCC, the LSC will commence the contracting process set out in the VHCC Arrangements 2010.

4.15 The VHCC Contract is split into:

- Contract for Signature
- Standard Terms (govern the relationship between the LSC and the provider)
- Specification (governs how work should be delivered, the service standards that providers must meet, the rules relating to claiming, assessment and remuneration and the appeals process).

4.16 All the contract documentation (and guides) are available at www.legalservices.gov.uk > CDS > VHCCs > VHCC Accreditation and we would strongly recommend that Applicant Organisations familiarise themselves with the terms of the VHCC Contract prior to applying.

Who we will contract with

4.17 Applications are welcome from new organisations and from organisations which are opening new offices subject to them meeting the requirements of their regulatory body, the application process, and the terms of the VHCC Contract.

Legal status of applicants, mergers, subcontracting and consortia bids

4.18 We will only contract with a single legal entity for the purposes of providing VHCC criminal defence services. Should Applicant Organisations wish to merge or join up with others it will be necessary to form a new single legal entity to provide the advice services required. This will mean that the single entity, in accordance with the relevant professional body's regulatory rules, will be responsible for ensuring the performance of the provider's obligations under the contract and that a client's retainer will always be with the single entity.

4.19 If Applicant Organisations have merged or intend to merge with another provider, they may apply as the merged entity if the merger is finalised before the submission of their application. If the merger is not complete by the submission date, Applicant Organisations are advised to apply in their current form as single legal entities in their own right, then once the merger is finalised, apply to us to have the Accreditation Notice amended, once the Notices have been issued.

4.20 We will not accept subcontracting arrangements (e.g. where another organisation is paid to deliver part of the service); instead, Applicant Organisations must be able to provide all the services they apply for, without the need to refer work to other individuals or organisations. Please note that the VHCC Contract does permit, in limited circumstances, the use of agents, advocates or approved third parties. We will not accept consortia bids for the provision of these VHCC criminal defence services.

The Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006

- 4.21 The LSC does not consider that TUPE will apply to the end of the current VHCC Panel Member Contracts and the issuing of the VHCC Accreditation and subsequent issuing of a 2010 VHCC Contract (for organisations).
- 4.22 In summary, where the number of outgoing providers and successful providers is greater than two on both sides of the alleged transfer of activities, it seems likely that there will be significant difficulties in showing that the relevant activities are an identifiable transfer from a particular outgoing provider to a particular incoming provider.
- 4.23 However, we continue to state that Applicant Organisations should get their own legal advice on TUPE and not rely on our views.

Indemnities from Applicant Organisations with limited liabilities (excluding charities)

- 4.24 If you are an Applicant Organisation with limited liability (unless you are a registered charity) any VHCC Accreditation issued will be conditional upon the Applicant Organisation supplying the LSC with a completed, relevant indemnity form specified by us. Applicant Organisations that have already provided such a form as part of their 2010 Crime or Civil Contract tender need not resubmit this for the purposes of the VHCC Accreditation process. Those Applicant Organisations that have not provided such a form must do so by submitting it with their application form. The form must be signed by the ultimate owners of the Applicant Organisation and/or such persons as the LSC might reasonably regard as being controllers and/or senior managers of the Applicant Organisation and/or where the Applicant Organisation is a limited company, from any company which is a holding company.
- 4.25 If Applicant Organisations fail to provide the completed form (or notify us of any reasons for any delay) with their application form this will mean that the Applicant Organisation has failed to meet a condition of the VHCC Contract. This will entitle us to reject an application and/or entitle us not to proceed with any decision made to issue the Applicant Organisation an Accreditation Notice.

Section 5: Quality Standards

- 5.1 It will be a requirement of the VHCC Accreditation that Applicant Organisations hold a recognised quality standard – either Lexcel or the Specialist Quality Mark (SQM).
- 5.2 Applicant Organisations that currently hold the SQM or Lexcel automatically satisfy this criterion and will be asked to confirm that they hold this Quality Standard. The rest of this section is for those Applicant Organisations that do not currently hold the SQM or Lexcel.
- 5.3 A new provider (i.e. one that does not currently hold the 2010 Standard Crime or Civil Contract) or an existing VHCC provider that does not hold the SQM or Lexcel will be required to either:
- hold Lexcel; or
 - confirm in the PQQ that they wish to apply for the SQM and in accordance with the process set out below:
 1. must pass the desktop audit at least by the Stage 1 Start Date of the first VHCC for which they are instructed; and
 2. must fully hold the SQM within nine months of the date of your application.

Applying to hold the SQM

- 5.4 The process for applying for the SQM is made up of two parts:
1. SQM related questions in the PQQ;
 2. Submission of an Office Manual.
- 5.5 It is mandatory that Applicant Organisations submit their Office Manual with the PQQ if they are applying for the SQM or its application for the SQM will be rejected. The PQQ asks for a QM1 form as part of the SQM application. This form is non-mandatory. Therefore applications without this form will not be rejected on this basis.
- 5.6 The SQM comprises a set of standards designed to ensure that a service is well run and has its own quality control mechanisms. The content of the Office Manual must demonstrate that the Applicant Organisation has the procedures in place to comply with the SQM requirements. The purpose of the desktop audit is to assess the Office Manual to ensure it addresses these requirements.
- 5.7 Where, following initial desktop audit assessment of the Office Manual, the documentation is incomplete or further substantial work is required before the Applicant Organisation's procedures begin to comply with the SQM requirements, we will inform the Applicant Organisation of the omissions. The

Applicant Organisation will be given 14 days to provide us with a revised Office Manual.

- 5.8 If the Applicant Organisation fails to provide a revised Office Manual or having done so, following a further desktop audit assessment, the documentation is still incomplete or further substantial work is required before the Applicant Organisation's procedures begin to comply with the SQM requirements, the desktop audit will fail.
- 5.9 Failure to pass the desktop audit will mean the Applicant Organisation has failed to meet the Eligibility Criteria which will entitle us to reject an application, and/or entitle us not to proceed with any decision made to issue the Applicant Organisation an Accreditation Notice or entitle us to terminate any VHCC Contract pursuant to Clause 25 of the Standard Terms.

Applicant Organisations applying for a contract in multiple categories of law

- 5.10 We only require one application for the SQM per Applicant Organisation regardless of the number of ITTs an Applicant Organisation has responded to. This includes applications for civil categories of law under the 2010 Standard Civil Contract application process and crime categories of law under the 2010 Standard Crime Contract application process.
- 5.11 Consequently, we will process a single SQM application regardless of the number of ITTs an Applicant Organisation has submitted applications against (or times a PQQ response is considered).
- 5.12 For example, if an Applicant Organisation has submitted a PQQ response (including SQM application) for a 2010 Standard Crime Contract and again for the VHCC Accreditation we will conduct one application process (i.e. a single desk top audit) and apply the outcome to both application processes.
- 5.13 Applicant Organisations must therefore submit the required information to apply for the SQM with their first PQQ response and for any subsequent responses relating to ITTs for other Categories of Law, should indicate that they 'commit to achieving the SQM' but should not upload their office manual again.

