

Dated

2007

(1) Legal Services Commission

(2) [*PROVIDER*]

Criminal Defence Service Direct
DRAFT

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BETWEEN

- (1) The Legal Services Commission whose head office is situated at 85 Grays' Inn Road, London, WC1X 8TX (the "**LSC**"); and
- (2) [*PROVIDER NAME*] (registered as a limited company in England under number [*NUMBER*]) whose registered office is at [*ADDRESS*] (the "**Provider**").

BACKGROUND

- (A) The LSC wishes to enter into a contract for the provision of telephone based advice to suspects detained at any police station in England and Wales, known as the Criminal Defence Service Direct ("CDS Direct"). Telephone advice will be limited to Police Station Telephone Only advice cases as stipulated by the General Criminal Contract. CDS Direct is designed to (i) improve the speed at which detained clients can receive legal advice, (ii) reduce the number of unnecessary callouts of solicitors and (iii) provide better value for money for public funds.
- (B) The Provider is a supplier of legal services as specified in the General Criminal Contract and, in particular, has experience in the provision of telephone advice services.
- (C) The LSC wishes to appoint the Provider to fulfil the LSC's requirement for CDS Direct and the Provider wishes to accept such appointment, each upon the terms and conditions set out in this Agreement.

OPERATIVE CLAUSES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following expressions shall have the following meanings unless the context otherwise requires:

"Advice and Assistance"	advice and assistance within the meaning of s13, Access to Justice Act 1999.
"Agreement"	this agreement and its schedules as amended from time to time
"Anticipated Demand"	shall have the meaning set out at clause 6.1
"Approved or Approval"	the written sanction of the Contract Manager.
"Assets"	any item of infrastructure, Networks,

Hardware, software, equipment, furniture, consumables, data, records and any premises which the Provider uses to perform the Services

"Bid Documents"	the Provider's bidding documents including their response to the invitation to submit an expression of interest and their application responding to the Invitation to Tender
"Business Continuity Plan "	the business continuity and disaster recovery plans designed to ensure the Provider is able to continue to provide the Services in the event of certain specified disruptive incidents, based on the plan set out in Schedule 11
"Business Day"	a day (other than a Saturday or Sunday) on which banks are generally open for deposit taking in the City of London
"Case"	each client referral from the DSCC to the Provider for Police Station Telephone Advice Only
"Case Record"	the record made by the Provider for each client of advice provided on the ECMS
"CDS Direct Adviser"	any person engaged by the Provider to provide CDS Direct Services.
"Change Control Procedure"	the procedure for making changes to this Agreement set out in Schedule 7
"Change Control Notice"	a notice issued pursuant to the Change Control Procedure
"Charges"	the charges for the Services set out in Schedule 1 , as may be varied from time to time by the parties in accordance with the terms of this Agreement
"Closed Case"	a Case that has been closed on the ECMS following provision of Police Station Telephone Advice
"Commencement Date"	the date of this Agreement

“Confidential Information”

will include :

- (a) any information of whatever nature relating to the disclosing party which is by its nature confidential;
- (b) any information relating to any CDS Direct client or case and any LSC Data or LSC Materials

but will exclude any part of such information which (and which can be shown by documentary evidence):

- (i) is or becomes available in the public domain without breach of this Agreement or any confidentiality agreement or undertaking entered into prior to this Agreement by the parties;
- (ii) the receiving party can prove was lawfully in its possession free of any restriction as to its use or disclosure before the date of the disclosure;
- (iii) is or was received by the receiving party from any third party not acting on behalf of the party and where such third party having the right lawfully to disclose such information; or
- (iv) the disclosing party has given prior written approval for its disclosure by the other party

“Contract Manager”

each of the Provider’s and LSC’s Personnel responsible for the day-day management of the Agreement

“Contract Period”

the period from the Services Commencement Date until the date of expiry or termination of this Agreement (whether by effluxion of time or for default or otherwise in accordance with the terms of this Agreement)

“Contract Year”	the period of 12 months commencing on the Service Commencement Date and thereafter each consecutive period of 12 months (and in the final Contract Year the period between the last anniversary of the Service Commencement Date and the date of expiry or termination of this Agreement)
“Dispute Resolution Procedure”	the procedure for resolution of disputes set out in Schedule 8
“Duty Solicitor”	As defined in the Criminal Defence Service Duty Solicitor Arrangements 2001
“Duty Solicitor Call Centre”	the call centre set up and run by a service provider for the LSC.
“Duty Solicitor Scheme”	any scheme governed by the Criminal Defence Service Duty Solicitor Arrangements 2001 which provides Advice and Assistance at Police Stations in England and Wales
“Electronic Case Management System” or ECMS	means the electronic case management system used by the Provider to record, manage and control cases
“Employed Solicitors Code”	the Solicitors Regulation Authority Employed Solicitors Code 1990 (as amended)
“First Assist”	First Assist Plc
“FOIA”	Freedom of Information Act 2000
“Force Majeure”	any cause preventing a party from performing any or all of its obligations (other than payment) which is beyond its reasonable control including those which arise from or are attributable to acts of war, terrorism, riots, civil disorders, labour actions (other than as stated below), rebellions or revolutions or act of God and which cannot be avoided by the party taking reasonable steps. The following causes preventing a party from performing any or all of its obligations shall not be Force Majeure: default or delay of the Affected party (“Affected Party” having the meaning given to

such term in **clause 30** or subcontractors (unless the default or delay of the Affected Party or a subcontractor is itself caused by an event of Force Majeure); any event which is expressed to be, or could practically be managed by a Business Continuity Plan; regulatory acts of governmental agencies that were reasonably anticipated at the date of execution of this Agreement; strikes; lockouts or industrial action of Affected Party's workforce (unless comprising general strikes, lockouts or industrial action, not just affecting the Affected Party's workforce); or any event attributable to the wilful act or neglect of the Affected Party

"General Criminal Contract"	the contract between the LSC and solicitors for the provision of publicly funded criminal legal work as detailed at Schedule 15 and as replaced by the Unified Contract in April 2008
"Good Industry Practice"	the exercise of levels of skill, care and diligence in accordance with best industry practice and standards for performing services of a similar type to the Services practised by high quality service providers
"Hours Worked Report"	the electronic data the Provider will submit to the LSC monthly showing the hours worked on open cases.
"Informal Performance Quality Reviews"	informal monthly meetings under clause 15.5
"Initial Period"	the six Month period from the Services Commencement Date
"Intellectual Property Rights"	patents, trade marks, design rights (whether registered or otherwise), applications for any of the foregoing, copyrights (including all rights in software), database rights, know-how, trade or business names, and other similar rights having equivalent or similar effect to any of them whether arising or granted under the

laws of England or any other jurisdiction

"Invitation to Tender"	the document of that name issued by the LSC on [DATE] inviting bids for the CDS Direct service
"Key Contact"	the Contract Manager, the Relationship Manager and the Senior Executive
"Key Performance Indicators or "KPI's"	the performance standards set by the LSC for providers to meet when performing the Services as described in Schedule 3
"Know-How"	techniques, experience, manner of working, methods, approaches and concepts
"Language Line"	translation facilities funded by the LSC and provided by [Language Line Limited] or other such party as the LSC shall notify to the Provider in writing from time to time for contemporaneous telephone translation for Clients in receipt of Services and who do not speak English as their first language
"League Table"	the table setting out each of the CDS Direct Provider's performance results against the Key Performance Indicators as referred to in clause 15.9
"LSC Data"	all data pertaining to, relating to or provided by the LSC, and/or on their behalf which comes into the possession, knowledge or control of the Provider either directly or indirectly under or in connection with this Agreement and which is identified as being LSC data or data which should reasonably be understood to be LSC data and may include all CDS Direct client data, designs, models, drawings, work notes, reports, specifications, methodologies, manuscripts, documentation, office manuals, samples, prints, photographs, negatives, tapes, discs, software, user guides, written technical guidance information or any other similar items embodied in any intangible or tangible media and all copies and drafts of such items together

with all modifications, enhancements or additions to the same made by or on behalf of the Provider and assigned to the LSC pursuant to **clause 23**

“LSC Materials”

all LSC Software, LSC Third Party Software, Hardware, methodologies and tools and other materials which are (i) to be provided and/or (ii) are provided or made available, by the LSC to the Provider and/or the Permitted Contractors for the purposes of this Agreement together with all modifications, enhancements and additions to the same made by or on behalf of the Provider and assigned to the LSC pursuant to **clause 23**

“LSC Software”

software which is owned by the LSC, as is specified in **Schedule 18**

“Month”

a calendar month

“Monthly Performance Reports”

all reports to be provided by Providers set out at **clause 11.2**

“Organogram”

the organisation chart set out in the Provider's Bid Documents (as may be amended by an agreement between the Provider and the LSC and as set out in **Schedule 1**, (as may be amended by agreement between the LSC, the Provider and as set out in **Schedule 1**)

“PACE Codes”

the Police and Criminal Evidence Act CODES OF Practice providing the core framework of police powers and safeguards around stop and search, arrest, detention, investigation, identification and interviewing detainees

“Outline Plan”

as set out in the Provider's Bid Documents

“party” and “parties”

either, or both, of the LSC and the Provider

“Payment”

in any Month the sum paid by the LSC to the Provider pursuant to **clause 11** and as calculated in accordance with **Schedule 1**

"Peer Review"	the LSC's direct independent assessment by experienced peer practitioners of the quality of advice to Clients given by the Provider under this Agreement, full details of which can be found on the LSC website at http://www.legalservices.gov.uk/criminal/contracting/mgpeerreview.asp and further details of which are provided in clause 14
"Permitted Contractor"	has the meaning given to such term in clause 40.1
"Police Concern"	a case identified by a CDS Direct Adviser as raising concerns because of police treatment or behaviour concerns because of police treatment or behaviour detriment to Clients or their legal rights or to the smooth running of the CDS Direct Service including difficulties in contacting police, speaking to Clients poor, or unusual local Police practice
"Police Station"	any police station within the definition in the Criminal Defence Service Duty Solicitor Arrangements 2001
"Police Station Register"	shall have the meaning set out in the Police Station Register Arrangements 2001
"Police Station Telephone Advice"	the provision of Advice and Assistance to Clients by telephone by CDS Direct Advisers
"Police Station Telephone Advice Only Case"	a request for telephone advice by persons detained at a Police Station which are covered by paragraph 8.2.17 (a) to (d) of Part B of the Specification of the General Criminal Contract issued by the LSC to its solicitor suppliers.
"Pre Services Commencement Period"	the period between the Commencement Date and the Services Commencement Date
"Prohibited Act"	(a) offering giving or agreeing to give any officer or Personnel of the LSC any gift or consideration of any kind as an inducement or reward:

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) entering into this Agreement in connection with which commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge;
- (c) committing any offence:
- (i) under Regulations creating offences in respect of fraudulent acts; or
 - (ii) at common law in respect of fraudulent acts in relation to this Agreement; or
 - (iii) defrauding or attempting to defraud or conspiring to defraud the LSC

“Provider Personnel”	the Provider’s employees and workers, and employees or holders of Permitted Contractors, engaged directly in connection with the Services
“Quarterly Performance Review”	the meeting held at 3 month intervals attended by the LSC and Provider in accordance with clause 15.7 in such locations as the LSC acting reasonably may determine
“Regulations”	As referred to in clause 11.8
“Relationship Manager”	the individuals engaged by the Provider and the LSC to oversee the relationship between

	the Provider and the LSC
“Senior Executive”	the individuals engaged by the Provider and the LSC responsible for relevant strategic issues associated with this Agreement
“Services”	the provision of services as described in Schedule 2
“Services Commencement Date”	31 October 2007
Solicitors Practice Rules	the Solicitors Regulation Authority Solicitors Practice Rules 1990 (as amended)
“Set-Up Plan”	the Provider’s plan as submitted as part of their response to the Invitation to Tender detailing activities necessary for the establishment and live operation of CDS Direct (as amended by agreement of the LSC and the Provider)
“Successor Provider”	a service provider appointed by the LSC to replace the Provider to provide the Services
“Supervising Solicitor”	any person engaged by the Provider to act as supervising solicitor to the CDS Direct Advisers under the Police Station Register Arrangements 2001
“VAT”	value added tax imposed by the Value Added Tax Act 1994.
“Worked Hours”	the hours that the Services are required to be provided as specified in Schedule 1

- 1.2 The Schedules to this Agreement have full force and effect, as if set out in the main body of this Agreement and references to this Agreement include the Schedules to this Agreement.
- 1.3 References in this Agreement to clauses or Schedules are to clauses of, or schedules to, this Agreement.
- 1.4 The headings used in this Agreement are for convenience only and do not affect the construction or interpretation of this Agreement.
- 1.5 References to a statute or statutory provision include that provision as from time

to time modified or re-enacted or consolidated whether before or after the date of this Agreement and any subordinate legislation made under it.

- 1.6 Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and reference to any masculine, feminine or neuter gender shall include the other genders.
- 1.7 Words importing individuals or persons shall include companies, corporations, firms, unincorporated bodies of persons and partnerships.
- 1.8 The words "include", "including", "includes", "in particular" or any similar expression are to be construed as if they were immediately followed by the words "without limitation".
- 1.9 References to any document being in "agreed terms" means such document as initialled by or on behalf of each of the parties for the purpose of identification.
- 1.10 References to either party shall include a reference to that party's employees, authorised agents and sub-contractors.
- 1.11 If there is any conflict between **clauses 1** to **43** of this Agreement and the Schedules to this Agreement the following order of priority shall prevail:
 - 1.11.1 the Schedules to this Agreement;
 - 1.11.2 **clauses 1** to **43** of this Agreement.

2. **CONTRACT DOCUMENTS**

- 2.1 The Bid Documents and the General Criminal Contract apply to this Agreement.
- 2.2 Where there is any conflict between the terms of this Agreement and those of the Bid Documents or the General Criminal Contracts the terms of this Agreement will prevail, followed by the Bid Documents, followed by the General Criminal Contract.

3. **TERM**

- 3.1 This Agreement shall commence upon the Service Commencement Date and, subject to the remaining provisions of this **clause 3** and **clause 28**, shall continue for [3/5] (three/five) years from the Commencement Date.
- 3.2 The LSC may at any time terminate this Agreement early to have effect following a minimum of six (6) months' prior written notice served upon the Provider. The Provider may at any time terminate this Agreement following a minimum period of twelve (12) months' prior written notice. If either party exercises its right under this **clause 3.2**, the LSC and the Provider shall each comply with their

respective obligations under **clause 29**.

- 3.3 At any time prior to the date that is six months before the expiry date of this Agreement, the parties may agree that this Agreement is to be extended for a further period of up to [24] months (or such other time period as agreed by the parties) from the expiry date of this Agreement.

4. **PRE SERVICES COMMENCEMENT PERIOD**

- 4.1 During the Pre Services Commencement Period the Provider shall co-operate with the LSC to carry out activities as set out in the Provider's Set-up Plan detailed at **Schedule 14** in preparation for live operation planned for October 2007 (without prejudice to the Provider's obligations to carry out the Services).

- 4.2 During the Pre Services Commencement Period the Provider will:

4.2.1 make available Provider Personnel who are to act as CDS Direct Advisers or Supervising Solicitors for a minimum of one (1) week's training, to be provided by the LSC at the Provider premises. The cost of Provider Personnel attending training will be the responsibility of the Provider; and

4.2.2 allow the LSC and FirstAssist to visit the provider's premises for provision of the Services on reasonable notice to view and test the provider's CDS Direct systems prior to the Services Commencement date; and

4.2.3 give the LSC advance notice of training the Provider intends to give its CDS Direct Advisers and allow the LSC to be present at that training.

