

# Draft Legal Services Commission Detention Advice Specification v.4

## Foreword

- A Contract Work is Controlled Work under the Contractor's Unified Contract.
- B So far as is reasonably necessary for the purposes of the Scheme, we may amend this Specification on written notice to Contractors. 14 days' notice will be given for urgent amendments and 28 days for non-urgent amendments.
- C This Specification forms part of your Detention Advice Schedule (and is not part of your Unified Contract Specification)

## Aim

Through this Schedule we wish to achieve the following aims:

- to create an accessible, independent, quality assured and integrated legal advice and representation service for clients detained at an Immigration Removal Centre (IRC)
- ensuring that services provided by suppliers at the (IRC) meet the needs and priorities of the detainees;
- to achieve continually-improving value for money, with the ultimate aim of delivering, the best possible value for money;

## Schedule Period

This Schedule starts on the Schedule Start Date and (unless lawfully ended sooner) ends on the earliest of either:

- (a) the expiry of 12 weeks' notice given by either party to the other;
- (b) on the ending of the right to perform Controlled Work in the Immigration Category of Work under the Contractor's Unified Contract for the Office;
- (c) on the ending of the Contractor's Unified Contract for the Office;
- (d) on the ending of the Contractor's Specialist Quality Mark in Immigration; or
- (e) on your receiving a confirmed category 3 rating following your last contract compliance/ cost audit (i.e. if your category 3 rating is confirmed on appeal) (see Clause 6 below); or
- (f) on your receiving a confirmed Peer Review rating of PR4 or PR5 – 'Below Competence' or 'Failure in Performance'.
- (g) the Schedule End Date.

## **1 Liaison with the Legal Services Commission (LSC)**

- 1.1 The LSC will appoint a Relationship Manager to act as liaison between us and you for the purposes of this Schedule. The name of the Relationship Manager is set out in the Key Information Table, but we may notify you of a replacement by writing to you. Unless stated otherwise, the Relationship Manager should be your initial point of contact for all matters concerning this Schedule. The contact details for the LSC are set out in the Key Information Table.
- 1.2 You must appoint a Liaison Officer who will be the named point of contact for the LSC for the purposes of this contract.

## **2 Incorporation of Unified Contract**

- 2.1 This Schedule incorporates the contents of the LSC's current Unified Contract and, unless stated otherwise, the obligations of the Unified Contract apply to the services provided under this Schedule. In the event of any conflict arising between the terms of this Schedule and the terms of the Unified Contract, the terms of this Schedule will take precedence.
- 2.2 For the avoidance of doubt payment for work undertaken as part of this schedule is paid for through this schedule and not through the Unified Contract.

## **3 Personal Performance**

- 3.1 This Schedule is personal to you and you may not give, bargain, assign (or otherwise dispose of) the benefit of any of its rights, or sub-contract (or otherwise delegate) any of your obligations under this Schedule except for agreed subcontracting arrangements set out in section 16.
- 3.2 You must ensure that you deliver the immigration advice and representation services as set out in section 4. These services must be provided according to the provisions set out in this Specification and its annexes.

## **4 Advice Services to be provided**

- 4.1 You must be able to provide the following services to detainees:
  1. Advice and representation in relation to temporary admission/ Chief Immigration Office Bail/ Bail (AIT or other appropriate court)
  2. Advice in relation to an immigration and/ or asylum application.
  3. Advice in relation to an immigration and/ or asylum appeal.
  4. Advice/ Representation for those detained under the fast track scheme
- 4.2 In addition to the range of services listed above you should also be able to provide detainees with access to the full range of services required to pursue their case including the remedies of Judicial Review and where appropriate Injunctive relief.

Only items 1 to 4 will be paid for through this schedule. Where advice/ representation is provided in relation to other matters such as Judicial Review, this will not form part of the schedule of payment through this contract and you should see paragraph 6.3 for further details regarding the funding of these matters.

- 4.3 You must also ensure that you make appropriate referrals for matters requiring legal advice outside of the Immigration Category.