Lexcel

- 5.14 As Lexcel is an externally run quality standard, any provider choosing to meet the quality requirements via this route would need to hold it at the time of applying. Further information on Lexcel can be found at the Law Society's website: <http://www.lawsociety.org.uk/productsandservices/lexcel.page>.

Section 6: About VHCCs

Introduction

6.1 As stated earlier in this IFA, the outcome of the VHCC Accreditation Process will be the issuing of a Conditional Accreditation Notice. However, it is important for all Applicant Organisations to read and understand the Contract Documents they may be awarded should they be successful in obtaining VHCC Accreditation and subsequently be instructed on a case classified as a VHCC. This section therefore outlines the VHCC services governed by those Contract Documents.

VHCC services

6.2 The rules governing how VHCC services should be delivered by organisations are set out in the VHCC Arrangements 2010 and the VHCC Contract.

6.3 From 14 July 2010, all cases classified as VHCCs will operate on an individual cases by case basis. Only those organisations that hold a Full Accreditation Notice will be eligible to contract with the LSC for their work on the VHCC.

6.4 For those organisations that have worked under a VHCC Panel Contract and/or under the pre-VHCC Panel arrangements, there are no significant changes to the way in which the scheme will operate. For new organisations and for the sake of completeness, below is a brief summary of the scheme.

Summary of the VHCC scheme

6.5 Pursuant to The Criminal Defence Service (General) (No. 2) Regulations 2001 (as amended), all organisations are under an obligation to notify the LSC of any case, on which they are instructed, that is likely to meet the VHCC criteria. They do so by submitting a Notification Request Form (available on the LSC Website) to the Complex Crime Unit (CCU) of the LSC. Upon notification, the CCU will determine whether, in their opinion based on the information available, the case satisfies the VHCC criteria and ought to be classified as a VHCC.

6.6 Following classification and the signing of a VHCC Contract, at the outset of the case the organisation's VHCC Supervisor and the CCU Contract Manager assigned to the VHCC will enter negotiations on the category of case. A VHCC will fall into one of four categories. The category will determine the hourly rate of remuneration for each fee earner and advocate working on that VHCC. For further information on the VHCC categorisation criteria please see Annex B of the VHCC Arrangements 2010.

6.7 The scheme operates on the principle that all work to be done on a VHCC must be agreed in advance of the work being undertaken. Having agreed the category, the case is divided into three-monthly stages and at the start of each stage the VHCC Supervisor submits a task list setting out, item by item, the

work required and time to conduct that work in order to further the defence case over the course of the three-month period.

- 6.8 The assigned Contract Manager and the VHCC Supervisor then negotiate the work and hours requested based on reasonableness and necessity. Throughout the stage, the VHCC Supervisor and the Contract Manager will then amend the task list (by agreement) to take account of new and/or further items of evidence or additional work that was not foreseeable at the outset of the stage.
- 6.9 At the end of each stage the VHCC Supervisor then submits the organisation's claim for the work done. Provided the work done falls within the item of work and time agreed, the CCU would pay the claim after audit. With the claim for work, the VHCC Supervisor will also submit a new task list for the next three-monthly stage of the case and the negotiation starts afresh.
- 6.10 The stage of the case that includes the work at trial will follow the same general principle but tends to offer greater flexibility to those conducting the work at this stage. For example, rather than agreeing very specific items of work, Contract Managers will tend to agree weekly allowances and/or ratios for reading evidence served. This is to avoid any unnecessary and often burdensome administration during the trial stage of the case.
- 6.11 The VHCC scheme also includes work undertaken post trial, at sentencing and/or confiscation hearings. These are dealt with as separate stages of the case and will follow the same strict principles as pre-trial stages.

Section 7: How to submit an application using the E-accreditation System

Introduction

- 7.1 This section covers how Applicant Organisations must submit a completed application and how to use the E-accreditation System to do so.
- 7.2 A completed application will consist of a response to both a PQQ and a VHCC ITT:

- (1) PQQ
- Response to the questions
 - Response to the Applicant Information Form (non-mandatory);

And, if applying for the SQM:

- The Applicant Organisation must as part of the PQQ response submit its Office Manual

and

- (2) VHCC ITT
- Response to the questions
 - Response to the Experience Information Form (where applicable this is a Mandatory Form)

VHCC Panel Members

- 7.3 Criterion 16 of the Eligibility Criteria at Annex A applies the same experience requirement as was required under the desirable criteria for the 2007 VHCC Panel tendering exercise. However, whereas in 2007, applicants were required to satisfy a balance of experienced to non-experienced defence team members; for the 2010 VHCC Accreditation, the experience can be held by the organisation itself or the Key Personnel or the employees individually.
- 7.4 Therefore, provided VHCC Panel Members have retained a sufficient number of experienced defence team members (including those that the LSC authorised you to add during the Panel period) to continue to meet the experience threshold set out at Criterion 16, they will automatically satisfy this criterion. They will not be required to resubmit the information they provided in 2007/08 as part of their VHCC Panel application form. These Applicant Organisations will be asked to simply confirm that they continue to meet the requirements set out in Criterion 16.

Other Applicant Organisations

- 7.5 Those Applicant Organisations that either were not VHCC Panel Members or have not retained a sufficient number of experienced defence team members as described in **paragraph 7.4** above must provide evidence of their

experience using the template Experience Information Form. For these Applicant Organisations, the Experience Information Form is a Mandatory Form which must be completed and submitted with the VHCC ITT in order for an application to be complete.

The E-accreditation System

- 7.6 E-accreditation is an electronic application process used increasingly by Government and private organisations to procure contracts and commission services. It replaces paper-based forms and uses a secure internet site as a platform through which interested parties can submit applications. It also offers a secure messaging service enabling Applicant Organisations and the LSC to communicate with each other throughout the application process.
- 7.7 E-accreditation offers many advantages over paper-based systems including:
- access to all relevant documents in one place
 - secure portal through which to submit applications and send/receive communications
 - instant submission with no risk associated with postal failure
 - automatic acknowledgement of receipt
 - full audit trail of all transactions.

Registration

- 7.8 To use the E-accreditation System Applicant Organisations will need to register onto the system. To do this Applicant Organisations should go to www.legalservices.bravosolution.co.uk. Once Applicant Organisations have registered they will receive an automated email sent to their registered email address detailing their username and password to enable them to log into the system in future. For more information on how to use the e-accreditation system please see the 'Technical Support and Guidance' on the e-accreditation portal. If required, Applicant Organisations can access this information from the e-accreditation front page before registering.
- 7.9 Some Applicant Organisations may have already registered on the E-accreditation System as part of a response to another of the LSC's ITTs (eg a response to the 2010 Civil or Crime tendering exercises). If this is the case, then the Applicant Organisation does not need to register again.

