

## Voluntary scheme

### General Civil Contract (Solicitors) Amendment

**Contract Number: 00/000000/0**

<b>Name of Contractor</b>	
<b>Address of Schedule Office</b>	

*(Version 2 - including MH)*

This document forms an amendment to your Contract Schedule. It starts on 4<sup>th</sup> October 2004 but applies to all Controlled Work Claims made on or after 1 April 2004 in all Categories of Work authorised by your Contract (including within a Tolerance) except for:

- Immigration
- Cases in the Mental Health category where the client is sectioned following criminal proceedings.
- Family if you are a FAINS supplier.

#### Amendments to the Schedule

1 Subject to the provisions of this Agreement, payment of any Controlled Work Claim made by you on or after 1 April 2004 in a Category of Work to which this Agreement applies will be due from us at the appropriate fixed rate per Claim set out in the table below (which forms Table 5 of your Schedule):

<b>Category of Work</b>	<b>Rate per Claim</b>
Actions Against the Police etc (AAP)	
Community Care (COM)	
Consumer/General Contract (CON)	
Debt (DEB)	
Education (EDU)	
Employment (EMP)	
Housing (HOU)	
Family (MAT)	
Clinical Negligence (MED)	
Mental Health (MHE)	
Residual List (MSC)	
Personal Injury (PI)	
Public Law (PUB)	
Welfare Benefits (WB)	

The fixed rates are inclusive of disbursements and any VAT due, and subject to paragraphs 12 and 13 below no further sum is payable by us in relation to a Claim to which a fixed rate applies.

These payment rates will apply notwithstanding any credit we have given in relation to a relevant Claim before this agreement starts.

2 You must continue to submit 'Claims' on the CMRF that will show the full amount of profit costs (calculated in accordance with the relevant rates set out in clause 7 of Annex A to the Schedule), disbursements and VAT. This will be important to give a record of the time that you are spending, and of how your costs this year compared with last year's and with other firms. Where the statutory charge attaches at the Controlled Work level, then the Claims should be reported in accordance with paragraph 11 of this agreement.

3 However, subject to the provisions of this Agreement, payment will be made at the fixed rate in Table 5, whatever the amount claimed by you and recorded on the CMRF and Annex A (and B if applicable) of your Schedule is amended accordingly. No payment will be due where the amount of the Claim is nil.

4 We may Assess your Claims in accordance with the provisions of the Contract.

5 Notwithstanding any Assessment, we will make no reduction of the fixed rate payment due to you in respect of any Claim subject to the following:

- (1) We will not pay for work that is outside the terms of the Contract (for example work for non-eligible clients or not within the scope of Controlled Work).
- (2) Where we terminate your Contract under clauses 20.4 (c) (Official Investigation or Report) or 20.13 (Fundamental Breach) of the Standard Terms then we may pay the lower of the Assessed amount or the rate payable under Table 5.
- (3) If your rates in Table 5 have been set subject to completion of a costs compliance audit (including any appeal), we may amend those rates to reflect findings under Contract Specification Rule 2.15 as a result of the Assessment on a sample of your Claims.

6 We may also amend the payment rates in Table 5 as we consider reasonably necessary to correct any error (such as a miscalculation of the total of your Claims used to make up an average). If the amendment does not take place at your request, we will give you a reasonable opportunity (at least 21 days) to comment on the amendment before it is made.

7 We may make such amendments to the payment rates set out in Table 5 as we consider necessary to reflect any Access to Justice Legislation.

8 Your Next Schedule will contain the same fixed rates in Table 5 as this Schedule subject to the following:

- (1) Any amendments under paragraphs 5 to 7 or 9 of this Agreement.
- (2) We may reduce the fixed rate in any Category of Work in your next Schedule to reflect the results of any findings applied under Rule 2.15 of the Contract Specification on a sample of your Claims from this Schedule period. However we will only make reductions where the Assessed costs of the file sample are more than 10% below the lower of either the amount claimed, or the amount of the fees payable under Table 5.
- (3) We may also reduce the fixed rate in your Next Schedule in any Category of Work where the average of your Claims in that Category of Work over this Schedule period is significantly below the relevant rate in Table 5. 'Average' in this context means the total value (recorded in accordance with paragraph 2 above) of all your Claims in any Category of Work made during this Schedule period, divided by the total number of such Claims. If we amend any rate under this paragraph, then the new rate must be set at a level no lower than that 'average' and may be set at a level in between that 'average' and the existing rate in Table 5.
- (4) We will only exercise the powers in paragraphs 8(2) and 8(3) above where we have significant concerns about either value for money or quality of work. If we are considering a reduction under 8(2) we will normally arrange for your files to be peer reviewed.
- (5) Any amendments to your Next Schedule made under paragraph 8(2) will take effect from the date notice is given of the amendment. Any amendments to your Next Schedule under paragraph 8(3) may be backdated to the beginning of that Schedule period (i.e. to 1 April 2005).

9 Any amendments made to the General Civil Contract (Solicitors) in order to implement the compulsory scheme for fixed fees will also be incorporated into your Contract as from the appropriate date (likely to be 1 April 2005).