## **5 Approved Personnel**

- 5.1 All advisers providing advice under this Schedule must be accredited in accordance with the requirements of the Immigration and Asylum Accreditation Scheme (IAAS) as required by rule 11.77 of the Immigration Specification.
- 5.2 The provision of services, require advisers to have reached a minimum level of accreditation in order to provide detainees with advice. You may not claim for advice given where it has been provided by advisers who are not accredited to this level. We may specify further or revised criteria on 28 days' written notice to you.
- 5.3. When providing advice through this Schedule to detainees at the On Site Surgery, Contract Work may be performed only by individuals accredited to at least Level 2 – Senior Caseworker - of the IAAS.
- 5.4 For all other advice services you should ensure that you comply with the Work Restrictions of the IAAS which can be found on our website at: <http://www.legalservices.gov.uk/civil/immigration/accreditation.asp>
- 5.5 Where a client has been seen by a level 2 accredited adviser through the On Site Surgery and had their case assessed, the Level 2 Adviser may, where appropriate pass the case to a Level 1 accredited adviser to continue to provide advice and assistance on the matter.
- 5.6 A Level 2 accredited adviser must always initially provide advice to a client who attends the On Site Surgery as they may have a complex immigration history that need to be assessed. Once the client's case has been assessed then the matter may be referred to another one of your advisers. You should ensure that the adviser is accredited to the appropriate level to undertake the work required.

## **6 Legal Representation**

- 6.1 You are entitled to commence Controlled Work cases in the Immigration category of law up to the maximum number set out in that Plan Allocation.
- 6.2 Once your Initial Case Allocation has been used up, you must seek further consent from your Relationship Manager if you want to undertake further cases. Any further cases will be managed and paid for in accordance to this schedule. When deciding whether to provide further funds for any further work, the LSC will take into account your performance against the Performance Standards and will not give permission to undertake additional cases if it considers, in its absolute discretion, that undertaking this work might jeopardise your ability to continue to deliver an appropriate volume and mix of advice services required by detainees at the IRC.

- 6.3 Matters which require the grant of Full Legal Representation (Certificated Work) do not form part of the work to be undertaken under this schedule. Such matters must be undertaken in accordance with the Unified Contract.

## **7 Exceptions to the Provision of exclusive advice**

### **7.1 Where a client is already represented**

- 7.1.1 It will be necessary to establish at the outset whether a detainee has a representative before giving any advice under this schedule. Where a detainee already has a representative and wishes to continue to instruct them, then in specified circumstances, they will be entitled to do so.
- 7.1.2 An individual may be detained during any stage of their immigration/ asylum application. In some cases no application for leave to remain may have been made e.g. where the individual has been residing in the UK without any leave to enter/ remain. You should therefore always seek to establish whether an individual has previously received advice on their immigration matter. If the previous representative no longer acts for the client or if they are no longer able to act for the client, for example due to their distance from the detention centre, you should ensure that you obtain their file of papers, so that you may fully advise the client on their case and prospects of success.
- 7.1.3 Detainees whose asylum claims are dealt with through the Home Office Fast Track process will be referred to you for advice and representation. You should represent such a detainee (subject to the means/ sufficient benefit/ merits test) unless their case comes within one of the exceptions to Rule 11.97 of the Unified Contract and therefore their existing representative will be entitled to continue to act for them. In such cases you will not be permitted to act for the client. You should ensure that you comply with the rules in Annex ... of this specification when providing such advice.
- 7.1.4 Where a client has been detained on any other case and approaches you for advice you should ensure that you ask the client whether he/ she has an existing adviser. If they have you should check (with the representative) whether the exceptions to rule 11.97 of the Unified Contract apply. If they do not then you should take on the client case (subject to the means & merits test).
- 7.1.5 Under the terms of the Unified Contract where a supplier represents a client who is subsequently detained by the Home Office/ Immigration Services, they may continue to act for the client if their case comes within the exceptions to Rule 11.97 of the Unified Contract. When the case reaches a stage claim within the Immigration Graduated Fee Scheme, as defined in the Unified Contract Immigration Specification, they may refer the matter to you as an exclusive detention advice provider if it is in the best interest of the client to do so.