- 4.3 Without prejudice to the LSC's obligations under this Agreement, including in the Set-up Plan, the LSC will co-operate in good faith with the Provider and take all action reasonably requested by the Provider in relation to the Provider's completion of the activities set out in the Set-up Plan.

5. **INITIAL PERIOD**

- 5.1 Throughout the Initial Period the LSC shall monitor the provision of Services in accordance with the Key Performance Indicators and the Provider shall use its best endeavours to meet the Key Performance Indicators, however the Provider will have relief from any consequences of failure to meet the Key Performance Indicators for the duration of the Initial Period.

- 5.2 During the Initial Period the LSC will pay to the Provider a fixed sum each Month based on a Monthly estimate of the allocated percentage of Cases ("the Initial Fixed Monthly Payment") set out in **Schedule 1**. Should the Provider handle in excess of the estimated allocated percentage of Cases, the Provider will be

reimbursed for the additional Cases handled, calculated in accordance with **Schedule 1**. For the avoidance of doubt should the Provider handle less Cases than the Monthly estimate of the allocated percentage of Cases during the Initial Period there will be no deduction from the Initial Fixed Monthly Payment.

6. **EMPLOYMENT PROVISIONS**

6.1 Should TUPE apply to this Agreement the LSC and Provider shall comply with the Cabinet Office's Statement of Practice "Staff Transfers in the Public Sector" and the Transfer of Undertakings Protection of Employee Regulations 2006.

7. **SERVICE PROVISION**

7.1 At all times during the Contract Period (and where the Provider has post termination obligations set out in this Agreement, for the period such post termination obligations apply) the Provider shall provide and deliver to the LSC the Services set out in **Schedule 2** in accordance with the terms of this Agreement and the General Criminal Contract and the Bid Documents, in particular the Outline Plan and the Organogram. Where there is any conflict or inconsistency between this Agreement and the General Criminal Contract the terms of this Agreement shall take precedence.

7.2 The Provider shall ensure that the Services are performed or managed by members of the Provider Personnel who are properly trained and possess suitable and relevant skills and experience for the performance of the Services as described in **Schedule 4** in a good and professional manner, properly and effectively managed, with sufficient resources.

7.3 The Provider shall not use or allow to be used, for the provision of services to a third party, any LSC Data and/or LSC Materials.

7.4 The Provider shall at all times during the Contract Period be prepared to implement the Business Continuity and Disaster Recovery Plans in accordance with the requirements of **Schedule 11** and **Schedule 9** respectively

7.5 The Services should be available in accordance with the Key Performance Indicators. In the event of any telephony/systems failure the provisions set out in **Schedule 9** apply.

7.6 Day to day management of this Agreement shall be between the LSC's Relationship Manager and the Provider's Relationship Manager named at **Schedule 1**.

7.7 The Provider shall ensure that the CDS Direct Advisers are supervised by Supervising Solicitors in accordance with Schedule 2 and the Solicitors Practice Rules as applicable.

8. SERVICE VOLUMES

- 8.1 The percentage of the overall volume of Cases allowed to the Provider is set out in **Schedule 1**. The LSC makes no guarantee of the number of Cases this percentage represents, but the anticipated demand for overall volume is 17,000 calls a month ("Anticipated Demand").
- 8.2 In the event that the actual demand for Police Station Telephone Advice is higher than Anticipated Demand, then subject to **clause 8.3** below the Provider is still obliged to handle the percentage of Cases set out at **Schedule 1** according to the terms of this Agreement (and at the price set out at **Schedule 1**).
- 8.3 If the actual demand for Police Station Telephone Advice is more than 120% of anticipated demand as set out at **clause 8.1** above, the Provider shall still be required to handle the allocated percentage of Cases, but the LSC shall not take any action against the Provider for breach of the KPI's No 1 Response times for requests over a month in respect of the Cases above 120% of Anticipated Demand, (but the other KPI's shall apply to these Cases).
- 8.4 If actual demand for Police Station Telephone Advice exceeds 120% of Anticipated Demand above and the LSC reasonably believes that this level of demand is likely to persist, the LSC reserves the right to conduct a separate tender exercise for the Cases exceeding Anticipated Demand and having done this, may reduce the Provider's percentage allocation of the overall number of Police Station Telephone Advice Only Cases in **Schedule 1** to take account of the fact that new providers have been commissioned to undertake this extra work.
- 8.5 Where the LSC exercises its right to reduce the number of Cases allocated to an alternative provider pursuant to **clause 16** or an alternative provider's agreement to provide Services is terminated for whatever reason, the LSC reserves the right (but is not obliged) to increase the number of Cases allocated to a Provider by up to 25% of the percentage of allocated Cases specified in **Schedule 1** for a maximum period of six (6) Months. In these circumstances the additional Cases allocated to the Provider shall be charged at the same price per case as the Cases allocated in **Schedule 1** but the LSC shall not take any action against the Provider for breach of the KPI's No 1 (Response times for requests over a month) in respect of the Cases above 120% of Anticipated Demand, (but the other KPI's shall apply to these Cases).

9. KEY PERFORMANCE INDICATORS

- 9.1 **Schedule 3** contains Key Performance Indicators which set the level of performance of the Services that is, as a minimum, required from the Provider and the steps the LSC may take if the Provider fails to meet the minimum targets under the Key Performance Indicators.

- 9.2 If the Provider does not believe that any of the KPI's will be met, it must notify the LSC in writing as soon as the Provider is aware there is or may potentially be a failure to meet any Key Performance Indicator. In the event of a potential failure the LSC may specify action to be taken by the Provider immediately to remedy the failing.
- 9.3 If the Provider is failing to meet one or more of the Key Performance Indicators, reasons must be supplied as part of the Monthly Performance Report.

10. **PRICING**

- 10.1 During the Initial Period the LSC shall pay the provider the Initial Fixed Monthly Payments set out at **clause 5.2** above.
- 10.2 After the Initial Period the Charges shall be calculated on the basis of price per Case handled by the Provider and in accordance with the prices set out in **Schedule 1**.
- 10.3 Unless otherwise expressly agreed by the parties in writing or expressly set out in this Agreement, the Charges shall constitute the LSC's entire payment obligations for the Services to be supplied under this Agreement.
- 10.4 The LSC will reimburse the Provider for the cost of outgoing telephone advice calls made by CDS Direct Advisers to CDS Direct clients and the police on production of a proper, paid, invoice, provided that this does not exceed reasonable costs for a UK based land line service.
- 10.5 The LSC will also pay for the costs of the use by the Provider of Language Line used in advising clients. The LSC will pay these costs to the interpreting service provider directly.

11. **PAYMENT**

- 11.1 The Provider shall be paid for the number of Closed Cases handled each Month according to the Charges set out in **Schedule 1**.
- 11.2 The Provider shall invoice the LSC in arrears on a Monthly basis (such invoice to be issued to the LSC no earlier than the first Business Day of Month and not later than 15 Business Days following the Month to which the Charges relate).
- 11.3 Each invoice submitted to the LSC for payment to such address as the LSC shall notify to the Provider from time to time and must contain the following information:
- 11.3.1 number of Closed Cases each Month;
 - 11.3.2 charges for Services provided;

- 11.3.3 costs incurred for outgoing telephone calls to CDS Direct clients and the Police;
- 11.3.4 the Month/period to which the Charges relate;
- 11.3.5 any adjustments to the Charges in accordance with the operation of the Change Control Procedure;

and must be in the format, and accompanied by the information, set out in **Schedule 6**.

- 11.4 The LSC will pay invoices delivered to it in accordance with this **clause 11** and accompanied by all the information listed or referred to in **clause 11.3** on or prior to the date which is 30 days following the date upon which the LSC received the invoice subject to the LSC's rights to withhold monies and/or set off monies (pursuant to **clauses 11.5** and **11.6**) as identified in this Agreement.
- 11.5 If the LSC disagrees with any amount invoiced or requires any further information (as described further in this sentence) with respect to any amount invoiced, it shall notify the Provider of such disagreement or request such further information that is reasonably required by the LSC to validate an invoice within thirty (30) Business Days of receiving the invoice. Pending the resolution of such matter the LSC shall be entitled to withhold payment of such part of the monies which are in disagreement or subject to further investigation.
- 11.6 The LSC may set-off all sums owed or payable by it at any time under this Agreement against any and sum payable by the Provider to it under this Agreement or under the General Criminal Contract.
- 11.7 Payment by the LSC shall be without prejudice to any claims or rights which the LSC may have against the Provider (except as specified in this Agreement) and shall not constitute any admission by the LSC as to the performance by the Provider of its obligations under this Agreement.
- 11.8 All amounts payable pursuant to this Agreement are expressed exclusive of VAT properly chargeable in accordance with the VAT Regulations. If required by the Regulations, the LSC shall pay any VAT at the rate properly chargeable in respect of the Services, subject to the Provider providing the LSC with such valid tax invoices or other documentation as may be required by any relevant statute or regulation.

12. **IT REQUIREMENTS**

- 12.1 The Provider shall comply with **Schedule 9** which contains the minimum IT requirements which the Provider must maintain during the Contract Period. The Provider shall meet the costs of providing the IT requirements including the costs

of connection to the ECMS which shall be recouped from the Provider by Azzurri (more information is set out at **Schedule 1**). It shall be an irremediable material breach of this Agreement if the Provider fails to reimburse Azzurri for these costs.

13. **MONITORING AND REPORTING**

13.1 All case information will be recorded by CDS Direct Advisers on the ECMS. The DSCC will extract information from the ECMS to produce regular reports to enable the LSC to monitor the Provider's performance and the Provider to monitor its own performance. The available monitoring information is listed in **Schedule 12**. The Provider may request copies of reports from the DSCC for a specific date or for the Direct Advisor by e-mail from the DSCC. The DSCC will endeavour to provide such reports within seven (7) days of request.

13.2 The Provider may request copies of reports from the DSCC for a specific date or for a CDS Direct Adviser by email from the DSCC. The DSCC will endeavour to provide such reports within seven (7) days of request.

13.3 By the 10th day of every Month following the Services Commencement Period (except the first month) the Provider will be required to send by email to the LSC:

13.3.1 a **file review report** using the peer review standard of 1 to 5 as further set out in **Schedule 2** at **paragraph 17.2**, in the report format set out at **Schedule 12**;

13.3.2 a **complaints report** detailing any complaints received concerning the Services, the outcome and timescale for resolution. Details of the complaints procedure to be followed and the format of the report are specified at **Schedule 12**;

13.3.3 a **requests for records of advice report** detailing the number of requests received for advice, the format of this report is set out at **Schedule 12**;

13.4 **A Police Concern report** shall be provided every two (2) weeks detailing a list of Cases where action is required, as further detailed in **Schedule 2**.

14. **PEER REVIEW**

14.1 The LSC reserves the right to review the quality of the Provider's advice to Clients via Peer Review.

14.2 The Peer Review Process is set out at the LSC's website at <http://www.legalservices.gov.uk/criminal/contracting/mgpeerreview.asp> as modified by **clauses 14.3 to 14.6** below and will be applied subject to the

amendments set out in this Agreement and the LCS's right to amend the Peer Review Process in respect of the Provider by giving written notice to the Provider. The peer reviewer will make an assessment of a sample of the Provider's Closed Cases based on the advice given by the Provider's CDS Direct Advisers and will write a report based on their assessment of the Provider's performance. The LSC will send the peer reviewer's report to the Provider with a note of any action the LSC propose to take as a result of the report. Both the Provider and the LSC agree to accept the validity of the Peer Review process and to be bound by any rating determined by it. A table setting out the possible assessment findings and consequences is set out in **Schedule 13**.

14.3 The LSC will carry out a Peer Review following completion of the Initial Period. Thereafter the LSC reserves the right to Peer Review the Services at such intervals as it considers reasonable and in any event no less frequently than annually.

14.4 In relation to the Peer Review at the end of the Initial Period the Peer Review will result in the Provider being awarded a competence rating with the consequences detailed below:

14.4.1 PR1 (Excellent) - no action required;

14.4.2 PR2 (Competent Plus) the Provider shall continue use all endeavours to improve the Services to a PR1 rating at the next Peer Review;

14.4.3 PR3 (Threshold Competence) - the Provider shall produce and implement an action plan to improve the Services to level PR2 or PR1 at the next Peer Review;

14.4.4 PR4 (Below Competent) - the Provider shall produce and implement an action plan and the LSC shall perform a second Peer Review within six Months; and

14.4.5 PR5 (Below Competent) - subject to the right to make representations set out in the Peer Review Process the LSC shall terminate this Agreement with immediate effect by written notice served upon the Provider and **clause 29** (effect of termination) shall apply.

14.5 Where required by **clauses 14.4.3** and **14.4.4**, the Provider will within [10] Business Days of the Peer Review rating being issued supply the LSC with a first draft action plan stating the failing elements of the Services with an action or actions to be undertaken by the Provider (at the Provider's cost) to rectify the failings (in reasonable detail and with implementation timescales). The LSC shall review such action plan and acting reasonably, either:

14.5.1 accept the action plan, in which case the Provider shall implement the

action plan in accordance with its terms; or

- 14.5.2 recommend changes to the action plan, in which case the Provider shall resubmit an action plan within 5 Business Days and the process described in this **clause 14.5** shall be repeated (as amended from time to time).
- 14.6 If the Provider has received a PR4 rating the LSC will undertake a further Peer Review within 6 Months of the date the PR4 rating was issued. If at this second Peer Review the Provider receives a PR4 or PR5 rating then the LSC shall terminate this Agreement with immediate effect by written notice and **clause 29** (Effect of Termination) shall apply.
- 14.7 If the Provider has received a PR5 the LSC will undertake a further Peer Review immediately. If the Provider receives a rating of PR4 or PR5 on this Peer Review, and this rating is confirmed following receipt of any representations the Provider makes, this Agreement shall be terminated on one month's written notice
- 14.8 In relation to all Peer Review subsequent to the Peer Review at the end of the Initial Period, the acceptable levels of Peer Review are PR1 and PR2. The consequences shall therefore be the same as at **clause 14.4** above save that "PR3" shall be treated as if it were "PR4".

15. **PERFORMANCE REVIEW**

- 15.1 The LSC may carry out performance reviews listed below at any time during the Contract Period. The dates given below are only an indicator of when the LSC are likely to carry out the different types of review.
- 15.2 The LSC will have regard to (although shall not be bound to determine in line with the performance review history) the Provider's performance review history when considering, for example, the potential extension of the Contract after the expiry date.

Performance review in the Initial Period

- 15.3 During the Initial Period the LSC will monitor the Provider's performance against the Key Performance Indicators but shall not implement any binding action or move Services to a better performing Provider. The Provider's performance during the Initial Period will be taken into account in the performance reviews undertaken immediately after the end of the Initial Period.
- 15.4 Where the LSC has concerns about the Provider's performance during the Initial Period it may request the Provider to make reasonable amendments to delivery of the Services in order to improve performance.

Monthly Performance Reviews

- 15.5 The LSC will analyse the Provider's Monthly Performance Reports and its own management information including but not limited to, the information set out at **Schedule 5** and the information derived from the CDS Direct system to assess what Services have been performed and whether the Key Performance Indicators have been met.
- 15.6 Any concerns of the LSC as a result of this review will be discussed with the Provider before the next Quarterly Performance Review.