Steps to submitting an application

- 7.10 Below we provide an overview of the steps that an Applicant Organisation must follow in order to apply to deliver VHCC criminal defence services.
- 7.11 An application will consist of responses to the:
- 1) PQQ; and
 - 2) VHCC ITT (which includes the VHCC ITT questions and the Experience Information Form).

7.12 These steps are set out in the E-accreditation System, we suggest Applicant Organisations look at the system in conjunction with reading this section:

- 1) Use the E-accreditation System to prepare and submit (publish) a single organisation response to the Pre- Qualification Questionnaire (PQQ)
- 2) Use the E-accreditation System to prepare and submit (publish) a response to the VHCC ITT
- 3) Once Applicant Organisations have completed a response to a PQQ and VHCC ITT they must ensure that they submit ('publish') it.

Pre-Qualification Questionnaire

7.13 The PQQ's purpose is to enable us to assess whether an Applicant Organisation meets our minimum standards of suitability for a publicly funded legal aid contract and to gather certain other information about Applicant Organisations.

Important note if the Applicant Organisation has already expressed an interest or responded to the PQQ on the E-accreditation System in relation to another LSC ITT.

7.14 Applicant Organisations may have already 'expressed an interest' or in fact completed and submitted a response to the PQQ as part of responding to another LSC invitation to tender (eg a response to the 2010 Crime or Civil tendering exercises).

7.15 To avoid having to fill in a new PQQ each time Applicant Organisations submit a response to an LSC ITT, the E-accreditation System is designed so that it saves Applicant Organisations' latest response to the PQQ. However, this means that Applicant Organisations will need to review their response to ensure that they have answered all required questions and the information provided is accurate. If any changes are needed, Applicant Organisations will need to resubmit the PQQ.

7.16 As part of a response to the VHCC ITT, Applicant Organisations will be required to confirm that a response to the PQQ has been submitted and that the information contained in the last response remains accurate and up to date at the time of submitting the VHCC ITT.

7.17 The PQQ covers the following areas:

- Are there any mandatory grounds for rejection of the Applicant Organisation under regulation 23(1) of the Public Contracts Regulations 2006 (Applicants or Key Personnel convicted of conspiracy, bribery, fraud, money laundering)?

- Requirement to have one year's managerial experience and three years' experience of delivering specialist legal advice
- Requirement to have a complaints process, and no history of complaints being upheld and sanctions applied by a regulatory/complaints body, or upheld professional negligence claims, in the last 3 years (in relation to publicly funded areas of law only)
- Requirement to have appropriate professional indemnity, public liability and employers' liability insurance cover
- Requirement to comply with workplace legislation (data protection, equalities and health and safety at work) by having appropriate policies and procedures
- Business conduct including interventions and adverse findings by regulatory bodies, bankruptcy/insolvency, terminations for fault of public sector contracts, criminal convictions and failures to repay money owing on public sector contracts
- Confirmation that the Applicant Organisation has met its tax, VAT and NI liabilities
- Confirmation that the Applicant Organisation will hold an appropriate quality standard (SQM or Lexcel)

7.18 A full version of the PQQ can be found on the E-accreditation System through the 'PQQs open to all suppliers' link.

7.19 Some answers to PQQ questions will be assessed on a pass/fail basis and do not offer an opportunity for Applicant Organisations to give further exceptional circumstances. In relation to these types of questions the requirement to have the required experience is absolute and is a mandatory ground for failing the PQQ.

7.20 Other questions on the PQQ provide an opportunity to set out exceptional circumstances where an Applicant Organisation considers that it cannot meet the requirements but that exceptional circumstances apply which mean that the Applicant Organisation should be considered by us as still meeting the PQQ requirement.

7.21 It is the Applicant Organisation's responsibility to ensure that it makes full use of this opportunity in order to provide comprehensive details of any exceptional circumstances. We are under no obligation to seek further information or clarify a response – and will not do so where in our opinion this would give an Applicant Organisation an unfair opportunity to improve their response.

7.22 The opportunity to give exceptional circumstances cannot be used to provide other supplementary information to an Applicant Organisation's PQQ or VHCC ITT. Information incorrectly submitted, as exceptional circumstances that is intended only to enhance an Applicant Organisation's bid, will not be considered.

- 7.23 If an Applicant Organisation fails any PQQ question, the PQQ will be unsuccessful and none of the Applicant Organisation's applications will be considered further.
- 7.24 The PQQ also asks for information about financial sustainability and equalities and diversity through an Applicant Information Form. This information is not assessed (and the form is non-mandatory at the time of submitting the application), although we may use the financial sustainability information to inform future contract management. However, if Applicant Organisations do not submit this form at the time of application and are subsequently awarded a contract following assessment of the application, we will require Applicant Organisations to provide this information as part of the terms of the contract.
- 7.25 Therefore we do encourage Applicant Organisations to complete and attach the relevant Applicant Information Form (Private Sector or not for profit as appropriate), however, where an Applicant Information Form is not uploaded and submitted as part of a application, it will not result in an application being rejected. Guidance about filling out the financial section of the Applicant Information Form is available at www.legalservices.gov.uk > CDS > VHCCs > VHCC Accreditation.

VHCC Invitation to apply/tender (ITT)

- 7.26 Once logged into the e-accreditation system, Applicant Organisations can access the VHCC ITT from the home page by clicking on the 'Invitations to Tender (ITTs)' link which will bring up a list of all ITTs currently open or by clicking on the 'Projects' link.
- 7.27 Applicant Organisations should click on the VHCC ITT. This will bring up an overview of the VHCC ITT. Applicant Organisations should then 'express an interest' in the VHCC ITT and 'reply' to it (these links can be found on the left-hand side of the page).

What is in the VHCC ITT?

- 7.28 The VHCC ITT comprises of the following sections set out in a single page of the e-accreditation system:
- VHCC ITT questions
 - Indemnities
 - Declarations (see **paragraph 7.32**)

VHCC ITT questions

- 7.29 The VHCC ITT questions section will seek confirmation that the Applicant Organisation meets the Eligibility Criteria (set out at Annex A) to be considered for the VHCC Accreditation.

