

2010 Standard Crime Contract - Specification

PART A – GENERAL PROVISIONS

1 PRELIMINARY

Scope of the Specification

- 1.1 This is the Specification of the 2010 Standard Crime Contract. It is one of the key Contract Documents set out in **Clause 12** of the Standard Terms, which you must comply with.
- 1.2 This Specification sets out the rules under which criminal Legal Aid services must be carried out by you, Service Standards applicable to you and all the rates and procedures governing payment for the work, which you must abide by.
- 1.3 The work that you carry out under this Contract must fall within the Access to Justice legislation and the scope of this Contract. You must adhere to LSC Guidance; for Associated CLS Work you must also have regard to the Funding Code Criteria (and Procedures) and you must refuse to act in respect of any such matter that does not meet the criteria.
- 1.4 This Specification only covers criminal Legal Aid funding in the Crime Category and is divided by (a) Classes of Work and (b) Units of Work. For the avoidance of doubt, Crown Court work is included within the scope of this Contract. The Service Standards in **Section 2** of this Specification apply to you when undertaking Crown Court work and the remuneration provisions for this work are contained in the CDS (Funding) Order 2007 (as amended) and must be complied with.
- 1.5 You may undertake only the following Units of Work (outlined in summary form below) within each Class of Work.

CLASS OF WORK	UNIT OF WORK	
Criminal Investigations	Work conducted at the Police Station	Police Station Advice and Assistance
	Work conducted outside the Police Station	Free Standing Advice and Assistance
		Advocacy Assistance on a warrant of further detention
		Advocacy Assistance for armed forces custody hearings

		Advocacy Assistance in the magistrates' court in connection with an application to vary police bail conditions
Criminal Proceedings		Advice and Assistance and Advocacy Assistance by court Duty Solicitor
		Advocacy Assistance at the Virtual Court
		Representation in the magistrates' court
		Pre-Order Cover Early Cover Means test form completion
		Representation in Prescribed Proceedings in the Crown Court other than in appeals from the magistrates' court
		Representation in the Crown Court under a Representation Order in mainstream Criminal Proceedings
		Representation in the High Court or county court
Appeals and Reviews		Advice and Assistance on appeals against conviction or sentence (where a newly instructed representative is not covered by an existing Representation Order) or applications to the Criminal Cases Review Commission (CCRC)
		Representation on an appeal by way of case stated
		Representation in the Crown Court under a Representation Order in Prescribed Proceedings on appeal from the magistrates' court
Prison Law		Treatment Cases – Advice and Assistance
		Sentence Cases – Advice and Assistance
		Disciplinary Cases – Advice and Assistance or Advocacy Assistance
		Parole Board Cases – Advice and Assistance or Advocacy Assistance
Associated CLS		Legal Help and civil Legal Representation - judicial review or habeas corpus

Structure of the Specification

1.6 **Part A** of this Specification is only of general application to all Classes of Work. **Part B** sets out the specific rules which apply to the Units of Work within each Class. They apply to all Crown Court Representation and also to work in the Appeals and Reviews Class of this Specification. Unless otherwise stated, where there is any conflict between the general rules (**Part A**) and the specific rules (**Part B**) in the Specification, the latter must take precedence. This Specification also includes a **Payment Annex**.

Your Schedule(s)

1.7 A Schedule will be issued to you covering the matters set out at **Clause 12.3** of the Standard Terms.

1.8 A Schedule is issued to you at the beginning of the Contract term and lasts for the duration of the Contract unless updated or amended in accordance with **Clause 13** of the Standard Terms.

Exclusive Schedule Arrangements

1.9 Contract Work other than Associated CLS Work is subject to Exclusive Schedule Arrangements. This means you cannot normally undertake such work under this Contract unless you have been issued with a Schedule, which specifically authorises you to do it. The following Contract Work is subject to Exclusive Schedule Arrangements:

- (a) Work in the Criminal Investigations Class and Criminal Proceedings Class;
- (b) Work in the Appeals and Reviews Class;
- (c) Work within the Prison Law Class;

1.10 You do not have to undertake all Classes of Work under this Contract and may undertake any Class of Work provided that your Schedule allows it.

1.11 For the avoidance of doubt, you will not be paid for any work on any Matter or Case which is not authorised in your Schedule.

Interpretation

1.12 Unless otherwise stated, definitions that are set out in the Act, Regulations, CDS (Funding) Order 2007, the Funding Code and the Standard Terms apply to this Specification and are not repeated here. You must refer in particular to **Clause 1** of the Standard Terms, section 2 of the Funding Code Criteria and rule A12 of the Funding Code Procedures.

1.13 In this Specification, the following expressions have the following meanings:

"2010 Standard Crime Contract" includes all Contract Documents and commences on the date as specified in your Contract for Signature;

"Accredited Representative" means an individual whose name is included on the Police Station Register and who is accredited by a body recognised by us as competent to grant such accreditation;

"Accreditation" means accreditation under parts one and two of stage one of the Law Society's Criminal Litigation Accreditation Scheme (CLAS);

"Advice and Assistance" means Advice and Assistance within the meaning of section 13 of the Act;

"Advocacy Assistance" means Advice and Assistance by way of advocacy within the meaning of section 13 of the Act;

"Appeals and Reviews" means work in respect of an appeal or review of a criminal conviction or sentence, and the making of an application to the Criminal Cases Review Commission (CCRC);

"Arrangements" means any arrangements made under the Act by us;

"Assessor" means a person appointed by us to assess your Claims;

"Assigned Counsel" means Counsel who is assigned under a Representation Order in accordance with regulation 12 of the CDS (General) (No 2) Regulations 2001 (as amended);

"Associated CLS Class of Work" means Legal Help and civil Legal Representation under a CLS Funding Certificate in actual or proposed proceedings:

- (i) for judicial review (including proceedings under the Human Rights Act 1998) or proceedings for habeas corpus, provided those proceedings arise from a Matter or Case within the Crime Category; or
- (ii) proceedings under the Proceeds of Crime Act 2002;

"Back-up" means a system by which the Defence Solicitor Call Centre ("the DSCC") seeks to contact another Duty Solicitor when a Duty Solicitor on a Rota is unable to accept a request for Police Station Advice and Assistance;

"BACS" means BACS Ltd (formerly known as Bankers' Automated Clearing Services);

"Boundary Areas" are the geographical areas defined by us for each Scheme. Each Scheme has its own specified Police Station Advice and Assistance Fixed Fee. The Boundary Area maps are set out on our website;

"Call-In Schemes" means a magistrates' court Panel Duty Scheme which is operated by the court contacting the Duty Solicitor directly as and when he or she is required at court;

“*Case*” means all the work carried out in Criminal Proceedings and Prison Law for all Clients represented by you in those proceedings in respect of:

- (a) one offence (that is an offence for which the Client is charged or summoned or otherwise required to appear in court); or
- (b) more than one offence, where one or more charges or informations are preferred or laid at the same time; or where
- (c) the offences are allegedly founded on the same facts or form part of a series of offences;

“*Case-worker*” means an employee who is not a Supervisor, but who is a fee-earner who regularly undertakes criminal defence work to whom a specific caseload of Contract Work is allocated and is responsible for the progression of those cases, within their specific caseload, under supervision. Case-worker includes paralegals;

“*Category of Law*” or “*Category*” or “*Category of Work*” is as defined in Paragraph 1.14 of this Specification;

“*CDS Direct*” is a service provided by independent contractors under separate contractual arrangements. CDS Direct’s role is to provide Police Station Telephone Advice for Clients at the Police Station on Matters which fall outside the scope of this Contract;

“*CDS Direct Fixed Acceptance Fee*” means the fee set out in the **Payment Annex** which is claimable in an Exceptional Case if a former CDS Direct case is referred to you to provide Police Station Advice and Assistance;

“*CDS Direct Matters(s)*” means Police Station Advice and Assistance which are not within the scope of this Specification and may only be undertaken by a CDS Direct Telephone Adviser, unless an exception as set out in **Section 9** of this Specification applies;

“*CDS Direct Telephone Adviser*” means a person approved by us to be employed or engaged specifically to provide telephone advice for the purposes of CDS Direct, the minimum qualification for whom shall be the Law Society’s Police Station Qualification (“PSQ”);

“*Child*” means a person under 18;

“*Civil Legal Aid (General) Regulations 1989*” means those Regulations as amended by the Civil Legal Aid (General) (Amendment) Regulations 2000 and the Access to Justice Act 1999 (Commencement No. 3 and Transitional Provisions and Savings) Order 2000;

“*Class of Work*” means Criminal Investigations, Criminal Proceedings, Appeals and Reviews, Prison Law and Associated CLS Work and “*Class*” and “*Classes*” has the corresponding meaning;

“*Constable*” means a police officer, a British Transport Police officer, an officer of HM Revenue and Customs and any other official with a power of arrest by virtue of his or her office. It does not include any other investigators, e.g. government departments, local authority, Post Office or Serious Fraud Office even if they have power to search premises or are required by section 66(9) of the Police and Criminal Evidence Act 1984 (PACE) to have regard to the PACE Codes of Practice;

“*Costs Limitation*” means the limitation setting out our maximum liability as to costs (including profit costs, Disbursements and Counsels’ fees but excluding VAT and the costs of Assessment) imposed upon any Licensed Work Legal Aid Certificate by the Director, and described as an Upper Limit in respect of a Representation Order granted in respect of Prescribed Proceedings in the Crown Court;

“*Counsel*” means a barrister in independent practice;

“*CPD*” means continuing professional development as defined in the Professional Bodies’ appropriate training regulations;

“*Criminal Investigations*” has the same meaning as in section 13 of the Act;

“*Criminal Justice System Area(s)*” or “*CJS Area(s)*” mean the 42 areas into which England and Wales are divided for the purpose of administering the CJS. The CJS areas are based on the police areas for England and Wales as set out in Schedule 1 of the Police Act 1996;

“*Criminal Proceedings*” has the meaning given in section 12(2) of the Act;

“*Criminal Litigation Accreditation Scheme*” or “*CLAS*” means the accreditation qualification which must be attained in order to become a Duty Solicitor;

“*Designated Area(s)*” means the CJS Areas of

London,
Greater Manchester,
Merseyside,
West Midlands; and the local authority areas of
Brighton & Hove,
Bristol,
Cardiff,
Derby & Erewash,
Kingston upon Hull,
Leeds & Bradford,
Leicester,
Nottingham,
Portsmouth,
Newcastle-upon-Tyne & Sunderland (including Gateshead, North Tyneside and South Tyneside),
Sheffield,
Southampton;

“*Designated Area Standard Fee*” has the meaning given to it under **Section 10** of this Specification;

“*Designated Fee Earner*” means a person who is designated by you to undertake Contract Work under this Specification (including Agents);

“*Devolved Powers*” means the powers and functions listed as such in this Specification that we have authorised you to exercise and discharge under this Contract (and which you must exercise and discharge unless we have directed you otherwise);

“*Disbursement(s)*” means out of pocket expenses properly incurred by you (and which, apart from this Contract, would be properly chargeable to a Client) in performing Contract Work;

“*Disciplinary Case*” means Advocacy Assistance on a Matter, which falls under **Section 12** of this Specification, and is within scope of regulation 4(f) of the CDS (General) (No.2) Regulations 2001 (as amended);

“*DSCC*” is the Defence Solicitor Call Centre (formerly known as the Duty Solicitor Call Centre) provided on behalf of the LSC by independent contractors to deal with requests for Advice and Assistance at the Police Station;