Quarterly Performance Reviews

- 15.7 Formal performance reviews of the Provider will be conducted approximately every three months with effect from six (6) months from the Service Commencement Date. These reviews will comprise meetings between the LSC and the Provider to review and discuss Provider performance under this Agreement during the previous three (3) months. The Provider will be assessed against both its own targets set out in this Agreement and against other Providers' performance, so as to ensure consistency of delivery within CDS Direct.
- 15.8 If the Provider's performance falls below the standard required by this Agreement, the LSC may require the Provider to implement improvements to Services in an action plan which shall be agreed in accordance with the same mechanism as described in **clause 14.5**.
- 15.9 The Quarterly Performance Review meetings are likely to include:
- 15.9.1 the results of the Monthly Performance Review;
 - 15.9.2 performance against the Key Performance Indicators;
 - 15.9.3 the number of hours that the CDS Direct Advisers were logged into CDS Direct taking calls;
 - 15.9.4 average case time compared to other similar Providers;
 - 15.9.5 the accuracy and timeliness of Provider reporting against the Key Performance Indicators;
 - 15.9.6 the experience and qualifications of the CDS Direct Advisers employed to provide the Services;
 - 15.9.7 the experience and qualifications of the Supervisors employed to supervise the CDS Direct Advisers;

- 15.9.8 the quality of the Services provided, by reference to the findings of Provider quality reports - eg peer review, file reviews, quality profiles (see below) and file reviews;
- 15.9.9 adherence to any action plans put in place to improve performance (eg against Key Performance Indicators), following an audit, a breach of Contract or otherwise;
- 15.9.10 any feedback on Services from the DSCC;
- 15.9.11 the turnaround time for answering urgent queries raised by the LSC;
- 15.9.12 the turnaround time for answering non-urgent queries raised by the LSC;
- 15.9.13 where appropriate, the outcomes of any audit conducted under the Provider's General Criminal Contract since the Service Commencement Date;
- 15.9.14 the outcomes of any audit conducted on Provider Services;
- 15.9.15 for General Criminal Contract holders only, the results of any Peer Review(s) carried out under the General Criminal Contract;
- 15.9.16 the results of any Peer Review(s) carried out on Provider Services;
- 15.9.17 complaints received by the Provider, how and when dealt with, and the outcome of the complaint;
- 15.9.18 any other Key Performance Indicators as and when developed during the Contract Period;
- 15.9.19 any issues or disputes that have arisen, how these have been resolved and what, if anything, should be learnt from them; and
- 15.9.20 any issues or disputes that have arisen that have not been resolved – in which case the Contract Managers will try to resolve them during the performance review meeting.

Quality profiles

- 15.10 The LSC will develop quality profiles to measure Provider performance against a series of indicators, such as case duration. Provider's profiles will also be compared with those of other Providers. The quality profiles will be used to provide a picture of performance over a period of time, may be applied at Performance Reviews conducted under this **clause 15**, and will enable the Provider and the LSC to identify any trends or changes in performance. If

necessary, areas where improvement is required can then be identified.

Ad hoc performance reviews

- 15.11 The LSC's Relationship Manager may decide that there is a need for an ad hoc performance review at any time during the Contract Period. If so, it will determine the agenda for such a meeting and contact the Provider's Relationship Manager to hold the review, either in person or by telephone.

16. REMOVAL OR REDUCTION OF ALLOCATED CASES

16.1 Criteria to Exercise Removal or Reduction of Allocated Cases

If the Provider has failed to perform any part of the Services such that:

16.1.1 in the LSC's reasonable view there is a serious risk to the confidentiality or probity of the information or data held, processed or utilised by the Provider for the performance of the Services; or

16.1.2 the LSC has the right to terminate this Agreement in whole or has the right to reduce the allocation of Cases because of failure to meet Key Performance Indicators as specified in **Schedule 3**; or

16.1.3 the Provider's actions or omissions are causing, have caused or are likely to cause failure to deliver the Services or has acted or omitted to act in a way which materially adversely impacts the business of the LSC, the smooth running of the DSCC or the CDS Direct Service; or

16.1.4 the LSC is entitled to exercise its rights under **clause 30**,

then the LSC shall be entitled to exercise the remedies given to it in this **clause 16** in respect of the Services.

Application of reduction or removal of allocated Cases.

- 16.2 If **clause 16.1** applies then the LSC may, on a temporary basis, reduce by any amount the number of Cases allocated to the Provider. If the LSC wishes to exercise its rights under **clause 16.1** it shall notify the Provider in writing (the "**First Action Notice**") that, unless the Provider rectifies, makes good or otherwise resolves the breach issues identified by the LSC, within seven (7) Business Days of receipt of that notice, the LSC will take action under this **clause 16**.

- 16.3 If the LSC serves a First Action Notice then unless the Provider has, within seven (7) Business Days of receipt of such notice rectified, made good or otherwise resolved the relevant breach(es) then the LSC may serve a Final Action Notice on the Provider specifying the number and percentage of Cases to be withdrawn

from the Provider and an indication of the time period which at that time the LSC believes will be necessary for such action.

Required Action

- 16.4 If the LSC serves a Final Action Notice then the LSC may take the action specified in that notice (the "**Required Action**"). The Required Action may include the LSC having performed for it, on a temporary basis using another provider, the percentage of allocated Cases as specified in the Final Action Notice. The Provider shall give all reasonable assistance to the LSC and/or its provider while it is exercising its rights pursuant to this **clause 16.4** including (where reasonable and practicable with respect to costs and other terms):
- 16.4.1 making (where practicable and reasonable) the Provider's Personnel available to such other provider and ensuring that they co-operate fully with such other provider;
 - 16.4.2 making available to such other provider information, documentation and data as shall be reasonably required to handle the allocated Cases, subject to the execution of satisfactory confidentiality undertakings; and
 - 16.4.3 where practicable granting the LSC and/or such other provider the right to deal with Permitted Contractors to the extent reasonably necessary.
- 16.5 The LSC may at its discretion reinstate the percentage of allocated Cases to the level set out in **Schedule 1**. The LSC shall give to the Provider 10 Business Days' notice of its intention so to do (and the Provider shall recommence handling the allocated percentage of Cases as soon as reasonably possible thereafter).
- 16.6 The LSC shall only be entitled to exercise its rights under this **clause 16** for such period as is reasonable in all the circumstances in order to remedy the situation referred to in **clause 16.1**.

Costs

- 16.7 In respect of the period in which the LSC is taking the Required Action pursuant to **clause 16** the LSC shall only pay the Charges to the Provider for the number of Closed Cases handled by the Provider.

17. PARTNERSHIP WORKING

- 17.1 In funding services as part of the Criminal Defence Service the LSC are bound by sections 5(7) and 18(3) of the Access to Justice Act 1999 to aim to obtain the best possible value for money. Without prejudice to more specific provisions of

this Contract and the Provider's professional obligations in respect of clients, the Provider and the LSC agree to work together and with the DSCC in mutual trust and co-operation to achieve this aim.

17.2 This Agreement is a key element in the development of the CDS Direct Scheme. Under this Agreement the Provider will be expected to develop a partnership working approach with the LSC and with all the other providers, sharing ideas and suggestions for improving the delivery of CDS Direct Scheme.

17.3 All Providers should work together to create a seamless service for clients, to identify better and more cost effective ways of working and to initiate, pilot and implement ongoing improvements to the CDS Direct Scheme. To achieve this the LSC expect to develop an open working relationship between all parties, where opinions can be voiced and ideas welcomed.

18. **CHANGE**

18.1 If either or both of the parties wish to make a change to this Agreement then, save where **clause 18.2** applies, the parties shall comply with the Change Control Procedure set out in **Schedule 7**.

18.2 Provisions which expressly permit the ongoing updating of their contents (including the Business Continuity Plan) shall not be subject to this **clause 18**, but to the relevant controlling provisions.

19. **PROVIDER PERSONNEL**

19.1 The Provider shall resource delivery of the Services in accordance with the Outline Plan and Organogram and as set out in **Schedule 1**.

19.2 The Provider shall procure that competent Provider Personnel are engaged at all times in providing the Services to the LSC in accordance with the provisions of this Agreement and as set out in **Schedule 4**.

19.3 The Provider shall ensure that if any member of Provider Personnel engaged in the provision of Services leaves the employment of the Provider, the Provider shall replace such individual with an individual of at least equivalent experience and expertise in delivery of services similar to the Services and with equivalent levels of authority as the individual being replaced.

19.4 The Provider shall not charge the LSC for any costs and expenses associated with the replacement of any Personnel including the cost and expense of bringing the replacement Personnel up to the same standard of knowledge and operational ability as the outgoing Personnel which will be at least the standard required by them to discharge the Provider's obligation under this Agreement.

19.5 If the LSC does not agree (acting reasonably) that the Provider has replaced a

departing Key Contact with an individual of at least relevant experience and expertise in accordance with this **clause 19**, the LSC may notify the Provider in writing of this concern requiring an explanation and the Provider's proposals to remedy the situation.

- 19.6 The LSC reserves the right by notice in writing to the Provider to require the removal from the Services of any individual used by the Provider or any Permitted Contractor in the provision of the Services who, in the reasonable opinion of the LSC is not acceptable on the grounds of misconduct, lack of performance, security or any other reasonable grounds. Following the issue of any such notice on the grounds of misconduct or security the Provider shall immediately withdraw such individual from provision of the Services. The Provider shall ensure that any Confidential Information held by such individual is returned to the Provider or the LSC (as appropriate). The Provider will not engage such individual again in the provision of the Services without the written consent of the LSC.
- 19.7 The Provider shall make available Provider Personnel to receive training from the LSC as specified in **Schedule 2**.

20. **AUDIT AND ACCESS RIGHTS**

- 20.1 The LSC may audit the Provider (both by attending the Provider's premises and by requesting information of the Provider) to determine the Provider's compliance with this Agreement, including financial and Regulatory compliance.
- 20.2 The Provider shall permit the LSC (or its authorised auditors), on reasonable prior notice during normal business hours access to the ECMS system and documentation in the possession, custody or control of the Provider which directly relates to the LSC and the Services and is needed to verify the Provider's compliance with this Agreement including validating invoices.
- 20.3 The Provider shall co-operate with the LSC's auditors, including by the provision of documentation and records directly relating to the LSC and the Services as required for audit purposes in accordance with the LSC's reasonable requests and timescales.
- 20.4 Each party will be responsible for all of its own costs arising from the exercise of the audit and access rights in this **clause 20**.
- 20.5 The LSC agrees that where it exercises its rights to inspect and/or audit all or any part of the Services under this Agreement, it will use reasonable endeavours to minimise any disruption caused to the provision of the Services and the Provider's compliance with its obligations
- 20.6 The LSC shall procure that any of its Personnel or authorised agents visiting the

Provider's premises shall conform to the reasonable rules laid down by the Provider from time to time for visitors to its premises. Reasonable rules include those introduced (whether security, data protection, health and safety etc) to achieve or facilitate the Provider's compliance with this Agreement, including all undertakings intended to facilitate or enable the LSC to comply with Regulations.

20.7 The Provider will co-operate in a timely manner with any request from time to time of any auditor(s) (whether internal or external) of the LSC for whom the relevant audited Services are provided to provide documents or written or oral explanations within and compliant with the audit provisions above and/or to audit the systems, controls and procedures relating to the provision of the Services (within and compliant with the audit provisions above).

20.8 If the Provider prevents or refuses all or substantially all audit requirements (including access to premises and provision of relevant documentation and access to the ECMS system) of the LSC or its auditors (an "audit failure") and;

20.8.1 the LSC has notified the Provider of the audit failure; and

20.8.2 notified the Provider that the LSC requires access in respect of an audit that has been the subject of an audit failure; and

then within three Business Days of the LSC's audit requirements not being fulfilled by the Provider or access has been denied at the specified time, this shall constitute an irremediable material breach and the LSC may serve a notice to terminate this Agreement for material breach pursuant to **clause 28.1.1**.

21. **WARRANTIES**

21.1 The Provider warrants, represents and undertakes to the LSC that as at the Effective Date:

21.1.1 the Provider is properly constituted and incorporated under the laws of England and Wales;

21.1.2 the Provider has all necessary authority, power and capacity to enter into this Agreement;

21.1.3 there are no facts or circumstances in relation to the financial position, operation, business affairs or constitution of the Provider which have not been fully and fairly disclosed to the LSC in writing and which, if so disclosed, might reasonably have been expected to affect the decision of the LSC to enter into this Agreement;

21.1.4 in entering into this Agreement the Provider has not committed any Prohibited Act.

- 21.2 The Provider warrants, represents and undertakes to the LSC that from the Effective Date and until the end of the Contract Period:
- 21.2.1 it will provide the Services in accordance with this Agreement;
 - 21.2.2 it has satisfied itself in respect of this Agreement as to the obligations therein, and the scope and requirements of the Services detailed in this Agreement;
 - 21.2.3 it will provide the Services using properly and appropriately qualified, skilled and trained personnel as set out in **Schedule 4**;
 - 21.2.4 it shall not in the course of supplying or performing the Services knowingly introduce a software virus, computer worms, software bombs or similar items into the Hardware or software used by the LSC, the DSSC Call Centre or by the Provider in the provision of the Services;
 - 21.2.5 each Permitted Contractor will execute the standard confidentiality agreement with the Provider in the form contained in **Schedule 16**.

22. **REGULATORY COMPLIANCE**

- 22.1 The Provider shall comply with the PACE Codes, Solicitor's Practice Rules, Employed Solicitors Code 1990 and any professional regulations applicable to the Provider's provision of the Services and to the extent the Services need to be performed in a certain manner to ensure that the LSC are not in breach of any of the Solicitors Practice Rules or applicable professional regulation.

23. **INTELLECTUAL PROPERTY RIGHTS**

- 23.1 The Provider acknowledges and agrees that it will not obtain any Intellectual Property Rights in the LSC Materials or the LSC Data save for those licence rights set out in this Agreement.
- 23.2 The LSC hereby grants to the Provider, or shall procure the direct grant to the Provider of, a non-exclusive, royalty free licence to use the LSC's Intellectual Property Rights, LSC Materials, LSC Data, LSC Software during the term of this Agreement solely to the extent necessary for performing the Services. The Provider shall not use the licensed material for any other purpose.
- 23.3 The parties agree that all Intellectual Property Rights arising during the continuance of this Agreement created by or on behalf of the Provider in the course of providing the Services or in respect of any developments procured by the Provider on behalf of the LSC, will belong to the LSC, and the Provider assigns to the LSC all such Intellectual Property Rights (whether existing or arising in the future).

- 23.4 The Provider shall fully indemnify and keep the LSC fully indemnified from and against all costs, claims, damages, loss and expenses (including reasonable legal fees and expenses) and charges suffered or incurred by the LSC arising from or by reason of any third party claim that the Provider's use or possession of the LSC Data or LSC Materials infringes the Intellectual Property Rights of a third party (except to the extent caused by use by the Provider in a manner non-compliant with relevant instructions of the LSC or its licensors).
- 23.5 In the event that a claim is made against a party (the "**Indemnified Party**") to which the indemnity in **clause 23.4** applies, then the Indemnified Party shall:
- 23.5.1 upon becoming aware of any infringement or allegations of infringement notify the other party (the "Indemnifying Party") of the same as soon as reasonably practicable;
 - 23.5.2 not make any admissions without the Indemnifying Party's consent (such consent not to be unreasonably withheld or delayed); and
 - 23.5.3 at the Indemnifying Party's cost and expense, ensure that the Indemnifying Party has sole conduct of the defence of any claims or demands and the Indemnified Party shall, at its own cost and expense, provide all reasonable assistance in connection with any negotiations and litigation arising from such claims or demands.