Indemnities

- 7.30 If you are an Applicant Organisation with limited liability (unless you are a registered charity) any VHCC Accreditation issued will be conditional upon the Applicant Organisation supplying the LSC with a completed, relevant indemnity form specified by us. Applicant Organisations that have already provided such a form as part of their 2010 Crime or Civil Contract tender need not resubmit this for the purposes of the VHCC Accreditation process. Those Applicant Organisations that have not provided such a form must do so by submitting it with their application form. The form must be signed by the ultimate owners of the Applicant Organisation and/or such persons as the LSC might reasonably regard as being controllers and/or senior managers of the Applicant Organisation and/or where the Applicant Organisation is a limited company, from any company which is a holding company.
- 7.31 If Applicant Organisations fail to provide the completed form (or notify us of any reasons for any delay) with their application form this will mean that the Applicant Organisation has failed to meet a condition of the VHCC Contract. This will entitle us to reject an application and/or entitle us not to proceed with any decision made to issue the Applicant Organisation an Accreditation Notice.

Declarations

- 7.32 Applicant Organisations must confirm that the information provided in the PQQ and VHCC ITT is accurate to the best of their knowledge, information and belief. Applicant Organisations must also confirm that they understand that if they have not answered every question on either form, the application may be rejected; further, that any material inaccuracy or omission in the information provided may lead to the application being treated as invalid and/or any Accreditation Notice issued being withdrawn or amended by the LSC.
- 7.33 Applicant Organisations must also declare that the person(s) involved in the preparation and collation of the application form were/are in no way, associated with the initial preparation by the LSC of the Accreditation documentation or with the subsequent evaluation, assessment, analysis, management and decision making process of the application.

What happens once a response to a VHCC ITT is 'published'?

- 7.34 Responses submitted to the VHCC ITT will be treated as open applications. This means that the LSC will be able to open any responses immediately after submission.
- 7.35 Therefore, once submitted, an Applicant Organisation will not be able to amend their VHCC ITT.
- 7.36 Responses will be automatically acknowledged when they are submitted.

Section 8: How the applications will be assessed

Opening procedure

- 8.1 The LSC will be able to open responses submitted by Applicant Organisations immediately after submission. An authorised LSC representative will open responses.

PQQ assessment

- 8.2 The PQQ consists of a series of yes/no questions that are designed to test compliance with our requirements.
- 8.3 We expect all Applicant Organisations to confirm compliance with all of our PQQ requirements. If an Applicant Organisation fails any question in the PQQ then they will not be considered further and their application will be unsuccessful.
- 8.4 We will assess on the basis of the latest information included in the response to the PQQ submitted to us.

VHCC ITT questions

- 8.5 The VHCC ITT questions reflect the minimum service requirements that we want all VHCC providers to meet.
- 8.6 The VHCC ITT will include a question about VHCC Supervisors. Applicant Organisations will be asked to commit to having at least one VHCC Supervisor in post from the Stage 1 Start Date of each VHCC until the Conclusion of that VHCC. The assessment of the VHCC Supervisor's experience will be conducted by the CCU immediately prior to signing the VHCC Contract. This assessment will determine the status of the Accreditation Notice (see **paragraph 8.8** below).
- 8.7 All of the questions asked in this section will be equally weighted and assessed on the basis of pass or fail and any Applicant Organisation unable to confirm that they meet all our requirements will have their response to the VHCC ITT rejected.

Issuing the Accreditation Notice

- 8.8 We will notify Applicant Organisations electronically via the E-accreditation System whether an application has been successful. If an application is successful, the LSC will issue a Conditional Accreditation Notice. The Notice is confirmation that the Applicant Organisation satisfies Criteria 1 to 16 inclusive of the Eligibility Criteria at Annex A and that they have committed to have a VHCC Supervisor in post from the Stage 1 Start Date of each VHCC until the Conclusion of that VHCC (Criteria 17 and 18 of the Eligibility Criteria). The Conditional Accreditation Notice becomes a Full Accreditation Notice for

a case when, at the start of the 2010 VHCC Contract (for organisation), the LSC confirms that the VHCC Supervisor is in post.

- 8.9 The organisation retains a Conditional Accreditation for any future VHCC, ie. the organisation will be asked to confirm the status of their VHCC Supervisor each time they are offered a VHCC Contract.

Reassessment

- 8.10 Where an application (or any part it) is unsuccessful or rejected, the Applicant Organisation will be given written reasons as to why it was unsuccessful or rejected.

- 8.11 There will be no right to apply for a reassessment against a decision to reject an application if it is incomplete.

- 8.12 There will be a right to apply for a reassessment if an application is unsuccessful in the following circumstances:

- (a) where the Applicant Organisation does not pass the PQQ;
- (b) where the Applicant Organisation does not pass the VHCC ITT;
- (c) where the Applicant Organisation does not comply with paragraph [10.2] **and** a notice that the application is unsuccessful stipulates a right to apply for a reassessment.

- 8.13 Applications for reassessment will only be accepted if made through the E-accreditation System and must be received prior to the applicable deadline(s) set out in the table below. An application for reassessment submitted after the applicable deadline, in any other form or by any other method will not be considered.

Where appropriate, Applicant Organisation to submit application for reassessment	Within one week of receipt of LSC decision
LSC Legal Director to consider application for reassessment and follow procedure set out at 9.13 of this IFA.	Determination made within one week of receipt of the application for reassessment

- 8.14 The LSC's Legal Director (or the Legal Director's appointed representative) will review all applications for reassessment, and will determine the procedure and will decide whether to invite or require any further information from the Applicant Organisation, before making a determination.

- 8.15 There will be no further right to apply for reassessment.

Section 9: Terms and Conditions of Application

- 9.1 The Applicant Organisation's participation in the accreditation exercise for publicly funded VHCC criminal defence services covered by the VHCC Contract is governed by these Terms and Conditions of Application. The Applicant Organisation must also comply with the User Agreement governing use of the LSC E-accreditation System and all rules and instructions set out in any Application Document.
- 9.2 Submission of an application which fails to comply with any Terms and Conditions of Application, User Agreement or other rules and instructions shall, without affecting the Applicant Organisation's liability for non compliance, entitle the LSC to reject an application, assess the application as unsuccessful and/or entitle the LSC not to proceed with any decision made to issue the Applicant Organisation an Accreditation Notice or entitle the LSC to withdraw the Accreditation Notice.
- 9.3 By submitting an application, the Applicant Organisation is acknowledging they have read and understood the VHCC Arrangements 2010 and the VHCC Contract.
- 9.4 The Applicant Organisation acknowledges that the issuing of a VHCC Accreditation does not guarantee any amount of VHCC Work. VHCC Work is dependent on successful Applicant Organisations attracting clients.
- 9.5 All applications and applications for reassessment must be submitted on the E-accreditation System at www.legalservices.bravosolution.co.uk. An application or application for reassessment submitted in any other form, or by any other method, will not be considered.
- 9.6 For an application to be complete, it must consist of a response to the Pre-Qualification Questionnaire (which, if applying for the SQM must include submission of the Applicant Organisation's Office Manual) **and** a response to the VHCC ITT.
- 9.7 The Applicant Organisation must not amend or alter any document comprising part of the application after they have submitted the application.
- 9.8 After submission any information or documents submitted in response to a request for clarification or further information (in accordance with **paragraph 9.22**) will also form part of the Applicant Organisation's application.
- 9.9 In the event of any conflict between the information, answers or documents submitted as part of an application, the conflict will be resolved by accepting the information, answer or document least favourable to the Applicant Organisation.
- 9.10 It is the responsibility of the Applicant Organisation to make sure that an application is fully and accurately completed. The LSC is under no obligation

to contact the Applicant Organisation to clarify its application or to obtain missing information.