“*Duty Period or Duty Slot*” means a period during which a Duty Solicitor is required to be available to give Advice and Assistance or Advocacy Assistance under a Duty Solicitor Scheme;

“*Duty Solicitor*” means a person who has previously been a member of a Scheme under the Duty Solicitor Arrangements 2008 or an earlier version of those Arrangements, or has been accredited under parts one and two of stage one of the Law Society’s CLAS and undertaken the PSQ. Where Accreditation was more than 12 months before you submitted a Duty Solicitor application (Form CDS12) to us that Duty Solicitor must demonstrate regular and satisfactory performance of Police Station and magistrates’ court work in the previous 12 months;

“*Duty Solicitor Arrangements 2008*” mean the Duty Solicitor Arrangements in force prior to this Contract Start Date and which cease to have effect from this Contract Start Date;

“*Duty Solicitor Scheme*” see “*Scheme*” definition below;

“*Early Cover*” has the meaning described in **Section 10** of this Specification;

“*Emergency Representation*” has the meaning set out in the Funding Code criteria (section 5 of part A);

“*Exceptional Case*” means a Case or Matter which would otherwise be paid under a Fixed Fee but which is payable in full or in part on Hourly Rates because of the extent by which the Claim exceeds the relevant fee;

“*Exceptional Case Costs*” is the remuneration payable in a case which would otherwise be paid by a Fixed Fee but where your costs exceed the specified Exceptional Threshold and are assessed by us;

“*Exceptional Threshold*” means the extent to which your costs must exceed a Fixed Fee so as to entitle you to have your costs assessed by us as an Exceptional Case;

“*Exclusive Schedule Arrangements*” mean arrangements under which services can only be undertaken by Providers who have been issued with a Schedule authorising such work in accordance with this Specification;

“*Financial Eligibility Tests*” in relation to Contract Work has the meaning set out at **Section 3** of this Specification;

“*Findings*” include not only findings on particular practices (such as failing to Assess financial eligibility or charging for administrative work that is not allowable) but in relation to more general matters, such as claiming excessive time for preparation or

attendances or the average percentage reduction on Assessment of a sample of your files;

“*Fixed Fee*” means any payment under this Specification for Contract Work on the basis of a specified fee rather than on Hourly Rates;

“*Fraud Case*” means a case in which the offence with which the Client is charged is primarily, or substantially, founded on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records;

“*Free Standing Advice and Assistance*” is Advice and Assistance in accordance with section 13 of the Act and is claimed in accordance with this Specification;

“*Graduated Fee*” means a fee designated as such (and paid in the circumstances set out and at the levels set out) in the CDS (Funding) Order 2007 (as amended);

“*Guidance*” means guidance issued by us and published on our website (www.legalservices.gov.uk);

“*Higher Standard Fee*” has the meaning set out in **Part B** of this Specification;

“*Higher Standard Fee Limit*” means a specified amount of costs of preparation above which you are entitled to have your costs assessed by us and paid on a Non-Standard Fee basis;

“*Hourly Rates*” means payment on the basis of hours of Contract Work as set out in the **Payment Annex** to this Specification;

“*Immigration Offence*” means a breach of the Immigration Acts such as illegal entry, overstaying leave to enter or remain, or breaching a condition of leave; an offence under the Asylum and Immigration Appeals Act 1993; or failure to observe a condition of temporary admission or release. This list is not exhaustive;

“*Incidental Proceedings*” means proceedings which are specified in regulation 3(3) in the CDS (General) (No.2) Regulations 2001 (as amended). Confiscation and forfeiture proceedings under the Proceeds of Crime Act 2002 are also Incidental Proceedings;

“*Independent Adjudicator*” in the Prison Law Class has the same meaning as in Rule 2 of the Prison Rules 1999;

“*Independent Costs Assessor*” means a person appointed by us to assess Providers’ Claims;

“*Independent Funding Adjudicator*” means a person appointed by us to determine applications for funding in accordance with this Contract;

“*Interests of Justice Criteria*” or “*Interests of Justice Test*” means the factors set out in paragraph 5 of Schedule 3 to the Act;

“*Investigation*” means all the Contract Work undertaken for one Client under **Section 9** of this Contract in respect of an arrest or arrests taking place at the same time. An Investigation concludes when either (a) the Client is charged or summoned or (b) the Investigation concludes in another way, for example, the police take no further action. An arrest or warrant for breach of bail is a separate investigation from the original Investigation but will usually be within the scope of CDS Direct, and so not within the Scope of this Contract;

“Location” means the address where your Office is based;

“Lower Standard Fee” has the meaning set out in **Part B** of this Specification;

“Lower Standard Fee Limit” has the meaning set out in **Part B** of this Specification;

“Magistrates’ Court Representation” means Representation as set out in **Part B** of this Specification;

“Matter” means:

- (a) in the Criminal Investigations Class, all Advice and Assistance and Advocacy Assistance provided to one Client in respect of an Investigation, whether or not that Investigation is extended to include other alleged offences;
- (b) in the Appeals and Reviews Class, all Advice and Assistance to a Client (other than Advice provided under a Representation Order at the conclusion of the Case) if the conviction(s) or sentence(s) arose from a single Case unless it involves the provision of Advice and Assistance or Advocacy Assistance on a legal issue which amounts to a genuinely separate problem; and
- (c) in the Prison Law Class, all Advice and Assistance or Advocacy Assistance provided to one Client on a legal issue, which falls within this Specification. A separate matter may only be started concurrently for the same Client on a legal issue which amounts to a genuinely separate problem.

“Matter Start” means the authority to grant Advice and Assistance or Advocacy Assistance to an eligible Client;

“Mis-Claiming” means claiming in a manner that is clearly contrary to the Contract and where no discretion arises as to payment. For instance, claiming using the wrong rates, failing to claim post charge Advice and Assistance provided on the same Matter as part of the Standard Fee or claiming for Advocacy Assistance outside the scope of this Specification;

“Non-Standard Fee” is a fee payable in respect of costs which have been assessed by us because your case costs have exceeded the Higher Standard Fee Limit; or because the case falls outside the Standard Fee payment scheme;

“Office” means a building which is registered with your regulatory body, is suitable to cater for the needs of your Clients and employees, enabling you to satisfy all relevant Health and Safety legislation and the quality and service standards of this Contract and to protect Client confidentiality. The requirements of an Office as stated in the Specification must also be met;

“Over-Claiming” means claiming more than we determine to be reasonable on Assessment under **Section 8** of this Specification, but where discretion arises as to the amount allowable. For instance, claiming one hour for an attendance where on Assessment we consider that only 30 minutes would have been reasonable or claiming a Disbursement where we consider that it was not reasonably incurred;

“*Own Client*” means an individual other than a Client who is advised under the Duty Solicitor Schemes;

“*Own Solicitor*” means a Solicitor who provides Advice and Assistance to a Client other than as a Duty Solicitor;

“*Panel*” or “*Panel List*” means an arrangement by which the DSCC telephones Duty Solicitors on a Duty Solicitor Scheme in sequence to identify a Duty Solicitor available to provide Advice and Assistance at a Police Station;

“*Parole Board Case*” means Advice and Assistance or Advocacy Assistance on a Matter which falls under **Section 12** of this Specification and is within scope of regulation 4(g) or (h) of the CDS (General) (No. 2) Regulations 2001 (as amended);

“*Payment Annex*” means, unless expressly stated otherwise, an annex to the Contract Document(s) which specifies fees and hourly rates which are claimable for Contract Work;

“*Police Station*” means a Police Station or any other place where a Constable is present and, except, where expressly excluded by this Specification or any Arrangements, any place where a Services Person is assisting with an Investigation by Services Police;

“*Police Station Advice and Assistance*” means Advice and Assistance given either by Police Station attendance or by Police Station Telephone Advice;

“*Police Station Attendance Fixed Fee*” means all work done on the Matter relating to Police Station attendance, including time spent advising the Client, travelling to and from the Police Station and waiting in relation to initial and subsequent visits to the Police Station. It also includes all letters and telephone calls and other work done outside the Police Station in relation to a Matter where at least one Police Station attendance has been given.

“*Police Station Qualification*” or “*PSQ*” means the qualification which must be attained before a Solicitor or Accredited Representative is eligible to provide Police Station Advice and Assistance in relation to a request for Advice and Assistance from a Duty Solicitor;

“*Police Station Register*” means the list maintained by us of all Accredited Representatives;

“*Police Station Telephone Advice*” means telephone advice under **Section 9** of this Specification;

“*Pre-Order Cover*” has the meaning described in **Section 10** of this Specification;

“*Prescribed Proceedings*” means civil proceedings which have been prescribed by Regulations as criminal for the purposes of Legal Aid by virtue of section 12(2)(g) of the Act and are listed under Regulation 3(2) of the CDS (General) (No. 2) Regulations 2001 (as amended);

“*Prison Governor*” has the meaning given by Rule 2 of the Prison Rules 1999;

“*Prison Law*” covers Advice and Assistance to a prisoner in Treatment Cases, Sentence Cases, and Advice and Assistance (including Advocacy Assistance) to a prisoner in Disciplinary Cases and Parole Board Cases;

“Probationary Representative” means a person (including a Solicitor or employed barrister) who is, under the LSC Police Station Register Arrangements 2001 (as amended), registered with us as a Probationary Representative and who has not yet passed the relevant accreditation tests to provide Police Station Advice and Assistance;

“Protected Party” means a party or intended party who lacks capacity conduct proceedings in accordance with the Mental Capacity Act 2007;

“Public Interest Advisory Panel” or *“PIAP”* means the panel set up by us which reports to us on cases that are considered to raise significant public interest issues;

“Qualifying Criteria” means the criteria outlined in **Section 3** of the Specification and which is used to determine whether an individual is eligible to receive services funded under the CDS;

“Regional Duty Solicitor Committee” means the Committee appointed by the LSC for the purpose of determining appeals under the Duty Solicitor rules set out in this Specification and facilitating consultation;

“Representation” has the meaning given in section 26 of the Act;

“Representation Authority” means the LSC or a court officer or other person to whom the LSC, in accordance with section 3(4) of the Act has delegated its functions under paragraph 2A of Schedule 3 to the Act;

“Representation Order” or *“Order”* means the document granting a right to Representation under section 14 of the Act;

“Representative” means an Accredited Representative or a Probationary Representative who is, under the LSC Police Station Register Arrangements 2001 (as amended), registered with the LSC;

“Rota” means a list of Duty Solicitors to provide Advice and Assistance or Advocacy Assistance at magistrates’ courts and Police Station Advice and Assistance over a given period;

“Scheme” and *“Duty Solicitor Scheme”* means a Duty Solicitor Scheme operating under this Contract covering one or more magistrates’ courts or Police Stations. Virtual Court Duty Schemes are part of the Scheme in which they are geographically based, however, membership of a Virtual Court is dependent on you applying separately to join that part of the Scheme;

“Section” means, unless otherwise specified, one of the main sections of this Specification;

“Sentence Case” means Advice and Assistance on a Matter, which falls under **Section 12** of this Specification and is within scope of regulation 4(d) of the CDS (General) (No. 2) Regulations 2001 (as amended);

“Serious Service Offence” means an offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 which cannot be dealt with summarily or which appears to interviewing Services Police to be serious;

“Services Person” means a person assisting with an investigation by the Services Police;

“*Services Police*” means a member of the Royal Navy Regulating Branch; the Royal Military Police; Royal Air Force Provost Officers or members of the Royal Air Force Police;

“*Service Standards*” means the requirements set out in **Section 2** of this Specification;