24. **CONFIDENTIALITY**

- 24.1 In consideration of the Confidential Information being made available to a party, such party undertakes that it will:
- 24.1.1 use the Confidential Information solely as necessary for the purposes of this Agreement and only disclose the Confidential Information to those persons who are required in the course of their duties to receive and consider the same;
 - 24.1.2 treat and safeguard as private and confidential all of the Confidential Information and not by any means whatsoever disclose or allow access to the Confidential Information (or permit such disclosure or access) to any person whatsoever (other than pursuant to **clause 24.1.5** without the prior written consent of the disclosing party, and in strict accordance with the terms of such consent;
 - 24.1.3 not without the prior written consent of the disclosing party copy by any means whatsoever any of the Confidential Information supplied or disclosed to it otherwise than as shall be necessary to fulfil its obligations under this Agreement;

- 24.1.4 not make any commercial use of the Confidential Information or any part thereof save as agreed in writing or to carry out its obligations under this Agreement;
- 24.1.5 procure that any of its advisers, agents, directors or employees to whom disclosure of any Confidential Information is to be made agree prior to such disclosure, to be bound by the obligations of this Agreement as if they were a party hereto and the party receiving the Confidential Information will be responsible for any breach of such obligations as they apply to such persons; and
- 24.1.6 not reveal to any person other than as permitted by **clause 24.1.5** or in accordance with **clause 24.2** , or make any public announcement:
- 24.1.6.1 of the fact that it has requested or received any Confidential Information; or
- 24.1.6.2 giving details of any terms or conditions of or other facts relating to the Confidential Information, or to its status,
- 24.1.6.3 save as may be agreed between the parties in writing.
- 24.2 In the event that a disclosing party provides prior written consent to allow the Provider to disclose Confidential Information to a third party, the recipient will ensure that those third parties execute a confidentiality agreement in the form of that contained in **Schedule 16** or on equivalent terms.
- 24.3 Within seven days of receipt of a written request from a party hereto, on termination of this Agreement each other party will, in relation to the Confidential Information held in connection with this Agreement return to the other parties all physical Confidential Information that is in its possession or under its custody and control and all copies thereof and will expunge any Confidential Information from any computer, word processor or other device, and all analyses, compilations, notes, studies, memoranda or other documents prepared which contain Confidential Information will be destroyed and each party will deliver to the other parties a certificate signed by the Relationship Manager confirming compliance with the requirements of this **clause 24.3**. Each party shall be entitled to retain Confidential Information for any post Agreement period reasonably required to comply with its legal or contract obligations, performance or other claims (actual or possible) or other issues with respect to the performance of Services.
- 24.4 Each of the LSC and the Provider will be fully responsible for instituting, maintaining, implementing and enforcing all security or other measures to comply with its obligations under this **clause 24**.

- 24.5 All Confidential Information supplied or disclosed by a party will remain the property of such party or relevant licensors.
- 24.6 Without prejudice to any other rights or remedies under this Agreement, the parties acknowledge and agree that damages would not be an adequate remedy for any breach of the provisions of this **clause 24**, and an affected party will be entitled without proof of special damage to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any such provision by any other party.
- 24.7 The Provider acknowledges that the LSC may be subject to the FOIA both at the Effective Date and to a greater or lesser degree at a later date. The Provider will act in accordance with the FOIA (and any other applicable codes of practice or guidance notified to the Provider from time to time relating to the supply of information, to the extent failure to apply with those codes or guidance is considered breach of the FOIA by the relevant regulatory authority) to the extent that they apply to the Provider's performance under this Agreement.
- 24.8 The Provider agrees that the provisions of this **clause 24** are subject to the respective obligations and commitments of the LSC under the FOIA and where the LSC is managing a request thereunder, the Provider shall co-operate with the LSC making the request and shall respond within five Business Days of any request by it (or such other period as is reasonable, with reference to the date by which a response is required by law) for assistance in determining how to respond to a request for disclosure.
- 24.9 The Provider shall and shall procure that its contracts with sub-contractors shall require the:
- 24.9.1 transfer of any request for information, as defined under section 8 of the FOIA or the Environmental Information Regulations 2004, to the LSC as soon as practicable after receipt and in any event within five Business Days (or such other period as is reasonable, with reference to the date by which a response is required) of receiving a request for information (and the LSC shall provide such explanations as the Provider shall require to allow the Provider to understand what information it needs to supply);
- 24.9.2 provision of a copy of all relevant information in its possession or power in the form that the LSC reasonably requires (where requested pursuant to an information request issued by the Regulatory Authority acting within the scope of its powers) within five Business Days (or such other period as the LSC may reasonably specify or the Provider may reasonably request, with reference to the nature and complexity of the request and/or response, and the date by which a response to the

information request is required by law, and so to enable compliance with the notice) of the LSC requesting that information; and

24.9.3 provide all necessary assistance as reasonably requested by the LSC to enable the LSC to respond to a request for information within the time for compliance set out in section 10 of the FOIA or the Environmental Information Regulations 2004.

24.10 The restrictions upon Confidential Information contained in this **clause 24** will continue to apply after the termination of this Agreement without limit in time until the relevant Confidential Information is no longer confidential (other than as a result of a breach by any party of their obligations under this Agreement).

25. **DATA PROTECTION**

25.1 Each party agrees that, in the performance of its respective obligations under this Agreement, it shall comply with the provisions of the Data Protection Act 1998 ("the **Act**") to the extent it applies to each of them. Where used in this **clause 25**, the expressions "**process**" and "**Personal Data**", "**Data Processor**", "**Data Subject**" and "**Data Controller**" shall bear their respective meanings given in the Act.

25.2 If the Provider is acting as a Data Processor in providing the Services and where processing Personal Data within the European Economic area then the following provisions shall apply:

25.2.1 the Provider undertakes that it shall process the Personal Data strictly in accordance with the terms of this Agreement and the LSC's instructions from time to time;

25.2.2 the Provider shall ensure that only such of its employees who may be required by the Provider to assist it in meeting its obligations under this Agreement shall have access to the Personal Data. The Provider shall ensure that all employees used by it to provide those Services (impacted directly by the undertakings in this clause) have undergone training in the law of data protection and in the care and handling of Personal Data;

25.2.3 the Provider shall ensure appropriate operational and technical measures are in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of the LSC or members of the LSC Group's Personal Data and, having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage. In addition, the Provider will

provide to the LSC assurance in respect of the security of any data processed by the Provider as may be reasonably required by the LSC to comply with its obligations under the Act, including for example, promptly providing reasonable information to the LSC upon request such as security measures;

- 25.2.4 the Provider undertakes to process the Personal Data only in accordance with this Agreement, the LSC's instructions and having regard to the provisions of the Act, or unless otherwise required by law or any other regulatory body;
- 25.2.5 the Provider hereby agrees to notify the LSC in the event that it receives a request or notice from a Data Subject exercising his rights under the Act and to assist the LSC promptly with all subject access requests which may be received from Data Subjects;
- 25.2.6 the Provider undertakes not to disclose the Personal Data to a third party in any circumstances other than at the specific request of the LSC (or as required by law);
- 25.2.7 the Provider undertakes not to disclose information to, or appoint a sub-processor other than with the prior written agreement of the LSC. Where the Provider wishes to so appoint a sub-processor, the Provider shall do so in the following manner:
 - 25.2.7.1 the Provider and sub-processor shall contract on terms, which are substantially similar to the ones set out in either **clause 25.2**, as applicable, and the LSC shall be named (as practicable) as a third party beneficiary (for the purpose of the Contracts (Rights of Third Parties) Act 1999) to that contract; and
 - 25.2.7.2 the grant of any approval by the LSC under **clause 25.2.6** in respect of the appointment of any sub-processor shall not relieve the Provider from any liability under this Agreement and the Provider shall remain responsible for obligations, services and functions performed by any of its sub-processors to the same extent as if those obligations, services and functions were performed by the Provider.
- 25.2.8 the Provider will allow its data processing facilities, procedures and documentation which relate to the processing of the Personal Data to be inspected by the auditors of the LSC and/or the LSC's employees or agents, in order to ascertain compliance with the terms of this Agreement. The Provider shall promptly carry out any request from the LSC requiring the Provider to amend, transfer or delete the

Personal Data or any part of the Personal Data (subject to compliance with applicable law);

- 25.2.9 for the avoidance of doubt, the processor shall acquire no rights in any of the LSC Personal Data and shall only be entitled to process it in accordance with its obligations under this Agreement. On termination of this Agreement, the Provider shall immediately cease to use the Personal Data relating to this Agreement and shall arrange for its safe return or destruction as shall agreed with the LSC at the relevant time;
 - 25.2.10 the Provider shall notify the LSC immediately upon receiving any notice or communication from any Data Subject, supervisory or government body, including the Office of the Information Commissioner, which relates directly or indirectly to the processing of the Personal Data;
 - 25.2.11 if requested in writing by the LSC from time to time, the Provider shall provide to the LSC a copy of the Personal Data in the format and on the media reasonably specified by the LSC (subject to compliance with applicable law);
 - 25.2.12 if any Personal Data (that is still relevant/not dated) in the possession or control of the Provider becomes lost, corrupted or rendered unusable for reasons caused by the Provider, the Provider shall promptly restore such Personal Data using its back up and/or disaster recovery procedures at the LSC's cost (unless caused by the Provider's negligence, in which case restoration will be at the Provider's cost);
 - 25.2.13 the Provider shall not and will ensure that its sub-contractors shall not, under any circumstances transfer the Personal Data outside the European Economic Area.
- 25.3 The Provider shall fully indemnify and keep the LSC indemnified against all claims, demands, actions, costs, expenses, losses and damages arising from or incurred by reason of any loss, damage or distress suffered by any person as a result of the loss, destruction or unauthorised disclosure of, or unauthorised access to, Personal Data by the Provider or its Personnel as a result of any failure to comply with the provisions of **clause 25.2** and the LSC shall similarly fully indemnify and keep the LSC indemnified from all claims, demands, actions, loss expenses, losses and damages with respect to LSC activity, actions, omission or directions or instructions with respect to Personal Data.
- 25.4 If under this Agreement the Provider is acting as a Data Controller, then the following provisions shall apply to the Provider:
- 25.4.1 the Provider undertakes that it shall process the Personal Data strictly in accordance with the terms of this Agreement; and

25.4.2 the Provider agrees that it has made the appropriate notifications and has complied with the notification provisions of the Act (or that it is deemed to have so complied by virtue of paragraph 2 of Schedule 14 to the Act) in respect of its respective obligations under this Agreement and that performance of its respective obligations hereunder shall not breach or otherwise contravene such notification.

26. **INSURANCE**

26.1 During the term of this Agreement and for two years following the date of expiry or termination, the Provider shall maintain insurance policies with reputable insurers covering the risks and amounts set out in **clause 26.6** and all such other insurances as may be required by law. The Provider shall bear any and all excesses and deductibles incorporated therein.

26.2 The Provider shall, if requested in writing at any time by the LSC, provide the LSC with evidence from its insurance broker that the required coverage has been implemented and is in place. Such evidence shall be provided within 14 days of such request.

26.3 The Provider shall give written notice to the LSC as soon as reasonably practicable and without undue delay in the event of cancellation or any material adverse change in the said insurance policies.

26.4 Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Provider of its liabilities and obligations under this Agreement.

26.5 If the Provider is in breach of **clause 26.1**, the LSC may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Provider together with reasonable administration fees incurred forthwith upon written demand. The LSC may set off any such sums against sums payable to the Provider at any time under this Agreement. Any action or inaction by the LSC under this **clause 26.5** shall not affect the liability of the Provider pursuant to this Agreement.

26.6 The Provider shall carry insurance cover which is no less extensive than:

26.6.1 insurance in accordance with its statutory obligations including health and safety at work requirements of not less than [£10,000,000 (ten million pounds)] per occurrence. Such insurance shall cover all employees of the Provider engaged in the performance of the Provider's obligations under this Agreement;

26.6.2 public liability insurance with a bodily injury and property damage limit of not less than [£10,000,000 (ten million pounds) per occurrence];

and

- 26.6.3 professional indemnity insurance of not less than [£1,000,000 (one million pounds)] per occurrence or series of occurrences arising from the same event. Such insurance shall cover liability for fraud by the Provider and/or any of its employees and cover for liability for the criminal acts of the employees of the Provider.
- 26.6.4 For Solicitor organisations current professional indemnity must exist in accordance with s37 of the Solicitors Act 1974 and must comply with solicitors' indemnity insurance rules.
- 26.6.5 Non-solicitor organisations must comply with any minimum terms and conditions set by their representative body and must provide a certificate of indemnity insurance showing continuous cover since the Service Commencement date of up to £1 million pounds for each claim or series of claims.

27. **INDEMNITY**

- 27.1 The Provider shall indemnify and keep indemnified the LSC against any direct loss, damage, fines, costs and expenses which arise by reason of the breach of this Agreement or from tort (including negligence or breach of statutory duty) whether by it, its employees, agents or subcontractors (whether or not Permitted Contractors).
- 27.2 The categories of loss which the LSC may incur and described in **clause 27.1** include:
 - 27.2.1 the costs of external consultancy and computer time necessarily and reasonably incurred to remedy the default;
 - 27.2.2 any necessarily and reasonably incurred costs incurred as a result of the LSC making a claim pursuant to this **clause 27**;
 - 27.2.3 any losses or costs incurred by the LSC as a result of the Provider using Intellectual Property Rights of the LSC in breach of this Agreement (where this causes the LSC to be in breach of obligations to third parties in respect of such Intellectual Property);
 - 27.2.4 reasonable external labour costs and reasonable travel expenses incurred by consultants and specialists to rectify damage to software (including licence fees);
 - 27.2.5 reasonable external costs of installation and testing and re-testing costs for equipment and hardware;

27.2.6 any other losses, third party costs and/or other amounts identified in this Agreement.

27.3 **Clause 27** shall expressly survive expiry or termination of this Agreement.

28. **TERMINATION**

28.1 The LSC may by written notice served on the Provider terminate part or all of the Service following a minimum of 30 days' prior written notice if:

28.1.1 the Provider is in material breach of this Agreement and the breach is not capable of remedy; or

28.1.2 the Provider commits a persistent breach of its obligations under the terms of this Agreement; or

28.1.3 the Provider is in material breach of this Agreement which is capable of remedy but which the Provider fails to remedy within 30 days after service of a written notice from the LSC specifying the breach and requiring it to be remedied, save for any failure to provide the LSC with the required access or information as specified in **clause 19.7**, whereupon the LSC reserves the right to terminate this Agreement within a timescale decided at the discretion of the LSC; or

28.1.4 the Provider, any Employee or officer of the Provider or a Permitted Contractor commits a Prohibited Act relating to the Agreement; or

28.1.5 the LSC is entitled to exercise its rights of termination with respect to the Services under other provisions of this Agreement; or

28.1.6 the Provider ceases to trade.

28.2 Either party (the "**Terminating Party**") may by written notice served on the other party (the "**Defaulting Party**") terminate this Agreement immediately if:

28.2.1 the Defaulting Party summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager, administrator or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation without insolvency), is subject to a bona fide petition presented to any Court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation without insolvency), is subject to a bona fide petition presented to any Court for its administration, has a provisional liquidator appointed, has a proposal

made for a scheme or arrangement under section 425 Companies Act 1985 or is the subject of a bona fide notice to strike off the register at Companies House or is subject to an administration order;

28.2.2 the Defaulting Party has any distraint, execution or other process levied or enforced on any of its property that materially adversely affects the Defaulting Party's ability to carry on its business and perform obligations under this Agreement, which is not contested or paid out within 20 Business Days of being levied or enforced.