### **7.2 Where the client is released from detention**

- 7.2.1 Where you have been providing advice/ representation to a client under the terms of this contract schedule and your client is either released from detention or moved to another detention centre (including a prison), then you should continue to provide advice under this schedule until the case reaches a recognised Graduated Fee Stage (GFS) of the Unified Contract Immigration Specification.
- 7.2.2 Where a client has been released from detention, you should continue to represent the client until the case reaches the next GFS. You should decide whether it is in the interest of the client to refer them to a local provider or to continue to represent them. As the adviser you will be best placed to assess all the circumstances of the case.
- 7.2.3 Where a client has been moved to another detention centre, once the case reaches the next GFS stage or where both Stage 1 and 2 have already been completed, you should decide whether it is in the interest of the client to refer them to either:  
(a) an exclusive contract provider (if exclusive contracting arrangements are in operation) or  
(b) a local provider (where no exclusive contracting arrangements are in operation).  
As the adviser you will be best placed to assess all the circumstances of the case.
- 7.2.4 In some cases a referral may not be appropriate under rule 7.2.3. For example where a client is to be removed from the UK, and their move to another detention centre is for a short period prior to removal. However you should ensure that the client is advised to contact you for further advice should their removal not proceed and they therefore require further advice regarding their case/ detention. In such circumstances you should then consider whether a referral should be made under rule 7.2.3.
- 7.2.5 Where it has been decided that a referral should be made you should ensure that you comply with Rule 12 of this specification. Where you make a referral you should ensure that you provide the new advisers with a copy of the clients file of papers as soon as possible but in any event no later than 7 days from the date of the request from the clients new advisers.

## **8 Compliance with professional rules**

- 8.1 You undertake that, at all times you will comply fully with the conduct and practice rules of your professional body including (if applicable) the Solicitors' Practice Rules and Rules of Professional Conduct in relation the performance of the advice services you provide under this contract schedule. (This equally applies to rules set down by OISC.)

## **9 Services to be provided through the IRC**

You must ensure that you provide services to detainees according to the provisions set out below.

### **9.1 Providing an appropriate balance of Advice Services within the IRC**

- 9.1.1 Through this contract specification we wish to ensure that suppliers provide all the

immigration (including asylum) and detention advice services to meet the needs of detainees. You are therefore required to undertake a reasonable mix of type and size of cases and not favour cases which require less work. For example we would not expect you to provide advice services exclusively through one method e.g. through surgery advice sessions. We would expect you to provide a variety of services which will meet the needs of detainees.

9.1.2 To ensure that these aims are achieved we required you to record the following information and report it to us:

- (a) all time spent on each case (including a breakdown of the time spent)
- (b) profile information on each client and the services they access from you
- (c) the frequency of each all outreach services e.g. on site surgeries

Full details of the information we require you to record is set out in ..... below.

9.1.3 Where the overall average (mean) length of case (excluding on site scheduled surgery advice) falls below/ above the average length of cases at this level funded by the LSC for the Immigration category of law we will raise these issue with you. Failure to achieve these targets may result in the funding received under this schedule being reduced.

9.1.4 If you are not reaching a proportionate mix of services (as set out in ..... ) we will discuss this with you and reserve the right to impose an action plan to focus the provision of specific services/ targets.

9.1.5 You are also required to achieve the Performance Standards which maintain an appropriate balance of the provision of advice delivered, and a focus on the outcomes achieved for clients in the detention centre. The provisions on Performance Standards are set out at Part [ ] below.

## **10 Procedures to deal with emergency cases**

10.1 It is anticipated that most clients will be referred to/ contact the on site surgery as the first point of contact if they require a legal adviser. However it may not always be practical for a detainee to wait until the next surgery appointment when making initial contact with an adviser. This will particularly be the case where, for example, an appeal deadline needs to be met or removal directions have been issued.