“*SMP Reconciliation Protocol*” means the document of that name published on our website, setting out our approach to reconciliation and to review and amendment of Standard Monthly Payments due under this Specification – see further Paragraphs **5.21 to 5.25**;

“*Solicitor*” means a Solicitor of the Senior Courts of England and Wales;

“*Special Request*” is a request identified to you as such by the DSCC. Special Requests may include, for example (without limitation): requests where CDS Direct consider that, because of a conflict of interest, the request should be handled by the Duty or a Client’s Own Solicitor (instead of by a CDS Direct Telephone Adviser); or considers that Advocacy Assistance is required; or considers that one of the other exceptions in **Section 9** of this Specification applies;

“*Standard Fee*” means a fee designated as such (and paid in the circumstances set out and at the levels set out) in this Specification and includes in relation to the provision of Contract Work the Undesignated Area Standard Fee and Designated Area Standard Fee;

“*Sufficient Benefit Test*” has the meaning set out in **Section 3** and **Section 12** of this Specification;

“*Supervisor*” is a partner, principal or employee of your organisation who actively supervises staff and meets all the Supervisor standards in **Section 2** of this Specification;

“*Treatment Case*” means Advice and Assistance on a Matter which falls under **Section 12** of this Specification and is within scope of regulation 4(f) of the CDS (General) (No. 2) Regulations 2001 (as amended);

“*Unassigned Counsel*” means Counsel who is not assigned (within the meaning of regulation 12 of the CDS (General) (No 2) Regulations 2001 (as amended)) under a Representation Order in the magistrates’ court, but who is instructed by the Solicitor acting under that Representation Order;

“*Undesignated Area Standard Fee*” has the meaning given to it in **Section 10** of this Specification;

“*Unit of Work*” and “*Unit*” have the meaning described in **Section 1** of this Specification;

“*Unsocial Hours*” means between the hours of 5.30pm and 9.30 am on any Business Day and any time on a day which is not a Business Day;

“*Upper Limit*” means a specified maximum amount of costs which may be claimed under a Unit of Work, but which may be extended on application. An Upper Limit operates in the same way as a Costs Limitation;

“*VHCC*” or “*Very High Cost Case*” has the meaning set out in regulation 2 of the CDS (General) (No2) Regulations 2001 (as amended);

“*Virtual Court*” means a virtual magistrates’ court created by video links between police custody suites and a magistrates’ court together with an electronic document sharing system to which all relevant parties have access;

“*Virtual Court Advocacy Assistance*” means Advice and Assistance within the meaning of section 13 of the Act, as set out in the Specification;

“*Virtual Court Appearance Fee*” means the appearance fee set out in the **Payment Annex** of the Specification;

“*Virtual Court Duty Solicitor*” means a Solicitor or employed barrister who is admitted to a Virtual Court Duty Solicitor Scheme;

“*Volunteer*” has the meaning set out in regulation 2 of the CDS (General) (No.2) Regulations 2001 (as amended).

Categories of Work

1.14 We will publish on our website a document called “Category Definitions 2010” which sets out the legal definitions of each Category of Law covered by this Specification. Any reference in this Specification to “Category of Law”, “Category” or “Category of Work” refers to our published Category Definitions 2010. We will not amend the definitions or Categories during the life of this Contract, except in accordance with the principles and procedures set out in **Clause 13** of the Standard Terms (as if the Category Definitions 2010 were a Contract Document).

Transitional provisions

1.15 Pursuant to **Clause 1.27** of the Standard Terms, you may claim for Contract Work on any Matter or Case started prior to the Contract Start Date under a previous CDS contract (if you had one).

2 SERVICE STANDARDS

Supervisor standards

General

- 2.1 You must have or employ within your organisation either a crime Supervisor to undertake work in the Crime Category (excluding Prison Law work), or an Appeals and Reviews Supervisor to undertake just Appeals and Reviews work. To undertake any Prison Law work, you must have or employ a Prison Law Supervisor, in accordance with this Specification.
- 2.2 To qualify as a Crime Category Supervisor (excluding Prison Law), an Appeals and Reviews Supervisor or as a Prison Law Supervisor, a person must for the duration of this Contract comply with:
 - (i) the Supervision Standards set out in Paragraphs **2.11 to 2.15**; and
 - (ii) at least one (subject to the type of Contract Work) of the Supervisor routes of qualification set out in Paragraphs **2.16 to 2.21** (and also set out fully in the Supervisor self-declaration forms for each Category).
- 2.3 A Supervisor in the Prison Law Class does not have to be legally qualified. However, he or she must meet the Supervisor standards in this Specification.
- 2.4 All crime Supervisors who qualify under route 3 (see Paragraph **2.16(c)**), Appeals and Review or Prison Law Supervisors must, during the Contract, have in the previous 12 months have undertaken at least 350 hours of direct casework supervision (in accordance with the rules set out in this Specification).
- 2.5 In the case of part time Supervisors, the requirement in Paragraph **2.4** is to be read as 1,050 hours of direct casework supervision in the previous five years.
- 2.6 You must notify us if any Supervisor leaves your organisation, ceases to meet the Supervisor standards set out in this Specification or fails to perform their duties as a Supervisor in a timely manner and with all reasonable skill, care and diligence. Where your Supervisor ceases to meet the Supervisor standards or fails to perform their duties in the manner described, such member of your personnel must immediately cease acting as a Supervisor.
- 2.7 A Supervisor may delegate functions to an employee who does not meet all the Supervisor standards in this Specification to act as their deputy Supervisor. However, the Supervisor must continue to supervise the deputy Supervisor and have a training and development plan to provide the necessary skills and experience to become a Supervisor in future.
- 2.8 Your Supervisor(s) must meet the Supervisor standards in this Specification at the time of being appointed as Supervisor and continue to do so in any 12 month period thereafter.
- 2.9 Your Supervisor(s) must take account of any changes in legislation and case law.
- 2.10 All Contract Work must be supervised by a Supervisor in the relevant Category of Law or Class and failure to ensure this is a Fundamental Breach of this Contract.

Supervision standards

- 2.11 All Supervisors must meet one of the following supervisory skills standards:
- (a) Have supervised at least one full-time Designated Fee Earner or Case-worker in the relevant Category of Law and/or Class of Work for at least one year in the five year period prior to such person undertaking Contract Work as a Supervisor; or
 - (b) Have completed training covering key supervisory skills we approve no earlier than 12 months prior to the Contract Start Date; or
 - (c) Have achieved Level 3 or higher NVQ standard (or any replacement) in supervision no earlier than five years prior to the Contract Start Date.
- 2.12 A Supervisor must ensure that all persons performing Contract Work under this Contract have a professional legal qualification (as described in Guidance) or, where a professional legal qualification is not required in respect of Contract Work, that such persons perform a minimum of 12 hours of Contract Work each week in the relevant Category of Law or Class of Work.
- 2.13 Arrangements must be in place to ensure that each Supervisor is able to conduct their role effectively including but not limited to the following: -
- (a) designating time to conduct supervision of each Designated Fee Earner or Case-worker;
 - (b) designating time to be in Offices where Contract Work is being conducted; and
 - (c) ensuring that the level of Supervision provided reflects the skills, knowledge and experience of the individual Designated Fee Earner or Case-worker.
- 2.14 Each Supervisor must conduct file reviews for each Designated Fee Earner or Case-worker they supervise. The number of file reviews must reflect the skills, knowledge and experience of the individual. The Supervisor must record the outcome of files reviews, together with the details of corrective action taken (if any).
- 2.15 Where a Designated Fee Earner or Case-worker undertakes Contract Work in a location other than where their Supervisor is based, the Supervisor must conduct, as a minimum, face-to-face supervision at least once per calendar month.

Routes to qualify as a Crime Category Supervisor (excluding Prison Law)

- 2.16 In order to meet the requirements to be a Supervisor in the relevant Crime Category (excluding Prison Law) the individual must qualify under one of the following routes:

Route 1 – Duty Solicitor

(a) The Supervisor must be either:

- (i) a current Police Station and court Duty Solicitor; or
- (ii) a current Police Station Duty Solicitor and at any time in the previous 12 months have undertaken a minimum of six magistrates' court representations and advocacy under a Representation Order; or
- (iii) a current court Duty Solicitor and hold the PSQ part of CLAS.

Route 2 – Duty Solicitor equivalent

(b) The Supervisor must:

- (i) have held a current non-conditional practising certificate for the previous three years; and
- (ii) hold the PSQ part of CLAS; and
- (iii) at any time during the Contract, in the previous 12 months have undertaken a minimum of 20 magistrates' court representations and advocacy under a Representation Order (of which no more than 10 can relate to claims for category 1 proceedings as defined in **Part B** of this Specification).

Route 3 – 350 hour casework route

(c) The Supervisor must:

- (i) have held a current non-conditional practising certificate for the previous three years; and
- (ii) at any time during the Contract, in the previous 12 months, have undertaken a minimum of six Police Station Advice and Assistance cases (of which no more than two can be Police Station Telephone advice where there is no subsequent Police Station attendance); and
- (iii) at any time during the Contract, in the previous 12 months, have undertaken a minimum of six magistrates' court representations and advocacy under a Representation Order (of which no more than two can be Claims for category 1 proceedings); and
- (iv) at any time during the Contract in the previous 12 months have undertaken at least 350 hours of direct casework (this may include direct (documented) supervision).

Route to qualify as an Appeals and Reviews Supervisor

2.17 In order to meet the requirements to be a Supervisor in the Appeals and Reviews Class the individual must qualify under one of the following routes:

- (a) have held a current non-conditional practising certificate for the previous three years; and

- (b) at any time during the Contract, in the previous 12 months, have undertaken at least 350 hours of direct casework in the Appeals and Review Class of Work (this may include direct documented supervision).

Route to qualify as a Prison Law Supervisor

2.18 Your Prison Law Supervisor must have undertaken at least 350 hours of direct Prison Law casework supervision (or direct Prison Law casework) each year in the three years prior to the commencement of this Contract or 1050 hours in total over the three years to have qualified as your Prison Law Supervisor and to have made you eligible to apply to undertake Prison Law work under this Contract.

2.19 To substitute another Prison Law Supervisor under this Contract, your new Prison Law Supervisor must have undertaken at least 350 hours of direct Prison Law casework supervision (or direct Prison Law casework) each year in the three years prior to becoming your new Prison Law Supervisor, or 1050 hours in total over the three years and have undertaken a minimum of eight cases from the list which follows Paragraph **2.21(b)** and meet the requirement in Paragraph **2.21(c)**.

2.20 Part-time Supervisors should refer to Paragraph **2.5**.

2.21 In order to maintain his or her status as your Prison Law Supervisor under this Contract,

(a) at any time during the Contract, in the previous 12 months, your Prison Law Supervisor must have undertaken at least 350 hours of direct casework (this may include direct (documented) supervision) in your organisation (save for where Paragraph **2.19** applies); and

(b) at any time during the Contract, in the previous 12 months, your Prison Law Supervisor must have undertaken for your organisation (save for where Paragraph **2.19** applies) a minimum of eight cases from the following list:

- Indeterminate/life sentence planning;
- Determinate sentence planning;
- Re-categorisation and/or allocation;
- Post parole decision and review advice;
- Segregation and close supervision centres;
- Minimum term review applications;
- Parole representations - discretionary conditional release;
- Recall representations – (paper based);
- Home detention curfew;
- Release on early conditional licence;
- Release on temporary licence;
- The early removal scheme;
- Category A representation;
- Pre-tariff lifer parole representations;
- Compassionate release;
- Representations to the close Supervision Centres Committee;
- Issues of prison discipline before the governor;

and

- (c) in the previous 12 months have undertaken for your organisation a minimum of four representations at four distinguishable types of oral hearing before the Parole Board or the Independent Adjudicator.