29. **EFFECT OF TERMINATION**

29.1 The termination or expiry of this Agreement or any part of the Agreement, howsoever arising, is without prejudice to the rights and remedies of either party accrued prior to termination or expiry.

29.2 The clauses in this Agreement which expressly or impliedly have effect after expiry or termination will continue to be enforceable notwithstanding expiry or termination of this Agreement shall survive expiry or termination.

29.3 Notwithstanding the service of notice to terminate this Agreement pursuant to **clause 28** or any other express right of termination set out in this Agreement the Provider shall continue to provide the Services in accordance with the terms of this Agreement until the date of termination of this Agreement and thereafter as required in strict accordance with the terms of this Agreement.

29.4 The Provider shall ensure that on termination all Cases are either closed or transferred to the LSC or another Provider of CDS Direct Services as required.

30. **FORCE MAJEURE**

30.1 Subject to **clauses 30.2** and **30.3**, if either the LSC or the Provider (the "**Affected party**") with the other of them being the "**Other party**" in this **clause 30**) is prevented, hindered or delayed from or in performing any of its obligations by Force Majeure, then:

30.1.1 the Affected party's specific obligations under this Agreement which are prevented, hindered or delayed by Force Majeure shall be suspended for so long as the Force Majeure continues (the "**Force Majeure Period**") and only to the extent that the Affected party is so prevented, hindered or delayed subject always to complying with this **clause 30** of this Agreement;

30.1.2 as soon as reasonably possible and in any event within one day after commencement of the Force Majeure, the Affected party shall notify the Other party in writing of the occurrence of the Force Majeure, the

date of commencement of the Force Majeure and the effects and likely duration of the Force Majeure on its ability to perform its obligations under this Agreement;

30.1.3 the Affected party shall use its reasonable endeavours to mitigate the effects of the Force Majeure upon the performance of its obligations under this Agreement and the Other party will use its reasonable endeavours to assist the Affected party with the aim of reducing the Force Majeure Period; and

30.1.4 as soon as reasonably possible and in any event within one day of cessation of the Force Majeure, the Affected party shall notify the Other party in writing of the cessation of the Force Majeure and shall resume performance of its obligations under this Agreement as soon as reasonably possible.

30.2 Without prejudice to **clause 30.3**, during or in relation to any Force Majeure Period, the LSC shall not be obliged to pay to the Provider any sum due under this Agreement in respect of the affected Services to the extent that the Provider as Affected Party is not able to deliver the affected Services. To the extent the Provider is able to deliver the Services but the LSC is not able to receive the Services, the LSC shall be obliged to pay Charges for such affected Services.

30.3 If any Force Majeure preventing the Provider from providing any or all of the Services in accordance with this Agreement:

30.3.1 prevails for a continuous period of 7 (seven) days, then without prejudice to any other rights or remedies, the LSC shall at its sole discretion be entitled to in accordance with the terms of **clause 16**, or the duration of the Force Majeure, if the LSC reasonably believes that by enforcing its rights to reduce or remove the allocated percentage of Cases it might mitigate the consequences of the Force Majeure; and/or

30.3.2 prevails for either a continuous period in excess of 30 days or an aggregate of 60 days in any period of 365 days, then the LSC without incurring any liability to the Provider shall be entitled to terminate the affected Services or Service Element or the Agreement by giving not less than 30 days' prior written notice to the Provider.

31. **COMMUNICATIONS, ANNOUNCEMENTS AND PUBLICITY**

32. When making any communications with Clients or the Police as part of providing the Services, the Provider shall comply with the rules on communications and branding set out at **Schedule 19**.

33. The Provider shall also comply with the obligations in **Schedule 19** with regard

to any announcements or publicity concerning this Agreement and the Services delivered under it.

34. **ENTIRE AGREEMENT**

34.1 This Agreement (together with the Bid Documents any change control notices and the terms of the General Criminal Contract as updated, amended and replaced from time to time) contain all the terms which the parties have agreed in relation to the subject matter of this Agreement, and supersede any prior written or oral agreements, representations or understandings between the parties in relation to such subject matter.

34.2 The parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on, nor has either party been given any warranty, statement, promise or representation made by or on their behalf and other than as expressly set out in this Agreement. To the extent that any such warranties, statements, promises or representatives have been given, the recipient party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have in relation to them.

34.3 Nothing in this **clause 34** will exclude or limit any liability which one party would otherwise have in respect of any statements it has made fraudulently.

35. **DISPUTE RESOLUTION**

35.1 If, during the Contract Period, a dispute arises between the parties relating to this Agreement and the parties cannot reach agreement, the unresolved matter will be escalated between the parties in accordance with the procedures set out in **Schedule 8**.

35.2 Each party will continue to perform its obligations under this Agreement irrespective of any dispute between them.

36. **NOTICES**

Service of Contractual Notices

36.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by email (to the address stated in **Schedule 1**) hand, Special Delivery post, facsimile, addressed to the recipient at its registered office or its address or facsimile number, as the case may be stated in **clause 36.4** and will be marked for the attention of the individual(s) stated in **clause 36.4** (or such other address, facsimile number or person which the recipient has notified in writing to the sender in accordance with this **clause 36**, to be received by the sender not less than 10 Business Days before the notice is despatched).

- 36.2 The notice, demand or communication will be deemed to have been duly served:
- 36.2.1 if delivered by hand, at the time of delivery;
 - 36.2.2 if delivered by Special Delivery post, 48 hours after being posted;
 - 36.2.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by Special Delivery post to the other party within 24 hours after transmission;
 - 36.2.4 if delivered by email, at the time of transmission (provided no notice denoting non receipt is received within 12 hours),

provided that, where in the case of delivery by hand or transmission by email or facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

36.3 Service by facsimile is a valid means of service only where service of the original notice, demand or communication is not required.

36.4 The addresses and facsimile numbers for the parties are as follows:

LSC	Provider
FAO [<i>SPECIFY POSITION</i>]	FAO [<i>SPECIFY POSITION</i>]
[<i>ADDRESS</i>]	[<i>ADDRESS</i>]
[<i>NUMBER</i>]	[<i>NUMBER</i>]

Service of Court Documents

36.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

37. WAIVER

37.1 The failure or delay by a party to this Agreement in exercising any right, power or remedy of that party under this Agreement will not in any circumstances impair such right, power or remedy nor operate as a waiver of it.

37.2 Subject as expressly set out in this Agreement the rights, powers and remedies provided in this Agreement:

37.2.1 may be exercised separately, concurrently and as often as necessary;

and

37.2.2 are cumulative and not exclusive of, or prejudiced to, any rights or remedies provided by law or this Agreement.

37.3 Any waiver of a breach of, or default under, any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.

38. **INVALIDITY AND SEVERABILITY**

If at any time any clause or part of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect that will not affect any other provisions of this Agreement which will remain in full force and effect.

39. **ASSIGNABILITY**

39.1 The Provider may not assign, delegate, transfer or otherwise dispose of any of its rights or responsibilities under this Agreement without the prior written consent of the LSC.

40. **SUBCONTRACTING**

40.1 The Provider shall be entitled to appoint a sub-contractor, a contractor or an agent for the provision of any part of the Services following the prior written consent of the LSC (not to be unreasonably withheld or delayed) and such parties at the Service Commencement Date are contained in **Schedule 1** as set out in the Outline Plan, each such sub-contractor, agent or contractor so appointed being a "**Permitted Contractor**".

40.2 In the event that the Provider appoints a Permitted Contractor the Provider shall (i) not be relieved from any of its liabilities or obligations under this Agreement and (ii) as between the LSC and the Provider, be liable for the acts or omissions of the Permitted Contractor as if they were the Provider's own acts or omissions including compliance with the KPIs.

40.3 Each Permitted Contractor must enter into a confidentiality agreement with the Provider whereby the Permitted Contractor undertakes to ensure the confidentiality of LSC Confidential Information, strictly in the form set out in **Schedule 16** or on equivalent terms. Until such a confidentiality agreement is signed the Permitted Contractor shall not commence its services for the Provider and shall not be granted any access to any Confidential Information.

40.4 The Provider shall be and shall remain solely responsible for all and any payment it is required to make to any of its sub-contractors and shall indemnify and keep the LSC indemnified against any loss, damage or expense incurred by the LSC,

howsoever arising, as a result of any claim or action brought by any such sub-contractors as a result of breach of this undertaking.

40.5 Each CDS Direct Adviser and Supervising Solicitor employed or engaged by a Permitted Contractor shall be treated as a member of the Provider's Personnel for the purposes of the obligation in this Agreement.

41. **NO PARTNERSHIP**

41.1 Nothing contained in this Agreement, and no action taken by the parties pursuant to this Agreement, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee.

41.2 Neither the LSC nor the Provider has, nor may it represent that it has, any authority to act or make any commitments on the other's behalf, other than as expressly stated in this Agreement, or as required for the purposes of providing the Services pursuant to this Agreement.

42. **COUNTERPARTS**

This Agreement may be entered into by the execution by the parties of a single document, or by the execution by the parties of two or more identical copies of the document (in this latter case, each copy will be deemed to be a counterpart, and all such documents taken together will be deemed to form one contract).

43. **LAW**

43.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement will be governed by English law.

AS WITNESS the hands of the duly authorised representatives of the parties on the date stated at the beginning of this Agreement.

EXECUTION PAGE FOR AGREEMENT

SIGNED by [NAME] and [NAME])
duly authorised to sign for and on behalf of)
LEGAL SERVICES COMMISSION)

SIGNED by [NAME] and [NAME])
duly authorised to sign for and on behalf of)
[PROVIDER])

SCHEDULE 1

Key Contract Terms

[To be inserted at contract award. To include the following]

Percentage of cases allocated

Price per case

Permitted Subcontractors

Outline Plan

Organogram

Senior Executive (LSC)

Senior Executive (Provider)

Contract Manager (LSC)

Contract Manager (Provider)

Relationship Manager (LSC)

Relationship Manager (Provider)

Initial Fixed Monthly Payment

Email address for service of Notices

Welsh Speaking Services to be provided Yes/No

ECMS Connection/Management Fee

SCHEDULE 2

Description of Services

1. Introduction

1.1 CDS Direct provides a national legal telephone helpline for non-means tested legal advice direct to members of the public suspected of Police Station Telephone Only Case criminal offences and detained at a Police Station in England and Wales.

1.2 Requests for legal advice are passed by the Police to the Duty Solicitor Call Centre (the "**DSCC**"). The DSCC then ascertain the following details from the Police and input the information onto a form within the Electronic Case Management System (ECMS):

1.2.1 Police station name and contact number;

1.2.2 Clients Name and Gender;

1.2.3 Custody number;

1.2.4 Time and date of arrival at the station;

1.2.5 Alleged Offence/s;

1.2.6 Whether an interview or I.D procedure is scheduled within or beyond 90 minutes of the call; and

1.2.7 Any other comments.

1.3 The DSCC then save the Case and issue the Police with a system generated unique reference number. This Case then remains within the ECMS database and can be retrieved at any time.

2. Case distribution

2.1 Once a Case has been saved by the DSCC if it is a Police Station Telephone Advice Only Case the ECMS will immediately transfer the case to a Provider's work queue.

3. Offences

3.1 CDS Direct only advises on offences that are restricted to telephone advice only under the Specification to the General Criminal Contract Part B, 3.7 (these and Police Station Telephone Advice Only Cases) as detailed at http://www.legalservices.gov.uk/docs/cds_main/GeneralCriminalContract-

3.2 Such Police Station Telephone Advice Only Cases include:

- 3.2.1 Cases under Sections 4,5,6,7 and 7A Road Traffic Act 1988, of driving with excess alcohol, driving whilst unfit through drink or drugs, drunk in charge, and failing to provide a specimen.
- 3.2.2 Cases in relation to a non-imprisonable offence.
- 3.2.3 Cases of warrants for failing to appear at Court, failing to pay court fines – a means warrant or warrant for commitment, arrested on a warrant for recall to prison.
- 3.2.4 Cases of breach of Police or Court bail conditions.

4. **Case Management**

- 4.1 The Provider is contracted to provide [percentage] of the volume of Police Station Telephone Only Advice Cases.
- 4.2 Cases will be transferred to the Provider in accordance with the percentage of cases specified in this Agreement. Once a case has been transferred to the Provider, it will appear on their 'work queue screen' within the ECMS, this screen is where CDS Direct Advisers will select and process open cases and Cases may only be processed in the ECMS, not any other system used by the Provider. The Provider will only be able to see and process cases that have been allocated to their own individual organisation. The Provider must undertake all Cases allocated to it in accordance with the KPIs.
- 4.3 A Case can only be selected by one CDS Direct Adviser at a time and once a case has been selected that particular CDS Direct Adviser's name will appear next to the case to show that they are dealing with it.
- 4.4 Upon entering a case the CDS Direct Adviser will be presented with all of the information captured by the DSCC when the case was created. CDS Direct Advisers will use the contact number generated by the software and make an outgoing call to the relevant Police Station to attempt to speak to the Client and advise as appropriate.
- 4.5 CDS Direct Advisers are required to record every action or call made on the case by using a combination of software events and relevant notes typed into the ECMS system. Each event has associated outcome codes which should be selected and these outcome codes will determine the status of the case and what action if any happens next.
- 4.6 CDS Direct Advisers will be able to record the following using these events and

outcome codes:

- 4.6.1 Outgoing calls to the Police Station detailing information;
 - 4.6.2 Outgoing calls to the Police Station detailing advice given to the Client;
 - 4.6.3 Create a diary event to trigger action on a case at a future time;
 - 4.6.4 Refer case back to DSCC for solicitor or immigration specialist deployment giving reasons for the referral;
 - 4.6.5 Close case following successful completion of legal advice;
 - 4.6.6 Cancel case following request from police or Client.
- 4.7 All notes and events saved on a case must be stored within the Case's event history along with the time and date they were created; the name of the CDS Direct Adviser responsible for creating the events will also be displayed. The event history provides a detailed account of all entries of work on a case from creation to closure including times, dates and which individual carried out the work. Data from the event history is then used to produce detailed Case prints.

5. **Referring cases back to DSCC**

- 5.1 CDS Direct must refer Telephone Advice Only cases back to the DSCC to deploy to the local Duty Solicitor to attend the Client in the following circumstances. For each scenario CDS Direct Advisers must
- 5.2 select and use the appropriate software outcome codes to record this action.
- 5.2.1 Multiple Offences - where a CDS Direct Adviser discovers that a Police Station Telephone Advice Only offence is coupled with another offence which is not restricted to telephone advice only eg Drink Drive and Drive Disqualified, or Warrant and Theft, no initial advice should be given. (except the pre-EBM advice if applicable) The case must be referred back to the DSCC to contact the local Duty Solicitor.
 - 5.2.2 Attendance Desirable - If, in the professional opinion of the CDS Direct Adviser, attendance at the Police Station is desirable (applying the criteria set out at paragraph 8.2.19 of Part B of the Specification to the General Criminal Contract), eg situations where the Client is unable to communicate over the telephone or complains of serious maltreatment by the police, the CDS Direct Adviser must refer the call back to the DSCC to contact the local Duty Solicitor to attend the Police Station.
 - 5.2.3 Interview Cases - If the Provider discovers that the police intend to interview in respect of a Telephone Advice Only case (eg Drink Drive

where the client disputes that he was driving or in charge), the CDS Direct Adviser must give initial telephone advice and monitor the case until the Police say that they are ready for interview when it must be returned to the DSCC to deploy the local Duty Solicitor.