10.2 Where you are contacted directly by a client or by a third party of their behalf, who does not have a legal representative, and the circumstances are such that it would be inappropriate to refer the client to the next surgery then you may arrange to visit the client in detention in order to take their instructions and to advise them with regards to their case and the options available to them.

10.3 Where the client has a legal representative, you should refer the client to their representative for advice and assistance.

## **11 Requirements for work undertaken at the IRC**

### **General Requirements**

#### **11.1 Means and merits tests**

With the exception of scheduled surgery advice sessions, you are required to apply the Commission's financial eligibility and legal merits tests before helping undertake clients' cases. Where advice is provided through the on site surgery, by the conclusion of a clients advice session you must have applied the appropriate means and merits test to the matter.

The financial eligibility and legal merits tests you must apply are those set out in the versions of the Funding Code applicable at the time when the client requests advice or representation.

11.2 On accepting instructions from a client, you should anticipate that those instructions will continue, as a minimum, for as long as the client is in detention, (e.g until they get leave to remain, temporary admission or they are removed from the detention centre or the UK), unless the client specifically ceases to give instructions. You should also refer to point 7.2.2 for further information on the referral of clients who are released from detention.

11.3 When taking instructions from the client for the first time you should establish whether the client has received advice under this exclusive contract schedule. If they have then they should be referred to the (other) exclusive provider who previously advised the client. The provider must provide advice to the client under point 11.2 of this contract schedule. (See point 7.1 for further information on accepting instructions).

11.4 If a detainee at the IRC seeks advice from you in relation to an Immigration matter within the scope of the Unified Contract, then you must fulfill their requirement for legal advice and where appropriate representation.

In points 11.1, 11.2 & 11.3 you must ensure that the client satisfies the Unified Contract means and appropriate merits tests. Where the merits test ceases to be satisfied you should not provide any further advice. You should ensure that the client is informed (where applicable) of their right to challenge your decision to the LSC. You must ensure that you comply with the Unified Contract regarding such matters.

11.5 Before providing advice under this contract schedule, you must ensure that, if required in order to provide effective advice, a competent and experienced interpreter will be available (either in person or by telephone).

11.6 If, for any reason, you consider that you are unable to provide effective Legal Help or Controlled Legal Representation (CLR) to any client, or they had difficulty in doing so, you must record why and must notify the Commission's Relationship Manager.

#### **Bail and temporary admission**

11.7 You must ensure that the client receives advice on the appropriateness of making a temporary admission or bail application at any particular time (including when appeal

rights have been exhausted). There will normally be sufficient benefit to the client in receiving that advice.

- 11.8.1 Where an application for temporary admission is refused you should consider making an application for Chief Immigration Officer bail or to make a bail application to the appropriate court. When applying the merits test the fact that the client is in (continues to be in) detention will obviously be a factor in that assessment of merit.

For the avoidance of any doubt, you are reminded that, even where a client's substantive appeal lacks merits and therefore would not warrant the grant of CLR for the appeal, the case may still warrant the grant of CLR funding for a bail application. CLR can be granted for the sole purpose of making a bail application.

- 11.8.1 If, at any time, you consider that an application for bail should be made and the appropriate Funding Code Criteria are met, such work may be carried out under this Schedule as CLR (which may be a continuation of CLR already granted for other proceedings).

- 11.9 When applying/ re-apply the merits test you should ensure that you address any reasons provided by the Home Office/ immigration Service for previously refusing bail/ temporary admission. This, of course, would need to be considered along with the other circumstances of the case.

- 11.9 Where there is an appeal listed before the AIT you should always consider making a bail application at the appeal hearing. If you decide not to make a bail application at this stage you should record your reasons on the file. This will be monitored on audit.

- 11.10 Where you decide there is no merit in making such an application you must also inform the client of their right of review your decision. You should complete the CW4 explaining the reasons for refusal (in accordance with Rule 11.144 of the Unified Contract Immigration Specification). This information should subsequently be confirmed to the client in writing.