Temporary Supervisor absence

- 2.22 If your crime, Appeals and Reviews or Prison Law Supervisor is for any reason temporarily unable to act as such you may for a period of up to six weeks, either:
- (a) Nominate an employed Designated Fee Earner or Case-worker who does not meet all the Supervisor standards set out in this Section of the Specification to supervise; or
 - (b) Nominate an external Supervisor to supervise.
- 2.23 If you estimate that your Supervisor may be unable to supervise for more than six weeks, or following completion of the six week temporary period described in Paragraph **2.22** the Supervisor is not able to resume Supervision, you must immediately inform us and we will decide at our discretion what appropriate action to take. This may include:
- (a) Extending the use of an employed Designated Fee Earner or Case-worker as Supervisor for a limited period;
 - (b) Formalising the external Supervision arrangement for a limited period;
 - (c) By written notice specifying that you must put in place another employed Supervisor by such period as the notice specifies; or
 - (d) Applying a Sanction.

Minimum Supervisor ratios

- 2.24 The general position under the Crime Category (excluding Prison Law) is that there is no specified ratio of Supervisors to Designated Fee Earners or Case-workers.
- 2.25 If your Schedule allows you to undertake Prison Law work, you must have or employ at least one full-time equivalent Supervisor for every six full-time equivalent Designated Fee Earners or Case-workers. A part-time Prison Law Supervisor may only supervise up to three full-time equivalent Designated Fee Earners or Case-workers. You may not have or employ a Prison Law Supervisor who is also a Prison Law Supervisor for two (or more) other Providers.
- 2.26 Individuals who only undertake administrative tasks (which you may not claim for under this Contract) or only conduct triage (early diagnosis of the Client's overall legal problem(s)) prior to a matter being opened are not Case-workers for the purpose of these ratios or otherwise.

Designated Fee Earners

- 2.27 You are required to have a document that identifies all staff, their current jobs, and lines of responsibility. This must cover all Designated Fee Earners and must show:

- (a) whether the fee-earner is a Duty Solicitor, a Solicitor, an Accredited Representative, a Probationary Representative or other non-Solicitor staff; and
 - (b) any fee-earner codings or PIN numbers used by them.
- 2.28 Where a Designated Fee Earner is a Duty Solicitor, you must maintain evidence of compliance with the Duty Solicitor rules in **Section 6** of this Specification.
- 2.29 Where a Designated Fee Earner is an Accredited Representative, you must maintain a record of the evidence of compliance with the requirements needed to maintain Accredited Representative status.
- 2.30 The information required in Paragraphs **2.27 to 2.29** above must be retained on a personnel file for each Designated Fee Earner. Alternatively, you must retain the information for all staff together in a single Location.
- 2.31 You must designate all fee earners who regularly undertake Contract Work under this Contract for you. For the purposes of designation only, when identifying fee-earners, you may disregard any fee-earning work (which may be Contract Work) which is basic or routine, such as the completion of standard forms, making routing telephone calls, and dispatching standard letters. In addition, you do not have to designate staff who only occasionally undertake a limited amount of work as less than three hours a month.
- 2.32 You must designate all Supervisors that carry out Contract Work, Filex Supervisors, Duty Solicitors, Accredited Representatives and Probationary Representatives employed by you.
- 2.33 You may designate fee-earners not employed by you but whom you instruct regularly.

Percentage of Contract Work that must be performed by Designated Fee Earners

- 2.34 In relation to Contract Work we require:
- (a) 80% of instances of Police Station Advice and Assistance (both attendances and telephone advice) to be conducted by Designated Fee-Earners (or equivalent); and
 - (b) 50% of instances of Advocacy Assistance or Representation at the magistrates' court to be conducted by Designated Fee-Earners (or equivalent).
- 2.35 We will assess compliance with Paragraph **2.34** over any period not less than three months (but not exceeding 12 months). However, we will not do so until the number of relevant cases undertaken or reported is at least 20.

Office Location

- 2.36 You may only perform Contract Work from the Office(s) specified in your Schedule.

- 2.37 Your Office must be physically accessible for Clients each day from Monday to Friday, and you must have arrangements in place to ensure that during Office opening hours, Clients are able to speak to a person by telephone to arrange appointments and to contact you about emergency matters. Hotels, retail outlets and vehicles cannot count as Offices for these purposes.
- 2.38 The Office must display the CDS Logo in accordance with **Clause 6** of the Standard Terms.
- 2.39 You must also ensure that there are arrangements in place to ensure compliance with appropriate standards of supervision at an equivalent level to that outlined in the Solicitors' Code of Conduct.
- 2.40 You must ask our permission under **Clause 13** of the Standard Terms if you relocate your Office outside the postcode area in which your services are accessed during the life of this Contract. If we consent, we will update your Schedule to show your new Office address and to remove membership from any Schemes which you are no longer eligible for by virtue of the new Office Location.
- 2.41 If we do consent to amend your Schedule to allow you to undertake Contract Work from a new address, we may make it a condition on your revised Schedule that your Duty Solicitors may not undertake work on additional Duty Schemes which are accessible only by virtue of your new Office address. You will not be entitled to join any additional Duty Solicitor Schemes by virtue of any new Office address if you were not a member of that Duty Scheme before your Office relocation.
- 2.42 Where you do not consider that accepting instructions from a Client at a distance is justified, you must refer the Client to another Provider in accordance with Paragraphs **2.43 to 2.48** of this Specification.

Referral and signposting arrangements

- 2.43 You must have appropriate arrangements in operation so that you can refer or signpost a Client or potential Client to another Provider where:
- (a) you do not provide the services that the Client requires;
 - (b) you have so much work that you are unable to provide appropriate services to a Client within a reasonable time;
 - (c) there is a conflict of interest between two or more Clients or potential Clients wishing to access your services; or
 - (d) you are required to make a referral under the professional conduct rules of your Relevant Professional Body.
- 2.44 You must signpost a potential Client at an early stage if it becomes clear that the enquiry concerns a subject which is outside your area of expertise.
- 2.45 If you need to refer a Client after you already have an established Client relationship, have undertaken work on a current case or hold case information or documents, you must inform the Client of any cost implication of referral.

Information about Advice and Assistance already given and any relevant documentation must be forwarded to the new Provider.

- 2.46 Where you make a referral to another Provider you must ensure, so far as practicable, that the Provider is authorised by us to provide services in the Category of Law or Class most relevant to the Client's problem.
- 2.47 Where you refer an existing Client, such referral should be undertaken in a manner which does not prejudice the Client. You must also keep the Client informed in respect of the progress of such referral. If you are unable (or cease to be able) to perform Contract Work for Clients and you are unable to make any referral to another Provider, your procedures must ensure that you make reasonable endeavours to ensure that your Clients' rights are protected, that they suffer no damage and they are provided with all relevant information.
- 2.48 You must signpost Clients or potential Clients to the Community Legal Advice helpline (0845 345 4345) or website (www.communitylegaladvice.org.uk) in all cases where the Client's problem falls within the scope of the telephone and internet services available and it would be appropriate for the Client to take advantage of such services.

Welsh language requirements

- 2.49 If you provide services under this Contract in Wales, you must ensure, in accordance with the Welsh Language Act 1993, that those services are accessible to and understandable by Clients whose language of choice is Welsh.

Key Performance Indicators (KPIs)

- 2.50 The KPIs of this Specification are contractual requirements and are set out in the table in Paragraph **2.56**. However if you do not satisfy a KPI we will not apply any Sanction unless this is authorised under the procedures set out in **Clause 11** of the Standard Terms.
- 2.51 The KPIs depend on fair and accurate recording and reporting to us. You must ensure you report appropriately in accordance with our forms and Guidance. Material or persistent failure to report outcomes appropriately may lead to Contract Sanctions under **Clause 24** of the Standard Terms.
- 2.52 KPIs must be complied with both by your organisation as a whole and also by any Office for which we have issued you with a Schedule.
- 2.53 When assessing compliance with KPI 1 we will consider all relevant cases concluded and reported by you over any period of not less than three months (but not exceeding 12 months). We will consider cases over a period longer than three months if there are insufficient cases to satisfy the minimum volumes set out in Paragraph **2.55** or, if we are not satisfied that the volume of cases concluded within three months is sufficient to reach conclusions about your KPI compliance.
- 2.54 Where we have assessed your compliance with KPI 1 over a period ("the first period") under Paragraph **2.53**, in any future assessment of your compliance with that KPI we will not take into account any period which overlaps with the first period.

2.55 The minimum volume of cases we will take into account for the purposes of KPI 1 will be 20.

2.56 KPIs will be based on cases concluded within the lifetime of this Contract, including those started under any previous contract (where applicable). However when considering any Sanctions for failure to satisfy a KPI we will only be concerned with your performance from the Contract Start Date.

KPI Number	The Key Performance Indicators that you must meet in performing Contract Work in any three month rolling period
1	<p>To avoid a reduction of more than 15% of your costs on Assessment on any of your Claims for:</p> <ul style="list-style-type: none"> • Police Station Advice and Assistance (Exceptional Cases); • Free Standing Advice and Assistance Claims; • Advocacy Assistance Claims; • Magistrates' court non-Standard Fees; • Prison Law Exceptional Cases; • Prison Law non-Standard Fees. <p>If your costs are reduced by more than 15% on Assessment in any 3 month rolling period, then you have not met KPI 1.</p>
2	<p>To accept and to deal appropriately with a minimum of 90% of calls from the DSCC for Police Station Advice and Assistance when you are the allocated Provider on a Duty Solicitor Scheme Rota.</p> <p>If you do not accept at least 90% of calls from the DSCC in any three month rolling period when you are the allocated Provider on a Rota, then you have not met KPI 2.</p>

3 FUNDING CRITERIA

General Criteria

- 3.1 In this Specification, each Unit of Work may be subject to Qualifying Criteria as set out below. When a Unit of Work is subject to Qualifying Criteria, you must apply it in the following circumstances:
- (a) When the application from the prospective Client is made to you; and
 - (b) (Except in relation to the Financial Eligibility Tests) when further Contract Work is provided throughout the Matter or Case.
- 3.2 You must refuse to act in respect of any work that does not meet the relevant Qualifying Criteria.
- 3.3 In applying the Qualifying Criteria, you must have regard to any Guidance issued by us.
- 3.4 The Qualifying Criteria are:
- (a) “Financial Eligibility Tests” (which means such tests of the Client’s means to assess their eligibility for Legal Aid as are set out in Regulations); and/or
 - (b) The “Sufficient Benefit Test” (as set out below at the relevant Units of Work); and/or
 - (c) The “Interests of Justice Test”; and/or
 - (d) The “Advocacy Assistance Merits Tests” (as set out in **Part B** of this Specification at the relevant Units of Work); and/or
 - (e) Additional eligibility criteria as set out for each Unit of Work in **Part B** of this Specification.

Financial Eligibility

- 3.5 Where Financial Eligibility Tests apply to the provision of Advice and Assistance or Advocacy Assistance in this Specification, satisfactory evidence as described in Guidance, must be provided to you by the Client before you assess their financial eligibility, subject to Paragraph 3.6 below. The evidence (or a copy of it) must be retained on the file.
- 3.6 You may assess the prospective Client’s means without the accompanying evidence only where:
- (a) it is not practicable to obtain it before commencing the Contract Work; or
 - (b) pre-signature telephone advice is given; or
 - (c) exceptionally, the personal circumstances of the Client make it impracticable for the evidence to be supplied at any point during the Matter or Case.