- 5.2.4 Overnight Cases - Duty Solicitors must not be disturbed during the night unnecessarily if police say no interview is scheduled until the morning. If by 0700 the CDS Direct Adviser has given telephone advice to the Client and the police have scheduled a time for interview eg 10 am, this information must be conveyed by DSCC to the solicitor who is on duty at the time that an interview time is established. If by 0700 the CDS Direct Adviser has been unable to speak to the client because, for example, he was asleep or too drunk and/or no time has been scheduled for interview, the CDS Direct Adviser must monitor the case and return it to DSCC to deploy to the local Duty Solicitor only when the police say they are ready for interview.
- 5.2.5 Notification of CDS Direct Involvement - When a case is referred back to DSCC, the CDS Direct Adviser must record brief details of facts disclosed and advice given which will be read out to the local Duty Solicitor when the case is deployed. If, in unusual circumstances, the CDS Direct Adviser considers that the Duty Solicitor may require an oral briefing, they must indicate this to the DSCC. When the case is accepted by a Duty Solicitor the DSCC will inform the Duty Solicitor that the CDS Direct Adviser needs to speak to him over the telephone. The CDS Direct Adviser must then call the Duty Solicitor as soon as possible.
- 5.2.6 Signposting - If a Client is to attend court following a Police Station attendance, then the Client will have the option of using the services of the court Duty Solicitor (if the matter is within scope) or asking the court to contact the Client's chosen service provider. If, following telephone advice, the opinion of the CDS Direct Adviser is that there is unlikely to be an attendance at the Police Station then the CDS Direct Adviser must inform the Client of the above.
- 5.3 Where a Case needs to be deployed for attendance by a Solicitor or Adviser, Providers must return the Case to the DSCC to deploy. Providers must not deploy any Cases for attendance internally within their organisation. Deployment of Cases by Providers will be monitored to ensure that Cases are always referred back to the DSCC where attendance is required.
- 5.4 If a Client requires advice as to which legal advice provider to use, the Client should usually be advised to contact the court Duty Solicitor or alternatively be given details of the Community Legal Service Direct helpline (0845 345 4 345

which is open 0900 to 18.30 on weekdays with the option to leave a message outside of office hours) and the associated website www.clsdirect.org.uk.

5.5 If a Client requires legal advice on a non-criminal issue, eg welfare benefits, debt, education, employment and housing, he/she should be referred to the Community Legal Service Direct Helpline.

6. **[Welsh speaking clients]**

6.1 If the Provider are required to provide CDS Direct Services in Welsh the Provider must do so 24 hours a day 7 days a week and this will be notified in **Schedule 1**. In order to meet the requirements of the Welsh Language Act 1993 and provide callers with advice and information in Welsh, CDS Direct offers a Welsh speaking service. All requests for Welsh speaking advisers will be given to those organisations able to advise in Welsh. The volume of Welsh speaking Cases will be divided in proportion with the percentage of Cases that each organisation has been awarded to take.

7. **Non English speaking Clients**

7.1 A telephone interpreting service will be provided to Clients who are entitled to telephone advice from CDS Direct but who do not speak English. This service is provided by Language Line, a private company specialising in the provision of interpreting services for the public sector, but the LSC may replace the provider of this service from time to time.

7.2 When the CDS Direct Adviser establishes that an interpreter is required and for what language, the CDS Direct Adviser must telephone Language Line who will connect him/her to the relevant interpreter. The CDS Direct Adviser must brief the interpreter and then connect to the Police Station using a three-way conference call.

7.3 The LSC is responsible for managing the relationship with Language Line and will pay all costs for the usage of this service by CDS Direct Advisers directly to Language Line.

8. **Immigration calls**

8.1 The Provider is required to deal with clients who have been detained by the police in relation to an immigration matter.

8.2 The Police and other agencies have powers of arrest in relation to immigration linked criminal offences and non criminal matters. The Police, and the clients, are often unaware whether the client has been detained in relation to a criminal or non-criminal matter. In such Cases, the CDS Direct Adviser will liaise with the Police and the client to ascertain the reason for their detention.

- 8.3 If the Case is an immigration matter only and no criminal offences are being investigated, the CDS Direct Adviser must refer the Case back to the DSCC so that the client can receive advice from a specialist in Civil Immigration Law.
- 8.4 Where it is a criminal matter, if the offence is a Police Station Telephone Advice Only Case and deployment of a CDS Direct Adviser must advise the client. If the offence is outside of the provider's CDS Direct remit, the CDS Direct Advisers must refer the Case back to the DSCC for attendance by a solicitor.
9. This element of the service has been piloted since June 2006. The LSC will be publishing a consultation paper on the findings of this pilot in May 2007 on the LSC website; this element of the service may change as a result of any decision made following this consultation.
10. Currently there are approximately 250 immigration Cases taken by CDS Direct each week. The volume of Cases may however increase and current split may change with the introduction of new criminal offences through the new bills on borders and enforcement if introduced by the Government.
11. **Requests for Records of Advice**
- 11.1 Providers may receive requests to provide a copy of the record of advice given by CDS Direct from either the Client or an authorised solicitor, subsequently acting and are required to meet all such requests properly made to them. In such Cases, the solicitor will be asked to fax confirmation that they are acting for that Client, along with a copy of the Client's signed authority so that the information can be released.
- 11.2 Providers will need to obtain the Case printout from the DSCC to send with their correspondence. If the particular Case reference number is not known then Providers must include the following information to assist DSCC in quickly identifying the correct Case.
- 11.2.1 Client's full name.
- 11.2.2 Police station where advice was given.
- 11.2.3 Date when the advice was given.
- 11.2.4 Nature of the offence.
12. If requests are received by the DSCC then they will forward the correspondence and Case print to the Provider who advised the Client. It will then be up to the Provider to respond to the request.
13. Providers will be required to respond to such requests within 3 working days. Providers will also be required to report on a monthly basis the number of

requests that they have received and the number of days before the request was fulfilled. No extra charge may be made by Providers for providing these records of advice.

14. Witness Statements

14.1 If requested Providers will be responsible for providing witness statements under section 9 of the Criminal Justice Act 1967 [Criminal Procedures Rules, r27.1 (1)] explaining the involvement of CDS Direct. Such statements must be produced by the adviser (s) involved in the Case in question exhibiting the record of advice given.

14.2 Such statements must be provided free of charge by CDS Direct providers.

15. Requests for Advisers to Attend Court

15.1 Any such requests will need to be considered by the CDS Direct Supervisor. It is thought that a witness statement (see above) prepared by the relevant adviser should usually suffice.

15.2 However if attendance as a witness is required the LSC require that solicitors obtain and serve a witness summons for the relevant CDS Direct adviser which should be accepted at their CDS Direct business address. This will ensure witness expenses properly incurred are allowable out of central funds. No other payment will be made.

16. Training

16.1 The LSC will deliver training on how the system works, the process of taking calls and guidance on best practice to representatives from the Provider prior to the Service Commencement Date. The Provider shall receive no payment for or during any training. The Provider will then be responsible for cascading that information within their own organisation and ensuring that all CDS Direct Advisers are suitably trained to deliver the service as specified in the Pre Service Commencement Date Period. Providers will also be responsible for ensuring that all CDS Direct Advisers receive sufficient training to ensure effective provision of advice over the telephone and to Clients with varying communication needs. The LSC will expect to have access to the Provider's CDS Direct Advisers during this time and to attend training sessions.

16.2 The LSC will supply the Provider with copies of the Software manual, training manual and office manual which can be used to support CDS Direct Advisers in delivering the Services. In addition, details of suggested legal reference material is included within the office manual.

16.3 The Provider will ensure that each of the CDS Direct Advisers receives at least 6

hours training on Police station representation annually.

- 16.4 When any new advisers are recruited, it will be the Provider's responsibility to ensure that they are suitably trained to deliver the Services. The LSC will provide a regularly updated training manual to each Provider.

17. Quality

17.1 Office Manual

17.1.1 The LSC has produced an office manual containing details about how the service should be delivered. The Provider will be required to comply with this office manual. The manual includes a Code of Conduct which exists to govern work undertaken by CDS Direct Advisers.

17.2 File Review

17.2.1 The Supervising Solicitor will be required to review 4 files per experienced CDS Direct Adviser each Month on the Cases notified to it by the DSCC. A larger sample size will apply to junior, inexperienced or probationary staff. The files will be assessed using the Peer Review scale of 1 'Excellence' to 5 'Failure in Performance' and the LSC the LSC will supply the standards to be applied. The LSC will select at random, those files to be reviewed and the DSCC will supply the Provider with relevant Case prints so that the supervising solicitor can carry out the internal file review. The Provider must send a file review report to the LSC in accordance with **clause 13.3.1** in the form set out at **Schedule 12**.

17.3 Call Handling Monitoring

17.3.1 Calls will not be recorded to monitor advisers, under the Regulation of Investigatory Powers Act 2000 this could only be done if callers were informed that their call was being recorded. The Supervising Solicitor must however monitor the CDS Direct Adviser's side of telephone conversations.

17.4 Supervisor's activities

Supervising Solicitors must also:

17.4.1 sit with the CDS Direct Advisers and give oral advice and direction on matters of law, Police station and court procedures, and working practices and procedures of CDS Direct;

17.4.2 consider all feedback from CDS Direct Advisers and report as

appropriate to the LSC;

- 17.4.3 consider improvements to and inform and CDS Direct Advisers by email of changes in working practices and procedures, changes in law affecting Police station practice, and points of law of general application;
- 17.4.4 maintain and update the resources available to CDS Direct Advisers;
- 17.4.5 participate in reviews of the training and office manuals;
- 17.4.6 provide training to new CDS Direct Advisers on law and working practices;
- 17.4.7 conduct file reviews on CDS Direct Advisers' files as set out at **paragraph 17.2** above ;
- 17.4.8 consider outcomes of Peer Reviews and implement necessary actions;
- 17.4.9 consider ways to improve the efficiency of the service;
- 17.4.10 consider performance against Key Performance Indicators and identify any necessary actions to be taken;
- 17.4.11 attend liaison meetings with LSC;
- 17.4.12 deal with all escalated enquiries from solicitors on issues arising from CDS Direct Cases;
- 17.4.13 obtain and provide Case histories to solicitors on request, subject to receipt of Client's authority to disclose, and answer queries arising;
- 17.4.14 draft Section 9 Statements for CDS Direct Advisers, obtain signatures and send to solicitors when appropriate;
- 17.4.15 correspond with solicitors on all requests for CDS Direct Advisers to attend court as witnesses and make arrangements as necessary; and
- 17.4.16 deal promptly with all oral and written complaints received.

17.5 Complaints

- 17.5.1 Providers are required to follow the complaints procedure set out at **Schedule 17**.

SCHEDULE 3

Key Performance Indicators

The Provider will be required to meet a number of Key Performance Indicators (“KPIs”) as set out below (save for the Initial Period) under this Agreement. The table sets out the action by the LSC where the Provider fails to meet the specified target.

No	Key Performance Indicator	Provider Performance	LSC Action
1.	Response times for requests for advice over a month: <u>Target throughout contract term:</u> -100% of requests for advice responded to within 15 minutes per month. <u>Minimum Target:</u> -90% of requests for advice responded to within 15 minutes per month; and -95% of requests for advice responded to within 30 minutes per month.	-90% of requests for advice responded to within 15 minutes; -95% of requests for advice responded to within 30 minutes;	No action.
		-80% to 90% of requests for advice responded to within 15 minutes; - 85% to 95% of requests for advice responded to within 30 minutes.	LSC notify Provider of requirement to prepare action plan which may include logging in extra advisers and steps to improve systems.
		-70% to 80% of requests for advice responded to within 15 minutes; -75% to 80% of requests for advice responded to within 30 minutes.	Exercise of rights to remove work to another provider or reduce the number of allocated Cases.
		-70% or below of requests for advice responded to within 15 minutes; -75% or below of requests for advice responded to within 30 minutes	Potential to terminate this Agreement
2.	Peer Review Results of any Peer Review on this contract within 6 months of contract start: <u>Target</u> PR1 or PR2 <u>Minimum Target:</u> PR2	PR1 or PR2	No action.
		PR3	Action plan required including steps and timescales to improve systems.
		PR4 or PR5	Potential termination.
	Results of any Peer Review on this contract within 6 months of contract start: <u>Target</u> PR1 <u>Minimum Target:</u> PR2	PR1	No action.
		PR2	Action plan required including steps and timescales to improve systems.

No	Key Performance Indicator	Provider Performance	LSC Action
		PR3, PR4 or PR5	Potential termination. (see schedule 13, but in the table PR3 would become "Below Competence").
3.	<p>Reports to be in agreed format and submitted on time</p> <p><u>Target throughout the contract term:</u> 100% submitted in agreed format and on time.</p> <p><u>Minimum Target</u> 95% submitted in agreed format and on time.</p>	95% and above	No action.
		60% to 95%	Action plan required including steps and timescales to improve systems.
		60% or below	Potential termination Exercise of rights to remove work to another provider or reduce the number of allocated Cases.
4.	<p>Response to Complaints</p> <p><u>Target throughout the contract term:</u> 100% responded to within 3 business days.</p> <p><u>Minimum Target</u> 95% responded to within 3 business days.</p>	95% and above	No action.
		60% to 95%	Action plan required including steps and timescales to improve systems.
		60% or below	Exercise of rights to remove work to another provider or reduce the number of allocated Cases.
5.	<p>File Reviews</p> <p><u>Target throughout the contract term:</u> 100% completed to frequency and volume agreed with LSC.</p>	95% and above	No action.
		85% to 95%	Action plan required including steps and timescales to improve systems.
		85% or below	Exercise of rights to remove work to another provider or reduce the number of allocated Cases.
6.	<p>Service Availability over a month</p> <p><u>Target throughout the contract term:</u> 100% service availability over a month.</p> <p><u>Minimum Target</u> 99.5% service availability.</p>	99.5% over a month	No action.

No	Key Performance Indicator	Provider Performance	LSC Action
		95-99.5% over a month	Action plan including steps and timescale to improve systems.
		95% or less over a month	Exercise of rights to remove work to another provider or reduce the number of allocated Cases..
8.	<p>Response times to LSC queries</p> <p><u>Target throughout the contract term:</u> 100% urgent queries responded to within 2 business days and non-urgent queries responded to within 5 business days.</p> <p><u>Minimum Target</u> 95% urgent queries responded to within 2 business days and non-urgent queries responded to within 5 business days.</p>		No action.
		60% to 95%	Action plan required including steps and timescales to improve systems.
		Below 60%	Exercise of rights to remove work to another provider or reduce the number of allocated Cases.

SCHEDULE 4

Provider Personnel Requirements

These requirements apply to the CDS Direct Advisers and Supervisors; Solicitors engaged by a Permitted Contractor as well as those engaged by the Provider.

Skills and Experience of CDS Direct Advisers and Supervisors

1. All CDS Direct Advisers and Supervisors are required to be suitably experienced to carry out the work on a daily basis.

Advisers

2. CDS Direct Services must only be provided by Advisers who are:
 - 2.1 current Accredited Police Station Representatives under the LSC's scheme governed by the Police Station Register Arrangements 2001; or
 - 2.2 current Duty Solicitors; or
 - 2.3 a probationary representative; or
 - 2.4 Solicitors holding the Police Station Qualification; and
 - 2.5 they all must comply with the Police Station Register Arrangements 2001 (as amended); and
 - 2.6 they all must attend the Police Station on non CDS Direct work at least 25 times a year.
3. Up to a maximum of 50% of the CDS Direct Advisers may be Probationary Police Station Representatives who must also meet the requirements at paragraph 2.4 to 2.6 above.
4. CDS Direct Advisers will not be permitted to work on other work whilst being available to provide the CDS Direct Service. The Advisers may however work on other work outside of those hours that they are contracted to work on CDS Direct.