- 11.11 You are reminded that you may make a bail application at any stage in the proceedings where there the CLR merits test is satisfied. Before making a bail application you should make an application for temporary admission/ release. You must ensure that you regularly review your client's detention.

- 11.12 Where you cease to provide further advice in relation to a clients substantive immigration matter you must consider whether an appropriate referral can be made and you must advise the client of other paying options regarding advice. You may not continue to advise the client on a fee paying private basis.

For the avoidance of any doubt you should continue to act for the client in accordance with point 11.2. The appropriate merits test will still apply and this will determine the level/ amount of advice/ representation you should provide to the client.

- 11.13 A client who contacts or is referred to you (e.g. through the on site surgeries or fast track process) must be regarded as a client of your organisation, and any case which:

- (a) meets the means and merits tests (if applicable) as referred to at Part [ ]; and
- (b) which is in the Immigration Category of law

may not be referred to another supplier/ adviser (including services run wholly or partly by you) unless:

- (a) You are at complete capacity;
- (b) The client's case cannot be handled by you because the detainee requires advice / assistance which does not form part of the Immigration SQM; or
- (c) There is a conflict of interest that prevents the organisation from acting for that client.

and a referral to another provider is appropriate in all the circumstances and in compliance with clause 12 below.

### **Matter Type Specific Requirements On Site Surgeries**

- 1 You will need to be able to provide advice and assistance to detainees on a regular basis. You will be advised by your Relationship Manager / in this schedule of the dates on which you are required to provide advice at the IRC. When you attend the IRC you must provide advice and assistance to detainees who have requested to see the duty adviser in accordance with this contract schedule.
- 2 Clients who wish to receive advice under the scheme will appear on the Detention Duty Advice Scheme Rota Sheet. The number of detainees wishing to access the service will vary and advice surgeries will take place on the basis of demand from detainees. These issues are outside the control of the LSC.
- 3 Your Liaison Officer must have a fax and telephone number or numbers on which Removal Centres may contact them. In most cases it is anticipated that the main form of communication will be through the fax (and possibly e-mail) however telephone contact numbers will also be required and you should negotiate with the IRC as to the preferred method of communication of the Rota.
- 4 You must ensure that an adviser attends the IRC on the day that they have been scheduled to provide such advice. You must ensure that Advisers are available.
- 8 The advice session for each individual client should last for no more than thirty minutes. The purpose of the advice session is to ascertain the basic facts of the case and to make a decision as to whether the matter requires further investigation or whether further action can be taken. In more complex cases, where additional enquiries need to be made, the client would normally be provided with advice and assistance under the Legal Help Scheme, which would be subject to the client's case satisfying the Controlled Work sufficient benefits test and means criteria. You are reminded that normal contract provisions apply when taking on a new client in this way. In appropriate cases, you may need to go on to provide Full Legal Representation, in the normal way under your Unified Contract.
- 9 Work undertaken within the scheduled advice surgery (i.e. within the maximum of

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thirty minutes for each client) is not means tested. You are not required to complete a controlled matter work form entry for each client however you should record the time spent with each client on a Matter Report form as provided by us to you. The total time spent providing surgery advice must be recorded and submitted to the Commission on a monthly basis.

- 12 When attending a client under the Scheme, an Adviser must always advise a client in relation to temporary admission and bail. Further information is contained at point 11.7 through to 11.11.
- 14 You must keep a record of the time spent with each client and an ongoing record of the full time spent on Detention Duty Advice work over the period of the Schedule.