- 3.7 Unless Paragraph **3.6(c)** applies, you must require the Client to provide the evidence as soon as practicable. If satisfactory evidence as described in Guidance of the Client's financial circumstances is not subsequently supplied, then work which is payable by Fixed or Standard Fee may not be claimed. Where work is payable on an Hourly Rates basis, any work carried out by you above two hours cannot be claimed by you as Contract Work. In such circumstances, a note must be made on file.
- 3.8 You may accept clean copies of any evidence described in Guidance as satisfactory evidence. The evidence must be supplied in relation to both the Client and his or her partner if their means are aggregated.
- 3.9 Time spent applying Financial Eligibility Tests and completing the appropriate application form(s) is not remunerated under this Contract unless this Specification provides otherwise, or a fee is claimable under the CDS (Funding) Order 2007 (as amended).

The Sufficient Benefit Test

Advice and Assistance

- 3.10 The Sufficient Benefit Test is set out below and must be satisfied in order to provide Advice and Assistance in this Contract.

Advice and Assistance may only be provided on legal issues concerning English (or Welsh) law and where there is sufficient benefit to the Client, having regard to the circumstances of the matter, including the personal circumstances of the Client, to justify work or further work being carried out.

- 3.11 This test applies both when the application is granted by you and when further Advice and Assistance is provided throughout the Matter. It must therefore be considered whenever work is carried out on the Matter. Prison Law has a more detailed Sufficient Benefit Test which is set out in the Prison Law part of this Specification and which must be applied when undertaking work in the Prison Law Class.
- 3.12 If it becomes apparent that the Sufficient Benefit Test is no longer satisfied then the Advice and Assistance must cease and the Client must be so advised.
- 3.13 You must not claim for Advice and Assistance where the Client is seeking advice on non-legal issues. In such cases, you should generally refuse to provide Advice and Assistance at all, or if necessary, cease to provide Advice and Assistance once the issue becomes clear, which would often be at the first interview.
- 3.14 You must not carry out Contract Work, beyond taking initial instructions and advising the Client of his or her options, unless on the evidence available to you at the time the Advice and Assistance is being provided, the Client's case involves a legal issue.
- 3.15 You must also apply the Sufficient Benefit Test to determine the extent of the advice that is required (including whether an attendance is necessary and the length of time which should be spent).

- 3.16 In relation to Police Station Advice and Assistance the Sufficient Benefit Test is satisfied automatically where a Client has a right to legal advice or is a Volunteer under PACE or the equivalent legislation applying to the armed forces in the case of military investigations. This only applies to initial advice at the Police Station and you must still apply the test to determine the extent of the advice, which is required.

Advocacy Assistance

- 3.17 Before commencing Advocacy Assistance on an Own Client Matter, you must apply one of the following tests (where appropriate).
- (a) You must refuse to grant an application for Advocacy Assistance if it appears unreasonable that approval should be granted in the particular circumstances of the case. When determining an application for Advocacy Assistance, the prospects of success and merits of the application should be taken into account as well as whether the Client has reasonable grounds for contesting the proceedings.
 - (b) If the Interests of Justice Criteria are not met, then you must not grant an application for Advocacy Assistance.

Independent Funding Adjudicator

- 3.18 You must notify the Client of the right to apply to the Independent Funding Adjudicator for a review of your decision not to grant, or to withdraw Advocacy Assistance, or our decision not to extend the relevant Upper Limit (see **Section 5** of this Specification). If your Client decides to do this, you must inform him or her of the time limit and the approved form required and must keep a record of this on file.
- 3.19 Where work is undertaken within the Associated CLS Class of work, the applicable rights of review are those set out in the civil Specification and the Funding Code procedures and not under this Contract. Applications to the Independent Funding Adjudicator are subject to the rules set out in Section 3 of Part D of the Funding Code procedures.
- 3.20 You must inform the Client that a refusal to grant a Representation Order by the magistrates' court may be appealed in accordance with the CDS (Financial Eligibility) Regulations 2006 (as amended) (if the refusal relates to the Client being financially ineligible), or the CDS (Representation Orders: Appeals etc) Regulations 2006 (as amended) (if the refusal is on the grounds that the Interests of Justice do not require a Representation Order to be granted).

4 CARRYING OUT CONTRACT WORK

General Powers

- 4.1 For Advice and Assistance, Advocacy Assistance and Legal Help under the Associated CLS Class, the decisions to provide legal services are taken by you on our behalf with the exception that Advice and Assistance in Treatment Cases under **Section 12** of this Specification may only be provided if we have granted you prior approval to commence that Case. A Treatment Case undertaken without us having granted you prior approval is not Contract Work and cannot be claimed for under this Contract. This exception does not apply if you are working under a system of New Matter Starts which we have introduced under Paragraph **12.24**.

Devolved Powers

- 4.2 Devolved Powers extend to all Contract Work and must be exercised by you in accordance with the terms of this Contract and Guidance in all appropriate cases.
- 4.3 We may remove any Devolved Powers granted to you.
- 4.4 Subject to Paragraphs **4.2** and **4.3** above, your Devolved Powers under this Contract are to:
- (a) accept an application directly from a Child under Paragraphs **4.27 to 4.29**;
 - (b) accept an application on behalf of a Child or Protected Party under Paragraphs **4.24 to 4.26**;
 - (c) accept an application by post where permitted in this Specification for particular Units of Work;
 - (d) accept an application for Advice and Assistance from a Client who has received Advice and Assistance from you or another Provider within six months where permitted in this Specification for particular Units of Work;
 - (e) grant (or refuse to grant) Advocacy Assistance;
 - (f) authorise the instruction of Counsel when Advocacy Assistance is given in accordance where permitted under this Specification;
 - (g) grant, refuse, amend or refuse to amend an Emergency Certificate granted in the Associated CLS Class of Work. This power does not extend to judicial review proceedings unless we so authorise, and is subject to the Funding Code Guidance and does not allow you to grant an application on the ground that the case has a significant wider public interest. Decisions on significant public interest are taken by us (where necessary after referral to the Public Interest Advisory Panel);
 - (h) amend or refuse to amend certain limitations on a substantive Legal Aid Certificate for Legal Representation issued in the Associated CLS Class of Work. This power is subject to the Funding Code Guidance and does

not allow you to amend on the ground that the case has a significant wider public interest.

- 4.5 You must exercise the Devolved Powers in every appropriate case and the decision may not be referred to your Relationship Manager although advice may be sought in cases of difficulty or doubt, especially when Guidance given by us does not cover the particular situation.
- 4.6 The Devolved Powers described in Paragraph **4.4** are available provided they have not been withdrawn by notice to you and are only available in a Unit of Work, which you are authorised to perform (as indicated by your Schedule).
- 4.7 When you exercise a Devolved Power, you must provide details of the reasons justifying the exercise of the Devolved Power in the appropriate section of the application and record form.

Electronic working

- 4.8 You must meet the appropriate requirements as set out in **Clause 7** of the Standard Terms.
- 4.9 All written communications with us relating to Contract Work must be made in the manner we specify in Guidance. This will usually be electronic, unless we have confirmed that we are prepared to receive communications on paper or otherwise. References in this Specification to “forms” do not imply that hard copy written forms must be used. Forms include on-line forms and related processes.

Use of Agents, Counsel and Approved Third Parties

- 4.10 You may instruct Agents, Counsel or Approved Third Parties to carry out or assist with Contract Work where you are satisfied that it is in the interests of your Client to do so, subject to your compliance with **Clause 3** of the Standard Terms.
- 4.11 You may not entrust an entire Matter or Case to Agents or Counsel (save for Police Station Advice and Assistance Matters, where you may as provided in this Contract, entrust an entire Investigation to a Representative).
- 4.12 Where you instruct an Agent or Counsel you may Claim payment for the work as if you had carried it out directly in accordance with the terms of this Specification. Where you instruct an Agent or Counsel to carry out services which are covered by a Fixed, Standard or Graduated Fee, any fees or costs related to your use of the Agent or Counsel will be included in the Fixed, Standard or Graduated Fee and may not be claimed separately. This Paragraph does not apply to Assigned Counsel.
- 4.13 It is your responsibility to pay the Agent’s or Counsel’s fees directly, out of the amount you receive from us by way of the Fixed, Standard or the Graduated Fee. The fee which you agree to pay the Agent or Counsel may not be included in your calculation of costs to determine whether a case is claimable as an Exceptional Case. This Paragraph does not apply to Assigned Counsel.
- 4.14 You must not rely on the use of any Agent or Counsel as evidence of satisfying any of the Service Standards in this Specification.

Solicitors with higher court advocacy rights

- 4.15 A Solicitor with higher court advocacy rights may be instructed to give an opinion or to perform advocacy.
- 4.16 Solicitor with higher court advocacy rights instructed by you to give an opinion must be from a different organisation from your instructing Solicitor unless undertaking advocacy only. The use of such a Solicitor who must not be a partner in, or employed by, or a consultant to your organisation will ensure that any opinion obtained is independent and objective (in the same way that external Counsel's opinion would be).
- 4.17 Opinions from Solicitors with higher court advocacy rights must comply with the Relevant Professional Bodies' guidelines. They must also be dated and state the Solicitor's name and roll number and include a statement confirming that the Solicitor has higher court advocacy rights.
- 4.18 Instructions to Solicitors with higher court advocacy rights must:
- (a) include a copy of the Representation Order and any amendments to it and any authorities to incur costs; and
 - (b) be endorsed with the reference number of the Representation Order and the Unique File Number, but no fees will be marked on any set of papers so delivered.

Application rules

- 4.19 In addition to the application rules set out in Paragraphs **4.20 to 4.38**, application rules relating to specific Units of Work are set out in **Part B** of this Specification.

Application forms

- 4.20 Unless the terms of this Specification or we expressly provide otherwise in writing, you must not provide Contract Work unless the Client is within the jurisdiction, and has completed the relevant application form.
- 4.21 Where an application form is required, except in relation to a Representation Order, a copy of the completed form must be kept by you on the file, and its correct completion will be checked upon Audit.
- 4.22 We may prescribe different application forms for different Classes or Units of Work or Clients.
- 4.23 Failure to complete properly the requisite form may lead to the costs of the Matter or Case being disallowed on Assessment. The Financial Eligibility Test (where relevant) and the Client details must be fully completed and the form signed by the Client in your presence. Work carried out before the completion and signing of the form will not be remunerated. Limited exceptions to these principles for Advice and Assistance are contained in **Part B** of this Specification for specific Units of Work.

Application on behalf of a Child or Protected Party

4.24 You may only accept an application for Contract Work on behalf of a Child or Protected Party from:

- (a) in the case of a Child, a parent or guardian or other person in whose care he or she is; or
- (b) in the case of a Protected Party, from a deputy or attorney under the Mental Capacity Act 2005; or
- (c) in the case of a Child or Protected Party, a person acting for the purposes of any proceedings as his or her litigation friend; or
- (d) in the case of a Child or Protected Party, any other person where there is good reason why none of the persons specified in **(a)** to **(c)** above can make the application (and that good reason is noted on the file), provided that:
 - (i) there is sufficient connection between the Child or Protected Party and the other person to ensure that the other person is likely to act responsibly in the interests of the Child or Protected Party; and
 - (ii) the other person has sufficient knowledge of the Child or Protected Party, the problem and the Child's or Protected Party's financial circumstances (where relevant) to give proper instructions to you; and
 - (iii) no application may be accepted under Paragraph **4.24(d)** if made by a member, director, partner, shareholder, associate or employee of your organisation.