Supervisors

5. All CDS Direct Advisers must be supervised by a Supervising Solicitor, who must be employed by the provider or a Permitted Contractor and be a Police Station Duty Solicitor under the LSC's Duty Solicitor Arrangements 2001 (as amended in October 2006)

6. A Supervisor must be available to CDS Direct Advisers 24 hours a day. The Supervising Solicitor must be available at the Provider's premises to provide supervision for at least 35 hours a week (which must include some time outside 9am to 5pm Monday to Friday).
7. Outside the hours when the Supervising Solicitor is present, supervision from an alternative Supervising Solicitor must be available by telephone (not by email, SMS, text message or other form of non verbal communication) at all times.
8. Information on supervision requirements is included in the Solicitor's Code of Practice produced by the Solicitors Regulation Authority, available at: <http://www.sra.org.uk/documents/code/rule-5-business-management-england-wales.pdf> Section 5.03 relates to the supervision of work for Clients and members of the public; this replaces the current code issued by the Law Society (Practice Rule 13) in July 2007, available at <http://www.lawsociety.org.uk/professional/conduct/guideonline/view=index.law>.
9. The Supervising Solicitor may also act as a CDS Direct Adviser and undertake other work provided this does not impinge on their ability to supervise effectively.
10. Obtain and provide case histories to solicitors on request, subject to receipt of client's authority to disclose, and answer queries arising.
11. Draft Section 9 Statements for CDS Direct Advisors, obtain signatures and sent to solicitors when appropriate.
12. Correspond with solicitors on all requests for CDS Direct Advisers to attend court as witnesses and make arrangements as necessary.
13. Deal promptly with all oral and written complaints received.
14. The ratio of Supervising Solicitors to CDS Direct advisers must comply at all times with the Organogram.

Organogram

15. The Provider shall staff the CDS Direct Service in accordance with the Organogram set out at **Schedule 1**.

SCHEDULE 5

Monitoring And Reporting

1. All Case information must be recorded by CDS Direct Advisers on the Electronic Case Management System (ECMS). The DSCC will extract information from the ECMS to produce regular reports to enable the LSC to monitor the use of the service and Providers' performance.
2. Certain reports will also be made available to the Provider to assist them with performance management.

Management Information recorded by LSC/DSCC

CDS Direct Performance Statistics (Overall)

3. The purpose of this report is to confirm whether the CDS Direct Service which will be made available to the Provider; overall is achieving success criteria and illustrates the service's workload.
4. The report will display the following information:
 - 4.1 Total CDS Cases, by day, by hour.
 - 4.2 Daily totals for the month by offence type.
 - 4.3 Daily totals for the month of Cases referred back to DSCC, split by type of referral.
 - 4.4 Hourly performance against target of making initial calls within 15 minutes.
 - 4.5 Hourly performance against KPI target of making initial calls within 30 minutes.
5. The DSCC will distribute this report to the LSC and the Provider by email on a daily basis (excluding weekends and bank holidays).

CDS Direct Performance Statistics by Provider

6. This report will display:
 - 6.1 Total CDS Direct Cases, by day, by hour.
 - 6.2 Daily totals for the month by offence type.
 - 6.3 Daily totals for the month of Cases referred back to DSCC, split by type of referral.
 - 6.4 Hourly performance against target of making initial calls within 15 minutes.

- 6.5 Hourly performance against KPI target of making initial calls within 30 minutes.
7. The DSCC will produce and distribute this report by email to the LSC and the Provider on a daily basis (excluding weekends & bank holidays); The Provider will only receive data relevant to their own organisation's performance.

CDS Direct Calls Handled per Hour

8. This report measures the productivity of individual CDS Direct Advisers in terms of how many outgoing call events they have made via the ECMS broken down into hourly segments.
9. This report can be distributed to the Providers by the DSCC at the Provider's request.
10. Due to the large amount of data captured in this report it is advisable not to request for a date range in excess of one month.

Requesting Reports

11. The Provider may request copies of reports from the DSCC for a specific date period or particular member of staff eg number of CDS Direct calls handled per hour by emailing reports.dsc@firstassist.co.uk
12. The DSCC will endeavour to turnaround such requests within 7 days of receipt.

Management Information to be recorded and submitted by Provider

Police Concerns

13. CDS Direct Advisers will be expected to highlight any Police concerns and mark these on the affected Case via the ECMS. This will enable the Case to be reviewed at a later date by a Supervising Solicitor.
14. Police concerns may include but are not limited to:
 - 14.1 Answering machine or voicemail encountered when ringing Police custody contact number.
 - 14.2 Poor Police performance eg custody consistently refuse access to Client for no good reason.
 - 14.3 Police local policy is unusual eg FPNs only if admission of guilt or only if detainee is aged 18 or older.
15. The DSCC will send a list and call logs to the Provider of all Cases that they have handled where the CDS Direct Advisers have noted a Police concern by email each week. The Supervising Solicitor will need to examine these details and a

compile a list every two weeks where they agree that action is needed and email this to a nominated LSC contact. The report will include details of:

- 15.1 Police Station
- 15.2 Call log
- 15.3 Reason for concern and why further action is recommended.

File Review Report

- 16. Each month the Supervising Solicitor will be required to carry out file reviews. The provider will then be required to send the LSC the Case histories and the outcome of the file review using the peer review standard of 1 to 5. This report will need to be provided by email to the LSC by the 10th day of the month.

Complaints

- 17. The Provider is required to report to the LSC each month details of any complaints received, the outcome and timescales for resolution. Details of the complaints procedure to be followed and format of the report will be provided at contract award. This report will need to be provided by email to the LSC by the 10th day of the month.

Requests for Records of Advice

- 18. Providers will be required to report on the number of requests they have received in one Month and the time taken to respond to these requests. The report must be submitted monthly by email to the LSC by the 10th day of the Month.

SCHEDULE 6
Form of Invoice

SCHEDULE 7

Change Control Procedure

Annual Review

1. The LSC will review the Contract annually, probably prior to the anniversary of the Services Commencement Date. This will be an all-encompassing review of all the terms of the Agreement.
2. If, as a result of the above reviews, the LSC wish to amend any term of the Agreement (including its schedules), the LSC will contact the Provider initially with the LSC's proposed amendments and ask for comments within two weeks of these being communicated to the Provider. The LSC will consider any comments it receives and, as a result, may be willing to amend some of the LSC's proposed changes. However, there will no doubt be some changes the LSC wishes to make regardless of any comments the LSC receive. The LSC will not seek to alter fundamental terms of the Agreement, such as price or the nature of the service to be provided, without negotiating such changes with the Provider.
3. Changes will be detailed in a Contract Amendment Notice, as set out below. On such occasions, where it is appropriate, the LSC will amend and re-issue the relevant Schedule. Any new Schedule issued will replace the earlier version.
4. Such changes will come into effect on the 'effective date' set out in the Contract Amendment Notice, which shall be not less than one month from the date of the Contract Amendment Notice – e.g. if the Contract Amendment Notice is dated 1 March 2008, the amendment will come into effect after 1 April 2008 - unless the LSC agree an earlier effective date with the Provider.

Ongoing changes from the LSC

5. After reasonable notice the LSC may amend any term of this Agreement (including its schedules). 'Reasonable notice' in this clause means not less than one month, although some specific changes may require longer notice periods.
6. If the LSC consider that the changes are contentious, the LSC's Contract Manager will contact the Provider's Contract Manager to discuss them prior to implementation. Some changes may be capable of negotiation; some may not be. The LSC will tell the Provider whether the LSC's proposed changes can be subject to negotiation when the LSC first contact the Provider regarding the changes. If the Provider thinks some proposed changes are contentious where the LSC does not, the Provider may contact the LSC to discuss this. It is likely that any ongoing changes to the Agreement would cover day to day operational subjects.

7. If the Contract Managers are unable to agree on the content of contentious changes, they will deal with the change issue according to the dispute resolution procedure (see **Schedule 8**).
8. Any changes to the Agreement will be recorded by means of a Contract Amendment Notice. On such occasions, where it is appropriate, the LSC will amend and re-issue the relevant Schedule. Any new Schedule issued will replace the earlier version.
9. If the Provider does not accept any amendment to the Contract that the LSC makes, then the Provider may give notice to the LSC terminating this Agreement, effective from the day before the amendment takes effect.

Ongoing changes – from the Provider

10. The Provider must inform the LSC immediately in writing of any changes the Provider proposes to make to its CDS Direct Service, the location from which the CDS Direct service is provided, etc, as set out in this Agreement, for the LSC's consideration. Changes take effect when the LSC has recorded them in a Contract Amendment Notice.

Contract Amendment Notice

Contract Amendment Notice Number:	
Date of Contract Amendment Notice:	
Effective date (date amendment comes into effect):	
<p>Details of amendments to the Contract (Minor changes will be listed in this box. If the amendment involves substantial changes to the text of the Contract, the relevant pages, showing the changes in "tracked changes" will be attached to this Notice; any new annex will be attached to this Notice, stating which annex it replaces):</p>	
Signed:	<p>.....</p> <p>[Contract Manager] [Relationship Manager] [Senior Executive]</p> <p>On behalf of the Commission</p> <p>.....</p> <p>[Contract Manager] [Relationship Manager] [Senior Executive]</p> <p>On behalf of the Provider</p>

SCHEDULE 8

Dispute Resolution Procedure

[To be inserted at contract award will provide for(a) disputes to be escalated internally via Contract Managers and Senior Executives. If Senior Executives are unable to resolve a dispute, they will agree a mechanism for resolution, which may involve a report by an independent expert. If this fails to resolve the dispute, and it is agreed as the most appropriate course of action, the LSC may attempt to settle it by voluntary mediation. If the dispute can't be resolved by mediation, one or both parties may go to court to resolve it]

SCHEDULE 9

IT Requirements

Connection to the ECMS

1. The Provider will need to connect to the DSCC network in order to receive and process CDS Direct cases via the ECMS. This will be achieved via a dedicated connection from the Provider's office to a DSCC Internet protocol virtual private network with multiple label switching (IP VPN MPLS).
2. Each office will require their own individual connection. Selection of suitable line speed (2Mb, 4Mb or possible higher) will depend on the location of the Provider.
3. Connection costs are dependant on the Provider's postcode and will be confirmed at contract award. In addition to the connection costs a management fee is charged by the current network provider, (this is estimated at £3,000 per annum, per connection). The management fee covers maintenance, configuration changes and fault and status monitoring 24 hrs a day, 365 days a year. The network provider will invoice Providers direct for the connection and management fee costs.

Workstation Information

4. The ECMS has been designed for Intranet deployment using Oracle Internet Application Server, to be accessed by any workstation with a suitable web browser, e.g. Microsoft Internet Explorer 6, using the Oracle Jinitiator Java Virtual Machine (JVM).
5. The following items detail the basic requirements for workstations required to use the ECMS:
 - 5.1 a Windows based PC. The application is known to work under Windows XP, NT4, and Windows 2000. There may be compatibility issues with other Operating Systems.
 - 5.2 Internet Explorer 6 (IE6) installed as the web browser.
 - 5.3 ability to download, install and run Oracle Jinitiator software.
 - 5.4 The necessary internal network, communications software and configuration such that the firms PCs can connect to the DSCC provider's LAN via the IP VPN MPLS.
6. Providers will need to make sure they have sufficient PCs to accommodate the maximum amount of CDS Direct Advisers on duty at any one time.

Telephony requirements

7. Incoming calls for CDS Direct from the police will be handled by the DSCC and distributed by the ECMS system to the Provider. No specialist call management equipment is required to distribute incoming calls.
8. To operate effectively the Provider will need to meet the following basic telephony requirements:
 - 8.1 A phone for each CDS Direct Adviser on duty with the ability to make outgoing calls and support call conferencing. The call conferencing feature is vital to facilitate the use of the telephone interpreting service.
 - 8.2 A dedicated direct dial contact number to be used by the DSCC or LSC.
 - 8.3 A Fax machine.

Disaster Recovery (see Business Continuity Plan)

9. The Provider will need to have in place contingency plans which take account of major failure occurring at the main operating centre (this could take the form of a major fire, flooding, electrical failure, telephone or computer failure etc). If a Provider's service goes down and they are unable to access the ECMS due to problems with their internal network or PCS, they must notify the DSCC who will divert cases to another Provider until such time as the original Provider is up and running again.
10. If a Provider's telephony system or phone lines go down, providers will need to use cell phones to make the outgoing calls to clients until such time as the telephony system or phone lines become available again.
11. Providers must have staff in place throughout the Contract Term with the relevant skills to maintain their IT systems. Providers must also have suitable maintenance contract(s) and back-up system(s) in place for their telephone equipment and IT system in the event of any malfunction or breakdown to ensure swift resolution.
12. Providers must notify the DSCC within 15 minutes of any telephony/ systems failure and give a timescale for resolution. As payment is on the basis of the number of cases dealt with, Providers will not receive any payment for periods when they are unable to take cases.
13. Providers will also be required to meet the service availability requirements set out in **Schedule 3** - Key Performance Indicators. If they fail to do so, depending upon the level of their service availability, the LSC reserves the right to request an Action plan including steps and timescales to improve systems, terminate the contract or move work to another provider.

14. The DSCC have detailed plans for dealing with any loss in service which include a separate contingency site should they need to relocate due to a problem with their main operating centre. If access to the ECMS is not available due to a fault or a planned software update then they will operate manually recording case details from the police by hand. DSCC will then pass case details by phone to the Provider (in accordance with the percentage of cases that they are contracted to provide).
15. The Provider will need to record the case details and all work carried out on the case (including times of calls) manually until such time as normal service is resumed. The Provider will then need to return their notes by fax to DSCC who will update the ECMS accordingly and retain copies of the manual notes on file. DSCC will supply the Provider with the template for the correct form to be used. Providers will not be required to retain any copies of their notes at their premises.
16. Any software release that will require downtime to the ECMS will be scheduled in advance and be implemented during a period of low demand.
17. If the connection between the DSCC and Provider fails, the DSCC will be responsible for restoring the connection should the fault be with the line itself. The Providers will be responsible for maintaining and fixing any fault with their own network equipment. Should a fault develop with the line itself the Provider will be required to record information manually as set out above until DSCC have restored the connection. The LSC will not make any extra payment to the Provider for complying with these disaster recovery measures.

SCHEDULE 10

Exit Costs

[To be inserted at contract award]

SCHEDULE 11

Business Continuity Plan

Business Continuity Plan (“BCP”)

The Provider must comply with the following business continuity plan and ensure that it is able to implement it at any time in accordance with its terms - which are as follows:

If the Provider is large enough with facilities to do this (e.g. the Provider may have this for other clients), the Provider’s information technology infrastructure shall be covered by a business continuity contract with a specialist provider whereby a “warm” recovery site or facility shall be made available to the Provider within a maximum of four hours after the occurrence of any disaster. If a disaster occurs, the Provider shall inform the LSC of any remedial action within a maximum of four hours after the occurrence of any disaster.

If the Provider is a smaller Provider and does not have the above facilities in place, the Provider must notify the LSC of any computer/telephony failure within 15 minutes of occurrence together with a timescale for resolution. If the Provider’s system has malfunctioned, with the result that the Provider is unavailable to supply the CDS Direct service in accordance with the provisions of this Agreement over five consecutive days but contact the LSC with an acceptable timescale for resolving the problem, the LSC reserve the right to ask another Provider to take on the Provider’s CDS Direct cases until the Provider has resolved the problem to the LSC’s satisfaction. If the Provider’s proposals for resolving the problem are unacceptable, or if the Provider has no proposals, the LSC may give the Provider notice to terminate this Agreement, or any part of it, with effect from the date the LSC specify.