### **Fast Track**

- 1 You are required to take on clients who are referred to you while you are on the Fast Track rota. A duty rota for providers will be produced which will contain a number of slots each day according to the number of applicants that the Home Office anticipate.
- 2 You must ensure that while you are On Call you have staff in place that are able to receive these referrals. While On Call you must be available from 10.00am to 6.00pm. There is no guarantee as to the numbers of clients that will be allocated to you while you are on the rota. The allocation of clients will depend on whether clients have been detained under the Home Office scheme and/ or whether they wish to instruct their 'own solicitor'. These issues are outside the control of the LSC. You may be required to be on duty on Saturdays, Sundays or Bank Holidays, although generally the client will not be interviewed until the following day and s/he will not actually be required to attend the centre on the day s/he is on duty.
- 3 When On Call, the Home Office will notify you as soon as possible after the claim for asylum has been made that a client requires legal advice and provide the date of the substantive interview. Your client will require advice prior to their substantive interview, representation at the interview and advice after the decision has been served. You will also need to provide an interpreter at similar short notice where one is required.
- 4 You must have a telephone number or numbers (including a mobile phone number) on which IRC may contact you.
- 5 You must ensure that all clients referred to you through the fast track rota receive advice promptly. You must therefore have advisers available to attend the clients and provide prompt advice. The service that you are providing is in the nature of an emergency service and failure to comply with the obligation to attend promptly may lead to contract sanctions, including possible termination of this contract schedule.
- 6 You may only provide advice to a fast track client where you have been called out whilst On Call to see a named client. You may only advise clients under the rota arrangements unless the exceptions contained in Rule 11.101 of the Unified Contract's Immigration Specification apply

- 7 You must provide Legal Help to Fast Track asylum seekers before, during and after interview.
- 8 The IRC will notify you when a decision has been made on your client's application for asylum. You must then attend your client at the IRC, so that you can provide further advice when the decision has been given to the client.
- 9 In providing advice on the decision, you must advise on its effect and, if it is adverse, must apply the means and merits test and advise on whether there are grounds for appeal to an Immigration Judge and on the prospects of success. The CLR merits test must be applied before granting funding for any appeal and you must not grant CLR merely to preserve your client's right of appeal. If you refuse CLR you must ensure that your client is aware of the right of review of your decision and you should assist them in submitting that review if necessary (see point 13).
- 10 After having provided CLR for an appeal to an Immigration Judge, the Asylum Adviser may (provided the Funding Code Criteria are met) carry out such further Contract Work under CLR as they consider appropriate (e.g. advice on the grounds for an application for review and reconsideration under section 103A of NIA 2002), making such arrangements with the Removal Centre as may be necessary for the purpose of taking instructions and giving advice.

## **12 Referrals**

- 12.1 In relation to the provision of "Immigration " advice, as defined in the SQM you are required to provide all the range of services that a detainees requests. However there will be times where it may also be necessary to refer a detainee to another provider. You must provide an effective and appropriate referral system that makes appropriate referrals, as set out below, for advice and representation services for Clients.

### **Making referrals**

- 12.2 You must make appropriate referrals when:
  - (a) You have so much work that you are unable to provide the appropriate services to a client; or
  - (b) You do not provide the services the client requires; or
  - (c) In the case of any service where the client must comply with a means test, or the client's case must pass a sufficient benefit test (or merits test), and these tests are not met; or
  - (d) The client's problem is not of a legal nature; or
  - (e) There is a conflict of interest between two parties both wishing to access services at the IRC; or
  - (f) Any professional conduct rules applying to you or your solicitors/advisers requires you to make a referral.
  - (g) Your client has been released from the IRC and has reached the next GFS and in all the circumstances of the case you believe that it is in the clients best interest to make

a referral to a local supplier.

- (h) Your client has been moved to another IRC and the case has either reached the next GFS stage or has completed both stage 1 & stage 2 of the GFS, you should decide whether it is in the interest of the client to refer them to either:
- (a) an exclusive contract provider (if exclusive contracting arrangements are in operation) or
  - (b) a local provider (where no exclusive contracting arrangements are in operation).

As the adviser you will be best placed to assess all the circumstances of the case.