4.25 Where you accept an application under Paragraph **4.24**, the application will be in the name of the Child or Protected Party but signed on his or her behalf. The form should be completed in the name of the Child or Protected Party but signed by the person who is applying on behalf of the Child or Protected Party with an annotation to that effect.

4.26 Where relevant, the appropriate means, of the Child or Protected Party and, in appropriate cases, those who have care and control of, or are liable to maintain, or usually contribute substantially to the Child or Protected Party's maintenance, must be taken into account in applying the Financial Eligibility Test.

Instructions directly from a Child

4.27 You may accept instructions directly from a Child in the following circumstances:

- (a) by exercising the Devolved Power in relation to proceedings which that Child is entitled to defend without a litigation friend; or
- (b) where only Police Station Advice and Assistance is sought; or
- (c) where:

- (i) there is good reason why none of the persons specified in Paragraphs **4.24(a) to (d)** can make the application on the Child's behalf; and
- (ii) the Child is old enough to give instructions and understand the nature of the advice and proceedings.

4.28 Where Advice and Assistance (other than Police Station Advice and Assistance) or Advocacy Assistance is provided to a Child:

- (a) the Child must sign the application form him/herself; and
- (b) you must consider whether it is just and equitable not to aggregate the Child's means with those of the person liable to maintain him or her.

4.29 The presumption is that there should be aggregation but you can decide not to aggregate (and assess only the Child's means) if, having regard to all the circumstances, including the age and resources of the Child (and to any conflict of interest), it appears just and equitable to do so. Non-aggregation is more likely to be justified where there is a conflict between the Child and the person liable to maintain him or her.

Postal applications

4.30 You may exercise the Devolved Power to accept an application for Advice and Assistance by post from a Client where it is reasonable to do so, but not where the Client is resident outside the European Union; and

- (a) such residence is purely temporary and the Client can without serious disadvantage delay the application until he or she has returned to England or Wales; or
- (b) the Advice and Assistance could be applied for on the same Matter by a person resident in England or Wales; or
- (c) it is otherwise unreasonable to accept the application.

4.31 The Devolved Power to grant an application for Advocacy Assistance will apply to all proceedings for which it is available, as specified in **Part B** of this Specification.

4.32 Where you use the Devolved Power to grant an application for Advocacy Assistance, a written application is granted by the signature of a practising Solicitor who is a Designated Fee-Earner in your organisation or your crime Supervisor on the "Declaration and Grant" section of a properly completed application form. The application section of the form must be fully completed and signed by the Client before signature by you. The grant will not operate retrospectively.

4.33 If a written application is not required under this Specification, a check should be made that the Client satisfies any scope limitations and Qualifying Criteria and a note should be made on file.

4.34 The Devolved Power to grant Advocacy Assistance carries with it the corresponding duty to refuse it when any applicable Qualifying Criteria are not

satisfied. When refusing, you should make it clear that you are doing so on behalf of the LSC and applying the terms of the Contract.

- 4.35 The Devolved Power to self authorise the instruction of Counsel in Advocacy Assistance proceedings must be exercised in accordance with the provisions relating to the instruction of Counsel set out in this Specification.
- 4.36 The Devolved Powers set out in Paragraph **4.4(g)** and **(h)** above which only apply to Contract Work in the Associated CLS Class of Work must be exercised in accordance with the Funding Code. You must only exercise these Devolved Powers if your Office meets the Quality Standard.
- 4.37 Where you are authorised to exercise the Devolved Power to accept an application for Advice and Assistance from a Client who has received Advice and Assistance from you or another Provider within six months under Paragraph **4.4(d)** above, as previous Advice and Assistance has already been received, it must only be reasonable for you to incur limited further costs. Although this will depend on all the circumstances of the case, on a second or subsequent change of Provider the actual provision of Advice and Assistance is less likely to be justified and the costs, which are likely to be considered reasonable, will reduce.
- 4.38 The Devolved Power in Paragraph **4.4(d)** above does not operate retrospectively. Work done prior to the date of exercise of the Devolved Power cannot be remunerated and should be disregarded in the calculation of work done when submitting a costs Claim.

Unique File Numbers (UFN) and filing requirements

- 4.39 Before your first point of contact with us on any Matter or Case, you must assign a UFN in the format set out in Paragraph **4.40** to each separate Matter or Case other than those involving only the provision of Contract Work by a court Duty Solicitor acting as such.
- 4.40 The UFN must be calculated with reference to the date on which you first undertook Contract Work for the Client (which may be earlier than the date on which the UFN is actually assigned). You must use the following UFN format, which is:
 - (a) the date on which Contract Work (a) was first undertaken for the Client in the Matter or Case set out in the six digit numerical format of DDMMYY; followed by
 - (b) a “/” followed by
 - (c) a sequential number unique to that day. The numerical sequence part of the UFN will return to 001 at the beginning of each day.

Boundaries between Classes and Units of Work

- 4.41 Advice and Assistance does not extend to cover Representation, no matter what the circumstances of the Client or the Matter or Case. Where a Representation Order is granted you must not Claim for, or grant, further Advice and Assistance or Advocacy Assistance to the Client on the same Matter, which gave rise to the Criminal Proceedings, unless a Criminal Investigation is ongoing in respect of

other offences relating to the same Matter. Where Representation is available, you must make an application at the earliest opportunity.

- 4.42 Work for the same Client may be treated as a separate Matter if it involves the provision of Advice and Assistance or Advocacy Assistance under this Contract on a legal issue which amounts to a genuinely separate problem requiring a separate application (where relevant) and which can be claimed separately in accordance with this Specification.
- 4.43 You must identify, and record on the appropriate Matter or Case file, any point at which the work, which you are performing for a Client, becomes a separate Matter or Case.
- 4.44 Where two or more separate Matters or Cases arise, each one must be the subject of a separate application form (where relevant). You must decide whether you may Claim the work under this Contract and the appropriate Qualifying Criteria will apply to each Matter or Case.
- 4.45 Where two Matters are genuinely different problems requiring separate advice at the same time on one occasion only, then they must be treated as the same Matter, despite the fact that they would normally be treated as separate Matters.
- 4.46 Where two or more Matters arise from the same set of circumstances, they must not be treated as separate Matters for the purposes of Police Station Advice and Assistance, or Free Standing Advice and Assistance.
- 4.47 Where two or more Cases would be dealt with under one Representation Order or as part of the same Case, one application form must be completed and the Case must be treated as one matter.
- 4.48 In each Matter or Case, a single application form must be completed to identify the issues and provide general, preliminary advice. If one legal issue is identified then the original, single application should be used for the provision of any further Advice and Assistance. The following points should be noted:
 - (a) the fact that you may be giving initial advice to the Client about potentially different outcomes arising from the same set of originating circumstances does not in itself mean they are separate Matters; and
 - (b) the fact that circumstances have changed or developments have occurred as the case has progressed will not mean that a separate Matter arises if the Advice and Assistance continues to be provided on the same overall legal issue.
- 4.49 Where multiple application forms are used then you must record the reasons on file and be able to justify your decision on Assessment or Audit.
- 4.50 Duplicated work must not be claimed on related files.
- 4.51 Where different fee-earners undertake work for the same Client on different Matters, care must be exercised to ensure that no duplication of work takes place. If it subsequently comes to light that more than one fee-earner has undertaken work for the same Client on the same Matter then a check must be made to ensure that there has been no duplication. If duplicated work has been claimed in error, you must notify us.

- 4.52 If a Client seeks advice as to whether he or she should change Provider from a Provider already providing Advice and Assistance it is not justified to consider this as a separate Matter to the advice being given by the previous Solicitor. Paragraph **4.37** must be applied before any advice is given as a separate Matter.
- 4.53 Charges laid at the same time which are dealt with under one Representation Order, or are heard together, or form part of the same Case, must be dealt with as one Case.
- 4.54 Advice given on related issues, which could be considered to be a “series of offences”, must be dealt with as a single Case, rather than separate Cases.
- 4.55 Advice and Assistance in respect of a referral to the CCRC constitutes a separate Matter from Advice and Assistance given in respect of the original proceedings, including any previous appeal.

Matter or Case ends

- 4.56 A Matter or Case ends when any of the following events occurs:
- (a) where work is undertaken in the Criminal Investigations Class, when the Investigation has concluded, either by way of the Client being charged or reported for summons, or the Matter being disposed of in any other way;
 - (b) when you are notified that no further action is being taken in relation to a Criminal Investigation (or that the Investigation will not proceed for some other reason);
 - (c) when you are notified that Criminal Proceedings are discontinued, withdrawn, discharged or that no evidence is offered (or that the Proceedings will not proceed for some other reason);
 - (d) where Advice and Assistance is given in the Appeals and Reviews Class of Work, on an appeal against conviction or sentence, when a Representation Order is granted by the court on an appeal by way of case stated;
 - (e) where Legal Help is given in the Associated CLS Class of Work under **Section 13**, when a Certificate is granted for Legal Representation for the same Client arising from the same Matter;
 - (f) the Matter or Case has concluded;
 - (g) the Client decides to act in person;
 - (h) it is known that no further work will be undertaken for the Client in the same Matter or Case;
 - (i) it is unclear whether further work will be required or not and/or the Client fails to give instructions for two months (unless the Matter is on hold);
 - (j) the Matter or Case begins to be funded outside this Contract (save for circumstances in which you have applied for prior authority to instruct an expert, or a QC, that prior authority application has been refused, and the Client wishes to use his or her own money to pay for that expert or QC);

- (k) you have informed the Client that the provision of Contract Work is no longer justified and no appeal is submitted or pending;
- (l) in the Criminal Proceedings Class of Work only, when it comes to your knowledge that a Representation Order has been withdrawn, revoked or discharged;
- (m) you can no longer act due to a conflict of interest or the Client is referred to, or instructs, another Solicitor. The Matter or Case ends either on the date of referral or when a new Solicitor is instructed, whichever occurs first;
- (n) you are notified that the Case has been classified as a VHCC;
- (o) the Client dies.

4.57 The reason for a Matter or Case ending must be evident from your file. You must submit your Claim for payment in accordance with the provisions of **Section 3** of this Specification to us within three months of the Matter or Case ending.

4.58 Where you have agreed with the Client that the Matter or Case is on hold, Paragraph **4.56(h)** above will not be satisfied. The Matter will, however, end under that Paragraph where instructions are required from the Client and he or she fails to respond.

Continuity of service

4.59 Where you commence Contract Work for a Client then, unless any circumstances arise which would prevent you from acting in accordance with an express provision of this Contract or any relevant rules of professional conduct, you must continue to advise, assist or represent that Client until the Matter or Case ends.

4.60 Paragraph **4.59** does not override the circumstances in which a retainer may be terminated as set out in your professional Code of Conduct.

Change of Provider

4.61 The provisions set out in regulation 16 of the CDS (General) (No. 2) Regulations 2001 (as amended) apply in relation to a change of Provider under a Representation Order.

4.62 If you have provided Contract Work to a Client and:

- (a) that Client chooses to instruct another Provider with regard to the same Matter or Case; or
- (b) a new Provider is assigned by an amendment to a Representation Order

you must without delay send all relevant papers and other material in your possession relating to the proceedings to the new Provider.