10 In taking on the client on a fixed fee basis, then except as provided in paragraph 11 below, you are accepting that fee as full payment for all work reasonably required for the client in that matter at the Controlled Work level.

#### 11 Statutory charge

- (1) The amount of the statutory charge under section 10(7) of the Access to Justice Act 1999 that applies in your favour at the Controlled Work level will be the lower of either the 'costs' of the Matter (calculated as the amount of your profit costs at the relevant rates in Clause 7 in Annex A of your Schedule plus disbursements and VAT) or the value of the property recovered or preserved.

- (2) Nothing in this agreement affects your right to recover costs from another party in proceedings or prospective proceedings in excess of the amount payable by us.
- (3) Paragraphs 11(4) to (7) below apply only to Claims made after 4<sup>th</sup> October 2004.
- (4) Where the statutory charge applies in your favour then the amount due from us in respect of your Claim will be the difference (if any) between the appropriate fixed rate and the amount of the statutory charge.
- (5) Where the amount of the statutory charge equals or exceeds the appropriate fixed rate you should report the Matter on the CMRF as a 'nil' Claim. No payment will be due from us in relation to the Claim.
- (6) Where the amount of the statutory charge is less than the appropriate fixed rate then you may either:
  - (a) Report on the CMRF the difference between the fixed rate and the amount of the charge. Since the CMRF does not include information in relation to the charge, you will need to include details of the amount of the charge in the form referred to in paragraph 11(7) below, so that we can net this off from the fixed rate due for the Matter.
  - (b) Accept the amount of the charge as full payment for the Controlled Work and report the Matter on the CMRF as a 'nil' Claim.
- (7) You must submit, at such times as we shall require (not to be more than once every 3 months), a report (on the form provided by us for the purpose) of the total amount of the statutory charge retained by you at the Controlled Work level in relation to any Matters reported under paragraph 11(6)(a) above. We will then deduct this total from the amount payable to you under your Schedule. In reporting under this paragraph you do not need to include the amount of the charge recovered in any cases where you have made a 'nil' Claim.

## 12 Exceptional cases:

- (1) Where:
  - (a) the reported costs of any Claim, calculated in accordance with paragraph 2 above, exceed £2500; and
  - (b) you can demonstrate to our reasonable satisfaction that any such Claim is exceptional both in terms of type of work and in the amount of the work involved, compared with the Controlled

Work Claims used to calculate your fixed rates (normally those made during the period 1 April 2003 to 31 March 2004)

then subject to any Assessment we may agree to pay you the amount so calculated rather than the fixed rate for that Claim.

- (2) Any Claims covered by paragraph 12(1) above will not be included in any sample used for the purposes of paragraph 8(2) above or in any 'average' calculated under paragraph 8(3) above.

### 13 Extra Disbursements

- (1) Where the average per Claim of reported disbursements on the CMRF in the Schedule period exceeds the average of such disbursements in the Controlled Work Claims used to calculate your fixed rates (normally those made during the period 1 April 2003 to 31 March 2004), and some or all of the excess relates to either

- (a) an increased provision of reasonable disbursements to clients whose personal circumstances mean that they require additional services (such as translation facilities) in order for them properly to access Contract Work provided to them; or
- (b) an increase in any reasonable disbursements in the Mental Health Category,

then we will, subject to Assessment, pay that part of the excess that relates to such disbursements in addition to the rates payable under Table 5 of the Schedule.

- (2) We may issue guidance on the types of personal circumstance and additional service which are covered by paragraph 13(1)(a) above.

### **Amendments to the Standard Terms**

#### Clause 12A.4

Add the following sentence at the end of the Clause:

**'However, where the assessed Claim relates to work to which the fixed rates in Table 5 of your Schedule apply, then subject to the provisions of your Contract, the amount due from us in respect of that Claim will be the appropriate fixed rate.'**

#### Clause 12 B.2

Amend the clause to insert the words in bold:

'Subject to our right to Assess your Claims, the amount due from us in respect of any Controlled Work Claim is the amount properly claimed by you, **or where the Claim relates to work to for which the fixed rates in Table 5 of your Schedule apply, the appropriate fixed rate**, less:

- (a) the amount of any contribution payable by the Client; and
- (b) except where the Specification provides otherwise, the amount of any charge (whether contractual or statutory) arising under the Act.

**Amendments to the Specification**

Rules 3.6 (Upper Financial Limit) and 5.5 (Mental Health Controlled Legal Representation Limit) will not apply.

Signed for and on behalf of the Legal Services Commission by:	Signed for and on behalf of you by:
Name:..... Signature:..... Status:.....	Name:..... Signature:..... Status:..... <i>[Partner/Principal/Director/Other (please state)]</i> Type of organisation:..... <i>[e.g Partnership, Incorporated Practice, Limited Liability Partnership]</i>

This Contract amendment must be signed for you by a person or persons who can bind you to it. If you are a partnership a partner must sign. If you are a sole practitioner solicitor, the sole practitioner (principal) must sign. If you are a company, two directors or a director and a company secretary must sign. This Contract amendment is valid only if it is signed by one of our Regional Directors or another person with the specific written authority of our Chief Executive.