Referrals must:

- (a) Be made to CLS Direct on all occasions when it is appropriate for the client to receive telephone advice and the problem is within the scope of CLS Direct; and
- (b) Be made to private practice legal advice providers if it is appropriate for the individual to pay for the advice required; and
- (c) Be made to non-legal advice service providers if the client's problem is or has aspects of a non-legal nature;

or if none of the above apply, be made to alternative face to face legal advice providers who hold the CLS SQM in categories of law not provided by you;

As a minimum you must ensure that in all instances:

- (a) The client is told what role the adviser will take and what service(s) they should expect from you; and
- (b) Any feedback that is later given (by the client) on the service provided by the new service provider is recorded and reviewed; and
- (c) Information about advice and/or assistance already given (and any relevant documentation) is forwarded to the new service provider; and
- (d) Any cost implications identified are discussed with the client and noted on file.

### **13 Complaints procedure**

13.1 You are required to

- (a) have a written complaints procedure for all clients who access the advice services you provide, and
- (b) to draw their attention to this procedure in an appropriate manner and make this procedure available to them; and
- (c) to comply with the Performance Standard on dealing with any complaints; and to keep written records of all complaints and to disclose this record to us on request.

### **14 Time recording of work**

- 1 You should make and keep an accurate record of all time spent by advisers and solicitors on each case you undertake and must disclose this information to us in your monthly reports.

## **15 Disbursements**

We will pay you for any reasonable and permitted disbursement that you have paid in connection with the provision of advice to clients under this schedule. Where VAT is payable on a disbursement you may claim it from us. For those disbursements where VAT is not payable, we must not be charged VAT. Payment of disbursements will be included in the next payment due to you or, if that is not practicable, in the payment after that.

Your claim for disbursements should be on the form given to you by the Relationship Manager and will form part of the Monthly Report.

## **16 Subcontractors**

- 1 You shall perform all advice services required under this contract schedule personally. You may not sub-contract any consultant, agent, sub-contractor or agency worker unless:
  - (a) This is set out in the Services Delivery Plan; or
  - (b) We have given you written permission in advance.

Clauses 2.5 to 2.7 of the Standard Terms of the Unified Contract does not apply to you.

If you sub-contract any Services in accordance with this clause, you are required to ensure that at all times you properly supervise the sub-contractors and ensure that they comply with all the obligations set out in this Agreement.

You will be responsible for the work undertaken by any sub-contractors as if you had conducted the matter yourself. Any work a sub-contractor undertakes will form part of your monthly reports and outcomes they achieve will form part of contract payment, and the outcomes they achieve will form part of your performance indicators under this contract schedule.

We have no liability whatsoever for any sub contractors you may contract with to provide any services in connection with this contract specification. You warrant that you have informed all such sub contractors that this is the position.

## **17 Failure to provide the Services**

If you are unable to provide any of the Services at a time when this contract schedule requires you to provide them, we may:

- (a) reduce the payments to which you are entitled under this schedule to take account of the Services you are not providing; and
- (b) contract with other providers to provide the Services you are not providing; and if we regard the shortfall in Services to be so significant that the purpose of

contract schedule is not being met by you, terminate this Agreement with notice in writing.

**18 Right to audit and assess all advice matters conducted under this schedule**

For the avoidance of doubt, we have the right to consider your files and assess all of the work carried out under this Schedule as if they were Controlled Work claims under Clause 16 (5) of the Unified Contract Standard Terms, and paragraphs 8.42 to 8.46 of the of the Specification.

**Right to assess work of subcontractors**

You must ensure that we have the right to evaluate the quality of the work, and assess the files of all subcontractors, agency staff, agents etc who may perform work for you under this Agreement, in accordance with clause [ ] above, and are able to carry out this right. If we are unable to do this for any reason, we may require you to terminate your contract with the subcontractor in question, and if the subcontractor's work is in our view significant or a substantial part of the Centre's services, we may terminate this Agreement.

**19 Payment**

**Payments to sub-contractors**

You are solely responsible for all payments to your sub-contractors, and we have no liability to them.

**Performance standards**

You must work to a range of performance standards set out in the attached schedule xxx which set out the levels of work that we expect you to undertake in return for the payments made under this contract schedule.