4.63 If a Representation Order is amended to show a new Provider, the date on which the amendment came to the knowledge of the original Provider is deemed to be the date on which the Case ends for the purposes of any Claim.

- 4.64 Where there is a change of Provider assigned under a Representation Order, the provisions of **Part B**, Paragraphs **10.93 to 10.95** of this Specification apply when determining which fees may be claimed.
- 4.65 Paragraphs **4.61 to 4.65** must be read in conjunction with the specific provisions on Units of Work in **Part B** of this Specification.

Misrepresentation by Clients

- 4.66 If it comes to your attention that a Client has:
- (a) wilfully failed to provide information relevant to your decision to carry out Contract Work on his or her behalf; or
 - (b) has knowingly made a false statement or false representation which was material to your decision to carry out Contract Work in respect of his or her means
- and after this failure or false statement or false representation has occurred, you have carried out Contract Work on the Client's behalf, then you should cease work and report the matter immediately to your Relationship Manager.
- 4.67 We may require you to submit your entire file of papers to us.
- 4.68 You may submit a Claim for work carried out up until that point. The application form signed by the Client will incorporate an agreement by the Client to repay to us any costs we pay out to you in the matter in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work.

5 REMUNERATION FOR CONTRACT WORK

- 5.1 Fees for Contract Work you undertake are set out in the **Payment Annex**. They do not apply to work commenced by you under a previous CDS contract (or any other LSC contract). Such work will continue to be governed by the terms and remunerated at the rates set out in the relevant contract.
- 5.2 The basis on which we assess Claims is set out in **Section 8** of this Specification.
- 5.3 Payment for Contract Work undertaken under this Contract is based on Hourly Rates, Fixed Fees, Graduated or Standard Fees, depending on Classes or Units of Work. The **Payment Annex** sets out the payment structure and limits on claims for each Unit of Work, for ease of reference.
- 5.4 All payment rates set out in the **Payment Annex** to this Specification are hourly, except where otherwise indicated and exclusive of VAT.
- 5.5 London rates specified in the **Payment Annex** apply to a fee-earner whose Office is situated within the London CJS Area. If an Office situated outside the London CJS Area instructs an Office within that region to act as Agent, then London rates apply to the Agent's work. If a London based Office instructs an Office outside London to act as Agent, then national rates apply to the Agent's work.
- 5.6 The fees and rates may only be changed during the life of this Contract by amendments to the Contract under **Clause 13** of the Standard Terms. If this happens, we will issue you with a revised or new **Payment Annex** together with commencement and transitional rules setting out when the new fees or rates apply.

Time standards

- 5.7 For the purposes of claiming under this Specification, you must calculate the cost of Contract Work in six minute units with numbers of letters written and telephone calls made or received calculated by reference to the appropriate remuneration rate.
- 5.8 When your Claims are assessed, the test for the Assessor determining a Claim is whether the work appears to have been reasonably done and the time as claimed (excluding time spent on routine letters and calls) is reasonable.

Upper Limits on Claims

- 5.9 You may Claim Contract Work only up to the amount of any Upper Limit set out in the **Payment Annex** to this Specification. Representation Orders granted in Prescribed Proceedings in the Crown Court are subject to an Upper Limit which applies in the same way as a Costs Limitation. If you consider that your costs will exceed the Upper Limit you must apply to us for a formal extension under Paragraphs **5.10 to 5.15**. You must continue to have regard to any Qualifying Criteria throughout the Matter or Case, and must only perform such work as is reasonable in each Matter or Case. Paragraphs **5.7** and **5.8** and in the LSC Costs Assessment Manual will be applied on Assessment.

- 5.10 You will not be paid more than the Upper Limit unless that limit has previously been extended by us in accordance with the provisions of this Specification (or in the case of Contract Work undertaken in the Associated CLS Class of Work, the provisions of the civil Specification).
- 5.11 An application for authority to exceed the Upper Limit must be made to us on a form specified by us.
- 5.12 In order that we can monitor high cost matters you must not exceed the Upper Limit without our authority. The relevant Director may grant or refuse such authority on our behalf. If authority is granted, the Director will set a new Upper Limit on the Matter, above which payment will not be made unless you have applied for and been granted further authority.
- 5.13 Authority will not be granted by the Director unless the work carried out to date and the further work proposed is reasonable in accordance with any Guidance and the Sufficient Benefit Test (where applicable) and any other relevant Qualifying Criteria continue to be satisfied.
- 5.14 Extensions cannot be granted and do not operate retrospectively. When circumstances change such that it is necessary to carry out substantively different work from that envisaged in the extension granted, a separate extension will need to be considered.
- 5.15 Where the Sufficient Benefit Test applies to a Unit of Work, you must reapply the Sufficient Benefit Test before any extension is sought in relation to that Unit of Work.
- 5.16 If authority is granted to exceed the Upper Limit you may claim at the appropriate payment rate under this Specification for the work actually and reasonably carried out in accordance with the Sufficient Benefit Test (where it applies), up to a maximum of the amount authorised by us in the particular Matter or Case.
- 5.17 If we refuse to grant an extension to the Upper Limit, a right of review arises to an Independent Funding Adjudicator in accordance with **Section 3** of this Specification.
- 5.18 The Upper Limits set by us may vary according to the type of Contract Work provided by individual Providers.
- 5.19 The Upper Limits set out in the **Payment Annex** of this Specification are inclusive of profit costs, Disbursements and Counsel's fees properly incurred by you in connection with the Contract Work, but exclusive of VAT.
- 5.20 You will not be paid under this Contract for any work undertaken in excess of the upper limit if an extension has not been obtained. Where an extension to the Upper Limit has been granted on the basis of certain work being undertaken, then the costs (including Disbursements) of other work not previously specified may be disallowed as it does not fall within the scope of the extension granted, unless there are circumstances which justify the unanticipated work as reasonable. This is an issue for determination on Assessment.

Standard Monthly Payments

5.21 Subject to Paragraphs **5.22 to 5.23** we will make Standard Monthly Payments in respect of the following Contract Work:

- (a) in the Criminal Investigations Class of Work, all Units of Work;
- (b) in the Criminal Proceedings Class of Work, all Units of Work including Crown Court Representation in Prescribed Proceedings or as specified in Paragraphs **10.133** or **11.64**, but excluding Crown Court Representation where the payment is governed by the CDS (Funding) Order 2007 (as amended);
- (c) in the Appeals and Reviews Class, all Units of Work except for Representation under a Representation Order;
- (d) in the Prison Law Class of Work, all Units of Work;
- (e) in the Associated CLS Class of Work, all Units of Work except for legal Representation under a Legal Aid Certificate.

5.22 Each month's Standard Monthly Payment is triggered by our receipt from you, within 20 days after the end of the previous month, of the appropriate Contract Report Forms. Late receipt by us of the Contract Report Forms will delay your next Standard Monthly Payment and may result in you failing to receive your Standard Monthly Payment until the following month.

5.23 If we reasonably anticipate at the start of a Schedule that you will claim the annual equivalent of £2,500 or less for Standard Monthly Payments Work in the period of that Schedule, we will not pay you Standard Monthly Payments in respect of this work but will instead pay you following submission of Claims for this work made in accordance with this Contract.

5.24 We will set the amount of Standard Monthly Payments under your Schedule with the aim of making good any underpayments and recovering any overpayments arising under any previous Schedule.

5.25 Your Standard Monthly Payments may be reviewed and amended but only where this is consistent with the SMP Reconciliation Protocol. We will only amend the SMP Reconciliation Protocol during the life of this Contract by agreement with the Consultative Bodies or in accordance with the principles and procedures set out in **Clause 13** of the Standard Terms (as if the SMP Reconciliation Protocol were a Contract Document).

Payment for Crown Court Representation and Appeals and Reviews Representation

5.26 Where a Representation Order is issued for Crown Court work (excluding Prescribed Proceedings or as specified under Paragraph **10.133**) or in respect of Appeals and Reviews Representation under a Representation Order issued by the Court of Appeal (Criminal Division), or Administrative Court, you must submit your claim in accordance with the CDS (Funding) Order 2007 (as amended).

Payment for Legal Representation in the Associated CLS Class of Work

5.27 We will pay for Legal Representation in the Associated CLS Class of Work in accordance with the terms of the applicable civil Contract in force at the time.

Prior authority

5.28 Where you consider it necessary for the proper conduct of Criminal Proceedings for costs to be incurred under a Representation Order by taking any of the following steps:

- (a) obtaining a written report or opinion of one or more experts;
- (b) employing a person to provide a written report or opinion (otherwise than as an expert);
- (c) obtaining any transcripts or recordings, including police questioning of suspects;
- (d) in magistrates' courts only, where a Representation Order provides for the services of Solicitor and Counsel, instructing a Queen's Counsel ("QC") alone without junior Counsel;
- (e) performing an act which is either unusual in its nature or involves unusually large expenditure;

you may apply to us for prior authority before the expenditure is incurred.

5.29 If an application for prior authority is refused or partially refused by us, the application will automatically be referred to an Assessor. If the Assessor refuses an application, there is no right of appeal but a fresh application may be made at any time.

5.30 The effect of obtaining a prior authority is that no question as to the step taken or the amount authorised will be raised on Assessment of your claim, unless you knew or ought reasonably to have known before incurring the costs, that the purpose of the authority had failed or become irrelevant or unnecessary.

5.31 An application for prior authority must be made by application to the Director using the relevant form approved by us and applying any relevant Guidance.

5.32 An application for prior authority cannot be granted retrospectively. Any application must be made in advance of the relevant expenditure being incurred.

5.33 Applying for prior authority is not mandatory. If permission to incur the expenditure is not sought or refused, the costs may still be allowed on Assessment if the expenditure was reasonably incurred. The same principle applies if the amount authorised is exceeded.

5.34 Amounts claimed in respect of expert fees, if authorised, will be in accordance with the rates and provisions set out in the Criminal Defence Service (Funding) (Amendment) Order 2011 . The prior authority will specify the type of expenditure authorised, a maximum amount and may specify a maximum rate. This prior authority must be submitted with any Claim for payment.

- 5.35 An application for prior authority will be granted if the expense is necessary and reasonable having regard to the nature of the proceedings. The application may be granted subject to such terms and conditions as are appropriate.
- 5.36 An application for prior authority will be refused:-
- (a) where the application is for tendering expert evidence or the reports in question have been or could be ordered by the court in consideration of a disposal under the Mental Health Act 1983, as amended, or community order with a requirement for treatment and would thus be payable out of central funds;
 - (b) where the application is in respect of a medical assessment for which it would be reasonable to expect alternative funding to be used;
 - (c) for photocopying done “in house” which is an Office overhead, unless the circumstances are unusual, or the documents to be copied are unusually numerous in relation to the nature of the case;
 - (d) where the application is for a conference with Counsel to obtain Counsel’s written opinion (unless Counsel is instructed as an expert);
 - (e) where the application is to attend a distant court this is a matter for costs Assessment;
 - (f) where the application is to cover witness expenses;
 - (g) where the application is for a second expert report where the Client disagrees with the findings of the first expert’s report.
- 5.37 The circumstances in which you may be paid other than under this Contract where a prior authority is refused are set out in **Section 8** of this Specification.