- 9.11 It is the responsibility of the Applicant Organisation to make sure that it submits an application in good time to take account of any problems or delays in uploading the application and documents requested by the LSC, accessing the LSC E-accreditation System owing to heavy usage, internet access or with the Applicant Organisation's own IT systems.
- 9.12 The Applicant Organisation is solely responsible for the costs and expenses incurred in connection with the preparation and submission of application and all other stages of the application process. Under no circumstances will the LSC, or any of its employees, be liable for any costs.
- 9.13 The Applicant Organisation must reply to all the questions in order to respond to the PQQ and the VHCC ITT, even if it has previously provided this information or if it thinks the LSC is already aware of it (e.g. if the Applicant Organisation holds an existing contract with the LSC).
- 9.14 The Applicant Organisation must not submit an application which contains any information which the Applicant Organisation knows to be, or has reason to be, false or misleading in accordance with Clause 18 of the VHCC Contract Standard Terms. If information given by the Applicant Organisation is subsequently found to be false or misleading, this may lead to the Applicant Organisation's application being unsuccessful and/or entitle the LSC not to proceed with any decision made to issue an Accreditation Notice, enter into a VHCC Contract with the Applicant Organisation or entitle the LSC to terminate the VHCC Contract pursuant to Clause 25 of the Standard Terms.
- 9.15 If, because an Application Organisation has registered more than once on the LSC e-accreditation system or, for any other reason, more than one response to the PQQ or a VHCC ITT is received by the LSC the latest response submitted by an Applicant Organisation shall be the response that is considered by the LSC in the assessment process.
- 9.16 Where an application is unsuccessful (following the outcome of any reassessment), **paragraphs 1.17 to 1.19** apply.
- 9.17 The person who submits an application must be a member of the Applicant Organisation's Key Personnel with appropriate authority to submit an application for the Applicant Organisation.
- 9.18 An application will be unsuccessful where, following assessment, the Applicant Organisation:
- 1) fails to pass the PQQ;
 - 2) fails to pass the VHCC ITT.
- 9.19 The LSC reserves the right to amend at any time any of the Application Documents and the VHCC Contract or to issue clarifications (including in

response to questions and answers from Applicant Organisations) or to correct errors or omissions provided that in all cases any such amendment is not sufficiently material to amount to a new application or contract. Any notices of amendment etc will be published on the VHCC Accreditation page of the LSC Website and sent by email to all Applicant Organisations that have expressed an interest in the VHCC ITT and/or PQQ.

- 9.20 A submitted application, which does not comply with any additional or alternative Terms and Conditions of Application, rules, conditions of VHCC Contract and instructions (or other qualifications) introduced in accordance with **paragraph 9.19** above, may be rejected or unsuccessful.
- 9.21 Any communications about the Application Documents will be given by notice published on the VHCC Accreditation page of the LSC Website and sent by email to all Applicant Organisations that have expressed an interest in the VHCC ITT or PQQ.
- 9.22 Should the LSC, at any time during the application process, request the Applicant Organisation to give additional information/clarification the Applicant Organisation should be prepared to provide additional information and/or clarify any aspect of an application by the deadline set out in the request. The LSC reserve the right to validate any part of the Applicant Organisation's application and information subsequently given to it.
- 9.23 The LSC reserves the right to cancel the invitations to apply or PQQ covered by this IFA in their entirety or in part, and not to proceed to issue Accreditation Notices or to suspend any stage of the process at any time at its absolute discretion.
- 9.24 The Applicant Organisation agrees to keep any application valid and capable of acceptance by the LSC up to the Stage 1 Start Date of any VHCC.
- 9.25 The right to apply for reassessment for unsuccessful Applicant Organisations is limited to that set out in **paragraphs 8.10 to 8.15**.
- 9.26 After assessment is complete, the LSC will retain copies of applications for such time as it considers reasonable to satisfy the LSC's audit obligations and for any associated contract management purposes.
- 9.27 All intellectual property rights in the Application Documents and any associated documents are and shall remain the LSC's property.
- 9.28 While the LSC has taken all reasonable steps to ensure, as at the date of the issue of the Application Documents, that the facts which are contained in the Application Documents and associated documents are true and accurate in all material respects, it does not make any representation or warranty as to the accuracy or completeness or otherwise of these documents, or the reasonableness of any assumptions on which these documents may be based.

- 9.29 All information supplied by the LSC to the Applicant Organisation or potential applicants, including that within the Application Documents, is subject to that Applicant Organisation's own due diligence. The LSC accepts no liability to the Applicant Organisation or potential applicants whatsoever resulting from the use of the Application Documents, or any omissions from or deficiencies in them.
- 9.30 Without prejudice to any warranties given, the rules, instructions, conditions of the VHCC Contract and Terms and Conditions of Application contained in this IFA, do not form a separate collateral contract between the Applicant Organisation and the LSC. The relevant parts of the Applicant Organisation's application may form part of any VHCC Contract subsequently awarded.
- 9.31 If an Applicant Organisation changes its status or any material element of its application including management or Key Personnel, between submitting its application and being issued an Accreditation Notice and/or between being issued an Accreditation Notice and entering into a VHCC Contract, the LSC must be informed of this as soon as possible in writing. The LSC reserve the right (depending on the nature and effect of the change in status) to withdraw any Accreditation Notice and/or revoke any VHCC Contract and/or may request the new Applicant Organisation (post-change) to submit a fresh application.
- 9.32 The Applicant Organisation must not, and must ensure that its employees, partners, directors, Key Personnel and agents must not:
- (a) canvass any officers, employees, agents or advisers of the LSC in connection with this application process; or
 - (b) offer or agree to pay or give any sum of money, inducement or valuable consideration (directly or indirectly) to any person for doing or having done or causing or having caused to be done in relation to this application, any act or omission.
- 9.33 The Applicant Organisation must not enter into any agreement or arrangement with any other person or organisation about whether it should or should not apply, or to fix or adjust the amount of any application, or collude with any such other person or organisation in any way, in this application process.
- 9.34 Nothing in these Terms and Conditions prevents the Applicant Organisation from approaching or recruiting employees or agents to undertake work covered by this application process on behalf of the Applicant Organisation.
- 9.35 If you are an Applicant Organisation with limited liability (unless you are a registered charity) any VHCC Accreditation issued will be conditional upon the Applicant Organisation supplying the LSC with a completed, relevant indemnity form specified by us. Applicant Organisations that have already provided such a form as part of their 2010 Crime or Civil Contract tender need not resubmit this for the purposes of the VHCC Accreditation process. Those

Applicant Organisations that have not provided such a form must do so by submitting it with their application form. The form must be signed by the ultimate owners of the Applicant Organisation and/or such persons as the LSC might reasonably regard as being controllers and/or senior managers of the Applicant Organisation and/or where the Applicant Organisation is a limited company, from any company which is a holding company.