1. This section introduces Performance Standards. Each standard includes a target against which your performance will be measured.
2. We will measure your performance against the relevant Performance Standards from the reports you submit to us as required under this contract schedule. We will also use other information available to us, for example, data from the Commission's own systems and from the AIT. With your agreement, and where this is available, we may also make use of information you have available using your own time—recording and computer systems. Using this information, we will consider the level of performance of your office.
3. The Performance Standards apply to all Contract Work undertaken as part of this schedule. We will monitor and audit compliance with the Performance Standards. We

are aware there may be reasons beyond your control for failing to meet a performance standard. Where you are unable to meet the performance standard we will discuss the matter with you. Where you are unable to meet the target for reasons within your control, you may be required to introduce measures to improve your performance.

4. Where you fail to meet the Performance Standards (unless for reasons beyond your control), or fail to introduce effective performance improvement measures, we may record a non-compliance. In circumstances where the Standards are not met we may institute formal non-compliance action as provided for by xxx (under this schedule).

### **Payment Schedule**

#### **Payment for Services Provided under this Schedule**

These are the anticipated services that you are expected to provide. These may be subject to change according to the requirements of the centre and detainees. Where the services required differ substantially from the services below then it may be necessary to re-negotiate the payments made through this contract.

Services for Period: .....

Number of weekly surgeries:  
Number of Fast Track cases:  
Number of Non-suspensive appeal cases:  
Number of clients taken on/ advised:  
Number of bail applications/ hearings:  
Number of asylum appeals:  
Number of immigration appeals (including deportation)

*Information regarding individual centres requirements will be provided as part of the tender process. The final services contracted for will depend on many issues including the number of contracts awarded per centre and the capacity of successful applicants to undertake the work.*

Payment for the services set out in this schedule will be made in accordance with the number of cases set out in the performance standards.

The amount of detainees held within the IRC will be outside of the control of the LSC therefore it may become necessary to renegotiate the payments made in order to ensure that where extra work has been undertaken the contract payment is increased. This reconciliation will equally apply to cases where you have under performed under the contract and a re-payment is therefore made to us.

Payments made under this schedule will be reconciled on an annual basis. Interim reconciliation will also take place on a quarterly basis. Where the payment is within 10% of the schedules payment no reconciliation will be made as the issue may self resolve during the following quarter.

Contracts will have to be reconciled on a yearly basis (on a date specified)

1 You will receive quarterly payments in advance [?] as set out in the Key Information Table. These payments will be for:

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- a) all Services provided and work carried out under this Schedule by you; and
- b) all work carried out for you by your sub contractors; and
- c) all costs you may incur in providing the Services or under this Agreement including (but not limited to) travel, waiting, administration, attendance at liaison meetings etc

except that you will be entitled to additional payment for the matters set out at clause [ ] below.

Your entitlement to full payments above is dependent on you being able to deliver the full range of Advice Services for that quarter set out in the Service Delivery Plan. If you are unable to deliver this full range, we may at our discretion make you a lower payment or recover the shortfall from future payments. For the avoidance of doubt making a lower payment will not constitute a waiver of any breach of your obligations to provide Advice Services.

Payments include VAT (if applicable) and no extra payments may be claimed from the LSC in respect of Work or any of your obligations under this Agreement except from:

- (a) payments for disbursements, as set out in clause [ ]; and
- (b) any other additional payments agreed by us in writing.

Payment is subject to our receiving the required Monthly Reports from you, as these trigger the payment and are necessary to allow us to monitor this Contract Schedule. Subject to our receiving the Monthly Reports from you on time, payment will be made on the payment dates set out in the Key Information Table.

Payments are also subject to our rights to adjust your payments for failure to meet the Performance Standards, as set out at Part [ ] above.

## **20 Forms and Information - Reporting**

The Contractor shall send to the Commission's Liaison Officer, when reasonably required, such information and properly completed forms relating to this Schedule as

they may reasonably require.