The Provider shall ensure that the Provider’s mainframe power supply (together with that of any permitted sub-contractor or agent) is covered by uninterrupted power supply equipment and a generator.

The Provider shall document the business continuity arrangements to the LSC when the LSC reasonably ask for them.

The Provider shall test the BCP on a regular basis (and in any event not less than once in every 6 month period) and such tests shall simulate as a minimum recovery from a complete loss of software and data. The Provider shall produce an audit report from each test and ensure that any corrective actions are taken. The LSC may require the Provider to conduct additional tests of the BCP where the LSC consider it necessary, including where there has been any change to any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCP.

If the LSC require an additional test of the BCP, the LSC shall give the Provider written notice and the Provider shall conduct the test in accordance with the LSC’s requirements

and the relevant provisions of the plan. The Provider's costs of the additional test shall be borne by the LSC unless the plan fails the additional test, in which case the Provider's costs of that failed test shall be borne by the Provider.

Following each test, the Provider shall send the LSC a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the LSC consider to be necessary as a result of those tests.

The Provider shall undertake regular risk assessments in relation to the provision of the IT services not less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to the LSC promptly in writing following each review.

Upon request by the LSC, the Provider shall make the Provider's BCP available to individuals suitably authorised by the LSC for inspection and audit.

The LSC shall undertake a regular review of the BCP. The review shall be conducted at least once a year and shall include as a minimum: identification and evaluation of systems assets; identification and assessment of the potential impact of threats to those assets, or to the Provider's system as a whole; assessments of the weaknesses and vulnerabilities in the areas of threat; evaluation of the risks arising from the assessed threats and weaknesses; and identification of countermeasures in proportion to the risk.

SCHEDULE 12

Form of Reports

File review report

Complaints report

Requests for records of advice report

Police Concern report

SCHEDULE 13

Peer Review Ratings

Rating	Rating Description	Action
<p>PR3</p> <p>(in first six months following Service Commencement Date)</p>	<p>Threshold competence</p>	<p>Corrective action required to achieve a PR1 or PR2 at next Peer Review.</p> <p>At the LSC's option, a further Peer Review will be carried out to test corrective action.</p>
<p>PR3</p> <p>(in remainder of Contract Term)</p>	<p>Below competence</p>	<p>Rating notified.</p> <p>Representations received. If rating confirmed, corrective action required. Further Peer Review carried out to test corrective action. Rating notified. Representations received. If rating confirmed, contract notice issued. One more rating of 4 or 5 would lead to termination of the Contract on one month's notice.</p>
<p>PR4</p>	<p>Below competence</p>	<p>Rating notified.</p> <p>Representations received. If rating confirmed, corrective action required. Further Peer Review carried out to test corrective action. Rating notified. Representations received. If rating confirmed, contract notice issued. One more rating of 4 or 5 would lead to termination of the Contract on one month's notice.</p>
<p>PR5</p>	<p>Failure in performance</p>	<p>Rating notified.</p> <p>Representations received. If rating confirmed, further Peer Review carried out. Rating notified. Representations received. If 4 or 5 rating confirmed, termination of the Contract on one month's notice.</p>

SCHEDULE 14

Provider's Set-up Plan

[To be inserted at contract award]

SCHEDULE 15

General Criminal Contract Terms

[To be inserted at contract award]

SCHEDULE 16

Third Party Confidentiality Agreement

Dated

2007

(3) [CDS Direct Provider]

(4) [NAME OF PARTY 2]

CDS Direct: Third Party Confidentiality Agreement

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BETWEEN

- (1) [NAME OF PARTY] [ADDRESS OF PARTY] ("**the Discloser**");
- (2) [NAME OF PARTY] [ADDRESS OF PARTY] ("**the Recipient**").

BACKGROUND

- (A) The Recipient wishes to receive from the Discloser certain information belonging to the Discloser for the Purpose (as defined in **clause 1**).
- (B) In order to facilitate the Purpose the Discloser wishes to disclose to the Recipient information which is of a confidential nature.

1. DEFINITIONS

In this Agreement the following expressions shall have the following meanings unless inconsistent with the context:

- "Associated Company"** any company which is, in relation to another company, its holding company or its subsidiary or a subsidiary of its holding company. "Holding company" and "subsidiary" shall have the meanings attributed to them in section 736 and 736A of the Companies Act 1985
- "Business Day"** any day other than Saturday and Sunday or a public or bank holiday in England and Wales
- "Confidential Information"** all information in respect of the business of the Discloser including, without prejudice to the generality of the foregoing, any ideas; business methods; finance; prices, business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software; products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by the Discloser and information concerning the Discloser's relationships with actual or potential Clients, customers or suppliers and the needs and requirements of the Discloser and of such persons

“the Commencement Date” [THE DATE OF THIS AGREEMENT]

“Purpose” the purpose indicated in Annex 1

2. **INTERPRETATION**

- 2.1 References to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted, consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement.
- 2.2 The expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.
- 2.3 The words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context.
- 2.4 In this Agreement the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require.
- 2.5 Any reference in this Agreement to a clause, Schedule or Appendix is a reference to a clause or Schedule or Appendix of this Agreement and references in any Schedule or Appendix to paragraphs relate to the paragraphs in that Schedule or Appendix.

3. **DISCLOSURE**

- 3.1 On and from the Commencement Date the Discloser shall (to the extent that it has not done so already) disclose to the Recipient full particulars of the Confidential Information such as to allow the Recipient to proceed with the Purpose. The Recipient confirms that the duty of confidentiality imposed by this Agreement extends to any Confidential Information which has been, or may have been, supplied to it before the Commencement Date despite the absence of a written agreement, this Agreement merely recording in writing the oral confidentiality obligations under which the Recipient received the Confidential Information in question.
- 3.2 The Recipient agrees during and after expiry or termination of this Agreement for as long as the Confidential Information remains confidential:
- 3.2.1 that it will not use the Confidential Information other than so far as any such activity is essential for the Purpose; and
- 3.2.2 that it will keep secret and confidential all Confidential Information and to take all reasonable security precautions in the safekeeping of the

Confidential Information.

- 3.3 The Recipient shall only disclose the Confidential Information to those of its directors or employees who need to know it strictly for the Purpose, and who have signed express confidentiality undertakings with the Recipient, and are made aware of the Recipient's confidentiality obligations towards the Discloser.
- 3.4 If the Recipient considers it necessary for the Purpose to disclose the Confidential Information to third parties (including any sub-licensees, sub-contractors or any staff of Associated Companies) then, before any such disclosure takes place, the Recipient shall procure that each of the third parties concerned shall have first executed a confidentiality undertaking with the Discloser in the form set out in **Annex 2**. Notwithstanding any such undertaking the Recipient will be responsible to the Discloser for any failure by any such third party to observe the conditions of this Agreement regarding use and secrecy of the Confidential Information.
- 3.5 The confidentiality obligations on the Recipient in this Agreement shall not extend to information which the Recipient can prove to the Discloser's reasonable satisfaction:
- 3.5.1 was lawfully obtained after the Commencement Date free of any duty of confidentiality otherwise than directly or indirectly from the Discloser;
 - 3.5.2 was already in the Recipient's possession prior to the date of disclosure by the Discloser [which the Recipient can show from written records];
 - 3.5.3 is in or subsequently enters the public domain (other than as a result of a breach of this **clause 3**);
 - 3.5.4 is necessarily disclosed pursuant to a statutory obligation;
 - 3.5.5 is disclosed to the professional advisors of each party as described in **clause 8** under terms of confidentiality pursuant to **clause 8**;

4. **TERM AND TERMINATION**

- 4.1 This Agreement commences on the Commencement Date and, subject to **clause 4.5**, remains in force until either the Purpose is concluded, or until either party at any time gives the other written notice to terminate, whichever is the earlier.
- 4.2 Any copy of the Confidential Information made by the Recipient, including, but not limited to, any notes, or drawings, or recordings of any demonstrations, or notes of oral disclosures of Confidential Information, (including any recordings of transmissions over telephone lines or via radio or microwave), shall become the

property of the Discloser immediately on creation and shall be returned by the Recipient to the Discloser on demand.

- 4.3 The Recipient undertakes to the Discloser, on request by the Discloser at any time, to return to the Discloser any and all Confidential Information supplied to it (including any copies referred to at **clause 4.2**) and further undertakes, if so requested by the Discloser, to supply the Discloser with a statutory declaration given by a [director/officer] of the Recipient declaring that such documents and things so delivered comprise all the Confidential Information (or copies thereof as indicated under **clause 4.2**) in the Recipient's power, possession or control, and that no Confidential Information has been retained by the Recipient, or is held by a third party, in circumstances where it may come into the power, possession or control of the Recipient.
- 4.4 Upon any request by the Discloser under **clauses 4.2** and **4.3** the Recipient's rights to use the Confidential Information for the Purpose shall cease.
- 4.5 [The Recipient's obligations under this Agreement will survive the termination of this Agreement for a period of [15] years from the [Commencement Date]

5. **INTELLECTUAL PROPERTY RIGHTS, WARRANTIES AND DISCLAIMERS**

- 5.1 The Discloser retains all intellectual property rights in the Confidential Information at all times and for all purposes including the copyright or any other intellectual property right in materials produced by the Recipient relating to the Confidential Information.
- 5.2 Nothing contained in this Agreement is to be construed as granting or conferring any rights by licence or otherwise, expressly, or by implication, in respect of any intellectual property right in, or any invention, discovery or improvement made or acquired by the Discloser before or after the date of this Agreement relating to, the Confidential Information.
- 5.3 The Discloser gives no warranty, express or implied, in respect of the Confidential Information.
- 5.4 The Discloser accepts no responsibility for any expenses or losses incurred or actions undertaken by the Recipient as a result of the Recipient's receipt of the Confidential Information. It is understood by the Recipient that the Discloser does not warrant or represent that it will enter into any further contract with the Recipient in connection with the development or supply of any product or service to which the Confidential Information relates.
- 5.5 It is acknowledged that both parties are free to enter into similar agreements with third parties, provided that the obligations of this Agreement are not breached.

6. RESTRICTIONS

- 6.1 The Recipient undertakes and warrants that it will not remove, obscure, amend or deface any confidentiality notice or notice of ownership or origin on or contained in the Confidential Information.
- 6.2 The Recipient shall not make any copies of the Confidential Information without the Discloser's written consent and any authorised copies it does make will not omit or alter any confidentiality notice or notice of origin that was on, or contained in, the original.

7. SECURITY ARRANGEMENTS

- 7.1 The Recipient shall accord the Confidential Information no less protection than it accords its own confidential information and without prejudice to the generality of this obligation shall:
- 7.1.1 keep the Confidential Information and any copies of it separate from other documents of the Recipient;
 - 7.1.2 keep the Confidential Information and any copies of it at the Recipient's premises at [ADDRESS] in secure storage in locked premises;
 - 7.1.3 mark all Confidential Information 'Confidential'; and
 - 7.1.4 restrict access to the Confidential Information to those personnel identified in **clause 3.3**.

8. DISCLOSURE TO ADVISERS/ANNOUNCEMENTS

- 8.1 Notwithstanding any confidentiality provisions contained in this Agreement, either party may disclose the existence and substance of this Agreement on a confidential basis to its accountants, lawyers, financial advisers, other professional advisers, and/or lenders, provided that, before any such disclosure takes place, such persons shall have first executed a confidentiality undertaking with the Discloser in the form set out in **Annex 2**.
- 8.2 The existence of this Agreement, and of any relationship between the parties concerning the Confidential Information, is confidential and neither party will publish, or permit to be published, any information about their relationship or about the Purpose, unless that information has first been approved for publication by the other party.

9. ASSIGNMENT

- 9.1 The Discloser may at any time assign the benefit (including any present, future

or contingent interest or right to any sums or damages payable by the Recipient under or in connection with this Agreement) or delegate the burden of this Agreement without the prior written consent of the Recipient.

9.2 The Recipient may not assign the benefit and/or delegate the burden of this Agreement.

10. **REMEDIES**

10.1 Without prejudice to any other rights and remedies that the Discloser may have, the Recipient agrees that the Confidential Information is valuable and that damages may not be an adequate remedy for any breach by the Recipient of this Agreement. The Recipient agrees that the Discloser will be entitled without proof of special damage to the remedies of an injunction and other equitable relief for any actual or threatened breach by the Recipient of this Agreement.

11. **ENTIRE AGREEMENT/RELIANCE ON REPRESENTATION**

This Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersedes any prior written or oral agreements, representations or understandings between the parties. Neither party to this Agreement has been induced to enter into this Agreement by a statement or promise which it does not contain save that this clause shall not exclude any liability which one party would otherwise have to the other in respect of any statements made fraudulently by that party.

12. **VARIATION**

No variation of this Agreement shall be effective unless in writing and signed by a director [or other duly authorised officer] of each of the parties.

13. **WAIVER**

No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

14. **GOVERNING LAW AND JURISDICTION**

14.1 This Agreement will be governed by and construed in accordance with English Law [as applied in Wales].

14.2 The courts of England will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the parties hereby agree to submit to that jurisdiction.

14.3 The jurisdiction provisions contained in **clause 14.2** are made for the benefit of

the Discloser only, which accordingly retains the right to bring proceedings in any other court of competent jurisdiction.

15. **NOTICES**

15.1 Any notice, demand or communication in connection with this Agreement shall be in writing and may be delivered by hand, pre-paid first class post, Special Delivery post, or facsimile (but not by e-mail), addressed to the Recipient at its registered office or its address or facsimile number as the Case may be stated in **clause 15.3** (or such other address or facsimile number as may be notified in writing from time to time) and shall be marked for the attention of [NAME].

15.2 The notice, demand or communication shall be deemed to have been duly served:

15.2.1 if delivered by hand, when left at the proper address for service;

15.2.2 if given or made by prepaid first class post or Special Delivery post, 48 hours after being posted or in the Case of Airmail [14] days after being posted (excluding days other than Business Days);

15.2.3 if given or made by facsimile, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post to the other party within 24 hours after transmission;

provided that, where in the Case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 p.m. on a Business Day, or on a day other than a Business Day, service shall be deemed to occur at 9.00 a.m. on the next following Business Day (such times being local time at the address of the recipient).

15.3 The addresses and facsimile numbers for the parties are as follows:

THE DISCLOSER

THE RECIPIENT

[ADDRESS]

[ADDRESS]

[FAX NO.]

[FAX NO.]

15.4 For the avoidance of doubt, where proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

16. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Agreement do not intend that any of its terms will be

enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

17. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which so executed and delivered shall constitute an original, but together shall constitute one and the same instrument.

SIGNED BY the duly authorised representatives of the parties on the date stated at the beginning of this Agreement.

SIGNED by [NAME]

duly authorised to sign

for and on behalf of

[NAME]

[DISCLOSER]

in the presence of:

Witness signature:

Name:

Address:

Occupation:

SIGNED by [NAME]
duly authorised to sign
for and on behalf of
[NAME]
[RECIPIENT]
in the presence of:

Witness signature:

Name:

Address:

Occupation:

ANNEX 1

The Purpose

[Supply of CDS Direct Services]

ANNEX 2

Confidentiality Undertaking

SCHEDULE 17

Complaints Procedure

[To be provided at contract award]

SCHEDULE 18

LSC Software

[To be inserted at contract award]

SCHEDULE 19

Communications, Branding, Announcements and Publicity

[To be inserted at contract award]