- 9.36 If Applicant Organisations fail to provide the completed form (or notify us of any reasons for any delay) with their application form this will mean that the Applicant Organisation has failed to meet a condition of the VHCC Contract. This will entitle us to reject an application and/or entitle us not to proceed with any decision made to issue the Applicant Organisation an Accreditation Notice.

Confidentiality and Freedom of Information Act 2000

- 9.37 The LSC may share any information contained in an Applicant Organisation's application with Bravo Solutions Limited for the purposes of administering the application process.
- 9.38 The Applicant Organisation should note that under the Freedom of Information Act 2000 (the "FOIA") the LSC may be required to disclose details of its application in response to a request from third parties, either during or after the application process. The LSC can only withhold information where it is covered by a valid exemption as set out in the FOIA.
- 9.39 If an Applicant Organisation is concerned about possible disclosure it should contact the LSC and clearly identify the specific parts of the application that it consider commercially sensitive or confidential (within the meaning of the FOIA), the harm that disclosure may cause and an estimated timescale for that sensitivity. The Applicant Organisation should familiarise itself with the Information Commissioner's current position on the disclosure and non disclosure of commercially sensitive information and therefore should not notify us of blanket labelling of all its application as confidential.
- 9.40 The Applicant Organisation should also be aware that the receipt by the LSC of information marked 'confidential' does not mean that the LSC accepts any duty of confidence in relation to that marking. Neither does the LSC guarantee that information identified by the Applicant Organisation as confidential will not be disclosed where the public interest favours disclosure pursuant to our obligations under FOIA.
- 9.41 It is important to note that the sensitivity of information is likely to change over time and therefore it is likely that general Contract details will be disclosed once the application process is complete.
- 9.42 The LSC, will collect, hold and use personal data obtained from and about the Applicant Organisation and its Key Personnel during the course of the application process ("Personal Data").

- 9.43 The Applicant Organisation must agree to such Personal Data being collected, held and used in accordance with and for the purposes of administering the application process as contemplated by the Application Documents and for contract management of any Contract subsequently awarded.
- 9.44 The Applicant Organisation warrants, on a continuing basis, that it has:
- a) all requisite authority and has obtained and will maintain all necessary consents required under the Data Protection Regulations (which means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner);and
 - b) otherwise fully complied with all of its obligations under the Data Protection Regulations, in order to disclose to the LSC the Personal Data, and allow LSC to carry out the application process. The Applicant Organisation shall immediately notify the LSC if any of the consents is revoked or changed in any way which impacts on the LSC's rights or obligations in relation to such Personal Data.

Section 10: Definitions

Set out below are some summary definitions Applicant Organisations may find helpful.

“Applicant Organisation” means a single legal entity applying to deliver VHCC criminal defence services.

“Application Documents” means this IFA (and supporting annexes), the PQQ and the VHCC ITT.

“Bravo Solutions” is the software provider of the e-accreditation system.

“Category of Law” has the same meaning as the legal definition of each Category of Law set out in a separate document called “Category Definitions 2010” which has been published on the LSC website;

“CCU Contract Manager” means the nominated CCU representative who will be responsible for the day-to-day running of the 2010 VHCC Contract (for organisations);

“Conclusion” means either (i) the date the final Claim for the VHCC has been paid by the LSC and there is no appeal in respect of the payment; or (ii) the date the final payment is made on the VHCC following any decision made on appeal in respect of payment in accordance with this Contract; or (iii) the date of any decision to reject the appeal in respect of payment is made on the VHCC in accordance with this Contract;

“E-accreditation System” means the online system that will be used to run the application process and through which Applicant Organisations must submit applications.

“Eligibility Criteria” means in relation to organisations (and their employed Advocate), the criteria as set out in Annex A of the VHCC Arrangements 2010 and Annex A of this IFA;

“Information Commissioners Office (ICO)” is an independent authority sponsored by the Ministry of Justice, to oversee the Data Protection Act, the Freedom of Information Act and the Environmental Information Regulations.

“Equalities Legislation” refers to the:

- Equal Pay Act 1970;
- Sex Discrimination Act 1975;
- Race Relations Act 1976;
- Disability Discrimination Act 1995;
- Employment Rights Act 1996;
- Human Rights Act 1998;
- Sex Discrimination (Gender Recognition) Regulation 1999;

Part Time Workers (Prevention Of Less Favourable Treatment) Regulations 2000;
Fixed Term Employees (Prevention Of Less Favourable Treatment) Regulations 2000;
Employment Act 2002;
Employment Equality (Sexual Orientation) Regulations 2003;
Employment Equality (Religion Or Belief) Regulations 2003;
Gender Recognition Act 2004;
Civil Partnership Act 2004;
Equality Act 2006;
Work And Families Act 2006;
Employment Equality (Age) Regulations 2006; or

any other equivalent legislation in a foreign state where the Applicant Organisation employs staff or engages in business activities;

“Experience” means substantial involvement in the case. This would involve (but is not limited to) for example:

- (a) the overall supervision of the case; and/or
- (b) sole control of a number of important elements of the case, such as:
 - (i) instructing experts;
 - (ii) taking the client’s instructions;
 - (iii) instructing counsel;
 - (iv) identifying and dealing with complex legal issues;
 - (v) drafting legal argument documentation; or
 - (vi) trial preparation for/by counsel and/or advocacy.

Experience does not include (for Litigators or Advocates) travel or waiting or (for Litigators) attendance at trial;

“Experience Information Form” means the document used by Applicant Organisations to capture and provide case information as evidence in support of the organisation based experience criteria (Criterion 16 of the Eligibility Criteria at Annex A);

“Invitation to Apply/Tender” or *“VHCC ITT”* means the specific VHCC criminal defence services invitation to tender that Applicant Organisations can apply against. This can be accessed via the E-accreditation System.

“Key Personnel” means any person who has powers of representation, decision or control of an organisation including partners, directors and trustees.

“Mandatory Form(s)” means forms (or other documents or information) that must be submitted as part of an application;

“Partnership Voluntary Arrangement or PVA” is a formal agreement with the partnership’s creditors to repay their debts either in full or more likely partially over a fixed period of time.

“Peer Review” and *“Independent Peer Review”* means the independent assessment, by experienced peer practitioners, of the quality of advice and legal work provided by the Applicant Organisation;

“Pre-Contract” means work performed from the date the Representation Order was granted until the Stage 1 Start Date;

“Prepared to Trial” means that, where possible, all pre-trial work has been completed and the key issues/points to be raised at trial have been identified, whether or not the trial commences;

“Publish” means to submit the final version of the Applicant Organisation’s completed PQQ and VHCC ITT to the LSC.

“Qualifying Case” means, in relation to the Eligibility Criteria, a prosecution or defence case, where:

- (a) when funded publicly, the Representation Order (or where applicable the date the case was committed to the Crown Court) was granted during the Qualifying Period, the LSC and/or prosecution agency classified the case as a VHCC and contracted the case;
- (b) when funded privately, the Representation Order (or where applicable the date the case was committed to the Crown Court) was granted during the Qualifying Period and the trial in that case lasted or was estimated by the court to last more than 40 days;
- (c) whether funded publicly or privately, the Representation Order (or where applicable the date the case was committed to the Crown Court) was granted during the Qualifying Period, which was notified to the LSC and/or prosecution agency with trial estimates of over 40 days and where the LSC and/or prosecution agency acknowledged the case satisfied the VHCC definition but decided not to contract;
- (d) whether funded publicly or privately, a case, not contracted as a VHCC, where the Representation Order (or where applicable the date the case was committed to the Crown Court) was granted during the Qualifying Period and the trial in that case lasted or was estimated by the court to last no fewer than 25 and no more than 40 days inclusive and:
 - (i) the case is prosecuted by the Serious Fraud Office; or
 - (ii) the case is a Terrorism Case.
- (e) whether funded publicly or privately, a case, not contracted as a VHCC, where the Representation Order (or where applicable the date the case was committed to the Crown Court) was granted during the Qualifying Period and the trial in that case lasted or was estimated by the court to last no fewer than 25 and no more than 40 days inclusive and at least two of the following criteria (i) to (iv) apply:

- (i) there are/were more than five defendants;
- (ii) there are/were at least 10,000 pages of served prosecution evidence;
- (iii) there are/were at least 10,000 pages of unused or third party material;
- (iv) the case is/was 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.

“Qualifying Period” means the six-year period preceding the date of the VHCC Accreditation Application;

“Regulatory Bodies” means the Law Society, the Solicitors’ Regulation Authority, Bar Council, Bar Standards Board or the equivalent organisation in a foreign jurisdiction.

“Rules for Applicant Organisations” or *“IFA”* means this document and supporting annexes and appendices that contains information, instructions, rules, Terms and Conditions of Application that will govern the application processes.

“Specialist Legal Advice” means giving legal advice where the Applicant Organisation is taking action on behalf of the clients in order to move the case forward. This includes negotiation and representing the client to third parties on the telephone, by letter or face to face. This also includes providing representation, litigation and/or advocacy services. It does not include triage or initial general advice.

“Stage 1 Start Date” means the date the contract was made, as specified in the 2010 VHCC Contracts. For the avoidance of doubt, this is not the Contract Start Date;

“Terms and Conditions of Application” are the terms and conditions set out at **Section 9** of this IFA.

“VHCC” means Very High Cost (Crime) Cases as defined in the Criminal Defence Service (General) (No. 2) Regulations 2001 (as amended);

“VHCC Accreditation Notice” means the document issued, either in conditional or full form, to Applicant Organisations that are successful in their application for VHCC Accreditation;

“VHCC Panel Member Contract” means the contract awarded to applicants that were successful in their application for VHCC Panel membership in 2007;

“VHCC Supervisor” means a partner, principal or employee of the Applicant Organisation who is authorised to and actively supervises in accordance with the VHCC Arrangements 2010;

Annex A: Eligibility Criteria for Applicant Organisations

1.	The Applicant Organisation and its Key Personnel must not be in breach of the provisions of regulation 23 (1) of the Public Contracts Regulations 2006 (as amended).
2.	<p>The Applicant Organisation and its Key Personnel must not have been convicted of:</p> <ul style="list-style-type: none"> ▪ Conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of Council Joint Action 98/733/JHA (as amended) ▪ Corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 ▪ Corruption within the meaning of section 1 of the Prevention of Corruption Act 1906 (as amended) ▪ The offence of bribery ▪ Fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of: <ul style="list-style-type: none"> - the offence of cheating the Revenue - the offence of conspiracy to defraud - fraud or theft within the meaning of the Theft Acts of 1968 and 1978 - fraudulent trading within the meaning of section 458 of the Companies Act 1985 - defrauding the customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994 - an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993 - destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968 ▪ Money laundering within the meaning of the Money Laundering Regulations 2003 ▪ Any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant state.
3.	At least one member of the Applicant Organisation's Key Personnel must be able to demonstrate at least one year's experience at a managerial level in the five-year period preceding the date of the VHCC Accreditation Application.
4.	At least one member of the Applicant Organisation's Key Personnel must be able to demonstrate at least three years experience delivering Specialist legal advice to the public in the five-year period preceding the date of the VHCC Accreditation Application.

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5.	The Applicant Organisation must have, or commit to having in place by the start date of the contract, a written complaints process and/or record/log of client complaints.
6.	Unless exceptional circumstances apply, the Applicant Organisation and its Key Personnel must not, in the three-year period preceding the date of the VHCC Accreditation Application, have received any client or non-client complaints (irrespective of what organisation the Key Personnel were working for at the time) that have been referred to and upheld and sanctions applied by an external Regulatory Body / complaints body in relation to any Category of Law for which public funding is available, irrespective of how the work was funded.
7.	Unless exceptional circumstances apply, the Applicant Organisation and its Key Personnel must not, in the three-year period preceding the date of the VHCC Accreditation Application, have claims for professional negligence from clients or non-clients (irrespective of what organisation the Key Personnel were working for at the time) that have been upheld and sanctions applied by the appropriate Regulatory Body / complaints body or of successful claims of professional negligence in relation to any Category of Law for which public funding is available, irrespective of how the work was funded.
8.	<p>Unless exceptional circumstances apply, the Applicant Organisations must be able to demonstrate that they have (or will have by the start date of the contract) the following insurance in place to protect them, their employees, and the public and to offer effective financial redress to clients:</p> <ul style="list-style-type: none"> ▪ Professional Indemnity Insurance at the level required by us as set out at Clauses 7.4 and 7.5 of the 2010 VHCC Contract Standard Terms. ▪ Public Liability Insurance compliant with current applicable statutory requirements. ▪ Employer’s Liability Insurance compliant with the current applicable statutory requirements.
9.	<p>Unless exceptional circumstances apply, the Applicant Organisations must comply with all relevant workplace legislation as it currently stands, and in particular, with the following:</p> <ul style="list-style-type: none"> ▪ Health and Safety At Work Act 1974 ▪ Equalities Legislation

10.	<p>The Applicant Organisation must:</p> <ul style="list-style-type: none"> ▪ If the Applicant Organisation intends to be an employer during the life of the contract: <ul style="list-style-type: none"> - have written policies in place covering the Applicant Organisation as an employer and as a provider of services to clients, requiring compliance with the statutory obligations under the Equalities Legislation applicable in England and Wales (or equivalent legislation in the countries in which the Applicant Organisation employs staff); - have a written recruitment and selection policy and procedure that aims to ensure equality of opportunity in employment practices; ▪ Ensure that all current and/or likely clients in the local area(s) in which the Applicant Organisation operates: <ul style="list-style-type: none"> (i) have access to their service notwithstanding any disability; (ii) have any language needs (including but not limited to Welsh speakers) effectively catered for (e.g. by bi-lingual or translation service); ▪ Have adequate technical measures in place, including but not limited to its Information Technology (IT) systems, to keep personal data secure at all times; ▪ Have written policies in place that cover Data Protection – the commitment of the Applicant Organisation’s Key Personnel and all managers to comply with the principles of the Data Protection Act 1998 as amended (or equivalent in the countries in which they operate) and the identification of the person who has overall responsibility for compliance and raising staff awareness; ▪ Have written policies in place that cover Information Risk Management; ▪ Have written policies in place that cover Information Security; ▪ Have written policies in place that cover sanctions if the above policies are not complied with; ▪ Provide training (and/or refreshers) and development on at least an annual basis for managers, staff and/or volunteers in equality and diversity obligations and the Applicant Organisation’s equal opportunity policies and procedures; ▪ Have training (and/or refresher) plans in place to raise and continue to maintain awareness of data protection and information security policies and procedures within the Applicant Organisation; and ▪ Be registered with the Information Commissioner’s Office as a data controller as required under the Data Protection Act 1998 as amended (or equivalent in the countries in which the Applicant Organisation operates), unless the organisation is exempt from registering.
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<p>11.</p>	<p>Unless exceptional circumstances apply, the Applicant Organisation and its Key Personnel must not have been / are not:</p> <ul style="list-style-type: none"> ▪ The subject of findings of unlawful discrimination by an Employment Tribunal, the Employment Appeal Tribunal or any other court or in comparable proceedings in any other jurisdiction, in the three-year period preceding the date of the VHCC Accreditation Application; or ▪ The subject of formal investigations by the Equalities and Human Rights Commission (formerly Commission for Racial Equality, Disability Rights Commission) and the Equal Opportunities Commission or any comparative body in any other jurisdiction, in the three-year period preceding the date of the VHCC Accreditation Application.
<p>12.</p>	<p>Unless exceptional circumstances apply, the Applicant Organisation and its Key Personnel (as applicable) must not have been / are not:</p> <ul style="list-style-type: none"> ▪ The subject of adverse findings, disciplinary sanctions, or other controls or restrictions on their authority to practice relating to act(s) of grave misconduct or breach of professional duties in the course of their business or profession imposed by the Legal Complaints Service (LCS), Solicitors Regulation Authority (SRA), Solicitors' Disciplinary Tribunal, Bar Council, Bar Standards Board (BSB), Adjudication Panel, Disciplinary Tribunal or any equivalent Regulatory Body or complaints body (including, but not limited to, restrictions on solicitors' practising certificates and SRA regulatory agreements) at any time; ▪ In a state of bankruptcy, compulsory winding up, administration, composition with creditors, Individual Voluntary Agreements (IVA), Partnership Voluntary Agreements (PVA) or subject to similar proceedings under the law of any other state; ▪ In receipt of a notice to terminate any contract due to fault (ie. breach of contract) in the three years preceding the date of the VHCC Accreditation application, in relation to any contract with a public sector organisation (including the LSC); ▪ Received a notice to terminate due to fault in the three years preceding the date of the VHCC Accreditation application that includes terms preventing them from applying for any other contract with a public sector organisation (including the LSC); ▪ Convicted of any criminal offence other than those deemed spent under the Rehabilitation of Offenders Act 1974, or any equivalent legislation; ▪ The subject of any intervention by the SRA or any equivalent process by another Regulatory Body in the three years preceding the date of the VHCC Accreditation application; ▪ Upon written request, failed to repay any overpayments, payments on account or other sums owed to a public sector body for which it provides services (including the LSC) by any applicable deadline; or ▪ Upon written request, failed to adhere to a repayment agreement.

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13.	<p>Unless exceptional circumstances apply, the Applicant Organisation, its Key Personnel (and any organisation for whom any of the Key Personnel are or were directors/partners/trustees or have or had powers of representation, decision, or control) have, in each of the last three years preceding the date of the VHCC Accreditation Application (or, if the Applicant Organisation has been trading for less than three years, in each full trading year to date) discharged all its/their liabilities in regard to the following within six months of them falling due:</p> <ul style="list-style-type: none"> ▪ VAT ▪ National Insurance Contributions (Class 2 and/or Class 4) ▪ Corporation Tax or Income Tax.
14.	<p>The Applicant Organisation must hold and comply with the Specialist Quality Mark (SQM) or Lexcel quality mark or commit to achieving the SQM within the designated timescales.</p>
15.	<p>The applicant must have been assessed in its most recent Peer Review as:</p> <ol style="list-style-type: none"> a) PR3 minimum on a general crime work Peer Review; or b) “Threshold Competence or Better” on a Peer Review that includes VHCC contracts.
16.	<p>The Applicant Organisation and/or any of its Key Personnel or employees must have Experience of:</p> <ol style="list-style-type: none"> a) At least three Qualifying Cases, at least two of which must have been Prepared to Trial; or b) 500 hours on Qualifying Cases conducted in the Qualifying Period.
17.	<p>The Applicant Organisation must have at least one VHCC Supervisor in place for each VHCC from the Stage 1 Start Date to the Conclusion of that VHCC.</p>
18.	<p>Each VHCC Supervisor must be either a partner, solicitor, solicitor-advocate or employed barrister and:</p> <ol style="list-style-type: none"> a) have eight years’ post-qualification experience; and either b) where the case is a Non-Fraud VHCC, 1,050 hours conducted within the three year period preceding the date of the VHCC Supervisor application on Serious Crime Cases; or c) where the case is a Fraud VHCC, 1,050 hours conducted within the three year period preceding the date of the VHCC Supervisor application on Serious Crime Cases, with at least 700 of those hours on Serious Fraud Work.