Disbursements

- 5.38 We may prescribe types of Disbursements, which may or may not be incurred in the provision of Advice and Assistance, Advocacy Assistance or Representation. Payment of Approved Third Party fees incurred by you in relation to any Contract Work will not exceed any maximum rates set by us, unless authority has been granted to exceed the limit in the particular case. We may specify maximum rates payable by reference to type of expert and activity (such as reports, attending conferences or court hearings). Subject to any such limits and the provisions set out in the Criminal Defence Service (Funding) (Amendment) Order 2011, the amounts claimed for expert fees should be justified on Assessment by us in the normal way.
- 5.39 Disbursements may be incurred where it is in the best interests of the Client to do so and it is reasonable for you to incur the Disbursement for the purpose of giving Advice and Assistance, Advocacy Assistance or Representation to the Client and the amount of the Disbursement is reasonable.
- 5.40 The rules relating to payment and claims of Disbursements in the Prison Law Category of Law are set out in **Section 12** of this Specification and override this part of the Specification.

- 5.41 Disbursements will form part of your Claims. We will monitor your use of Disbursements via Audit and Assessment and may seek explanations and justifications as necessary. You must only incur Disbursements where it is in the Client's best interests to do so in the particular circumstances, subject to the provision as to reasonableness and to Guidance. You must produce a receipted invoice or voucher in support of any Disbursement claimed.
- 5.42 A non-exhaustive list of Disbursements, which may or may not be incurred in the provision of Advice and Assistance (including Advocacy Assistance) appears in the table below. Any Disbursements appearing in section A of the table below can only be incurred in any circumstances if it is reasonable to do so for the purposes of providing Advice and Assistance in relation to that Matter and if the amount is reasonable.

Section A Disbursements which may be incurred
Birth and other certificates
Counsel's fees
Enquiry Agents' and interpreters' fees
Experts' fees including medical reports
Fees recoverable on oaths
Newspaper advertisements
Photographers' accounts
Provider's travelling expenses

Section B Disbursements which may not be incurred
Clients' travelling and accommodation expenses
Court fees unless for a search/photocopies
Accommodation/hotel expenses incurred by Duty Solicitors (subject to Paragraph 5.43 below)
Any separate administration fee charged by an expert, where 'administration fee' includes but is not limited to a fee in respect of offices and consultation rooms, administrative support including typing services, subsistence and couriers
A cancellation fee charged by an expert where the notice of cancellation was given to the expert more than 72 hours before the relevant hearing or appointment

- 5.43 You must not Claim for accommodation or hotel expenses incurred by a Duty Solicitor during any Rota period, except where you have obtained the prior written authority from the Director. In making his or her decision, the Director will have regard to the need to ensure continued coverage of the Duty Solicitor Rotas. In circumstances where the Director reasonably believes that coverage is not at risk, the Director will not issue prior authority.
- 5.44 If you are considering incurring a Disbursement which appears in neither table then you must consider whether the Disbursement is recoverable or not by reference to its purpose.
- 5.45 The cost of the provision of legal advice by a person who is neither a lawyer nor supervised by a lawyer must not be treated as a Disbursement. The assistance of a non-lawyer can be sought but you must absorb this as an overhead rather than charge it as a Disbursement.

- 5.46 Except where Police Station Advice and Assistance is provided, an Agent cannot be employed to provide Advice and Assistance either as a Disbursement or as an element of profit costs (but see the position of Solicitors with higher rights of audience set out in **Section 4**). If you are not in a position to undertake work yourself then the matter should be referred. In appropriate cases you can obtain the opinion of Counsel. A Solicitor Agent may be used where Advocacy Assistance is provided (excluding court Duty Solicitor work).
- 5.47 In deciding whether the amount sought is reasonable regard must be had to all the circumstances including the purpose of the Disbursement in the context of the particular case (that is, having regard to the justification and need for it as against the value and importance of the case), the particular service involved, the extent to which there is a choice of alternative service providers and whether all elements of the service are justified in the particular case and at the particular time.
- 5.48 Where the opinion of Counsel or another expert is required on a question of foreign law, this cannot be covered by Advice and Assistance. In appropriate cases, an application for Legal Representation should be made.

Witness expenses

- 5.49 Payment to a witness attending court to give evidence in Criminal Proceedings cannot be claimed under this Contract, unless there is a direction from the court that the witness expenses may not be claimed from central funds and they are not recoverable from any other source. If the court does so direct, you must still satisfy us that the expense was reasonably incurred.

Mileage rate

- 5.50 Where you are permitted to claim travel costs under this Specification, the mileage rate is 45p per mile.

Mileage and time travel for experts

- 5.51 Where you instruct an expert, we will not pay in excess of:
- (a) 45 pence per mile travelling costs; and
 - (b) £40 per hour travelling time.

Solicitors with higher court advocacy rights - remuneration

- 5.52 When you have instructed a Solicitor with higher court advocacy rights, their charges are included in your bill as profit costs. This is subject to the exception outlined in Paragraph **5.53**.
- 5.53 When a Solicitor with higher court advocacy rights (from a different organisation) provides a legal opinion, that Solicitor's charges must be included as a Disbursement in the instructing Solicitor's bill. This recognises that the Solicitor with higher court advocacy rights is providing the same service as Counsel.

- 5.54 If a Solicitor with higher court advocacy rights acts as an advocate on behalf of his or her own organisation or is instructed as an advocate on behalf of another organisation when higher court advocacy rights are not required, his or her charges must be included in the instructing Solicitor's bill as profit costs in the normal way. Where, however, he or she acts as an advocate for another organisation and higher court advocacy rights are required, his or her charges may be included as a Disbursement in the instructing Solicitor's bill.
- 5.55 There is no obligation to claim the costs of a Solicitor with higher court advocacy rights as a Disbursement. This is an option and they may still be claimed as profit costs.
- 5.56 Payment should be claimed at the relevant "preparation rate". If the payment is properly claimed as a Disbursement the appropriate Hourly Rate depends upon the rate which the Solicitor providing the opinion is entitled to charge. It does not depend upon the rate that the conducting Solicitor is entitled to charge.
- 5.57 When advocacy is performed by a Solicitor with higher court advocacy rights, the appropriate rate is that for advocacy by a Solicitor (not Counsel). The fact that the Solicitor has higher court advocacy rights does not affect the amount chargeable. Where advocacy performed by a Solicitor with higher court advocacy rights is properly claimed as a Disbursement, the appropriate Hourly Rate depends upon the rate which the Solicitor performing the advocacy is entitled to charge. It does not depend upon the rate that the conducting Solicitor is entitled to charge.
- 5.58 The provisions in **Part B** of this Specification governing or prescribing payment (and any enhancement or "mark-up" which the instructed Solicitor wishes to claim) are applicable.
- 5.59 On Supreme Court costs Assessments, payment for preparing petitions for permission to appeal to the Supreme Court, and for any advocacy at such permission hearings, are subject to the maximum rate that would be payable to junior Counsel for such work.
- 5.60 When work done by a Solicitor with higher court advocacy rights is properly claimed as a Disbursement that Solicitor must send the conducting Solicitor an invoice for the work.
- 5.61 The invoice must detail the work done, the time spent, the payment rate applied (without any element of enhancement or other "mark-up") and VAT. If any enhancement or "mark-up" is claimed, this must be shown separately with reasons why it is claimed.
- 5.62 Where the work done was advocacy before a court where higher court advocacy rights were required, this must be stated on the invoice.
- 5.63 Disbursements incurred in instructing a Solicitor with higher court advocacy rights are subject to the provisions in this Contract for Payment on Account of Disbursements.
- 5.64 Applications for Payments on Account must be made by the conducting Solicitor (not the instructed Solicitor) with the receipted invoice.

- 5.65 The amount claimed on account should be at the appropriate rate but without any element of enhancement or “mark-up”. Enhancement or “mark-up” will not be paid on account but may be payable after the final bill has been assessed.
- 5.66 All payments by us are made to you. There is no provision for paying Solicitors with higher court advocacy rights directly.
- 5.67 When a conducting Solicitor has included, as a Disbursement in his or her bill, the charges of a Solicitor with higher court advocacy rights, the minimum sum, which the conducting Solicitor must pay that Solicitor, is the full amount of the payment which he or she receives for that work.
- 5.68 Where work done by a Solicitor with higher court advocacy rights is claimable as a Disbursement by the conducting Solicitor, it should be shown as such in his or her bill and Claim for payment and any Claim for Payment on Account.
- 5.69 In each case, a copy of the receipted invoice should be attached and the form or bill should set out the work that was done and the fact that it was done by a Solicitor with higher court advocacy rights. This is necessary to enable the work to be properly assessed.
- 5.70 Value for money should be a consideration for a conducting Solicitor in deciding whom to instruct to provide an opinion or perform advocacy services.
- 5.71 Paragraphs **4.15 to 4.18** and **5.52 to 5.71** apply to any Contract Work undertaken by a Solicitor with higher court advocacy rights.

Non-chargeable work

- 5.72 Save as otherwise provided by this Specification, payment will not be made under it for the time you spend on purely administrative matters.
- 5.73 You will only be paid under this Contract for work directly involved in the provision of legal services to the Client. Thus you will not be paid for time spent in opening and setting up files, the maintenance of time or costing records or in meeting the administrative requirements of your Contract and completing the Claim for costs. You may charge for work done in the exercise of Devolved Powers and recording of such exercise.
- 5.74 Unless the case involves a novel, developing, unusual or difficult point of law, justifying either legal research by you or the obtaining of an opinion from Counsel or a Solicitor with higher rights of audience, time spent on legal research will not normally be paid for as Contract Work.

Standards of Contract Work

- 5.75 Contract Work must be undertaken by a competent and experienced adviser in accordance with this Contract. Any Contract Work which is not appropriate for you to do must be referred by you to another Provider in accordance with this Specification.
- 5.76 Paragraphs **5.74** and **5.75** do not prevent you from undertaking reasonable checks of the current law in the normal course of Contract Work and do not prevent payment for the application of the law to the facts of the case, provided that the time spent is reasonable.

5.77 Where additional work has been undertaken as a result of your error or omission, resulting in additional costs being incurred unnecessarily, you must not Claim payment under this Specification.

6 DUTY SOLICITOR SCHEME RULES

- 6.1 The obligation to undertake work on Duty Solicitor Schemes is yours and not the individual Duty Solicitor(s) employed in your organisation.
- 6.2 You may only apply to join Duty Solicitor Schemes when you submit an application as part of the Tender Documents for Contract Work.
- 6.3 You cannot apply to join any Duty Solicitor Schemes (save for Virtual Court Duty Solicitor Schemes) during the life of the Contract unless we invite you to apply in accordance with the terms of this Contract.
- 6.4 The geographical Location of your Office or Offices determines which Scheme(s) you are entitled to join. An online tool on our website sets out the geographical ambit of each Scheme by reference to postcodes so that you can determine which Scheme(s) you may join by virtue of your Office(s) Location.
- 6.5 We may, by prior consultation for at least six weeks with the relevant Providers who are members of a particular Scheme and the Relevant Professional Bodies, change the postcode boundaries of a Scheme if a magistrates' court closure or a Police Station closure (whether temporary or permanent), or reduction in membership of a Scheme necessitates such a change.
- 6.6 Duty Slots and places on a Panel are allocated to you (and by reference to the relevant Office, if you have more than one Office) and not to the individual Duty Solicitors who are employed by you.
- 6.7 If you are a member of a Scheme, your Duty Solicitors are entitled to undertake Back-up work from the DSCC on that Scheme and also, if required, on neighbouring Schemes on which they may not be a member.
- 6.8 Your Schedule will list the Duty Schemes on which your Duty Solicitors may undertake Duty Solicitor work.
- 6.9 The number of Duty Solicitors you have determines the number of Duty Slots which are allocated to you on that Scheme. The number of Duty Slots you are allocated is also dependent on the number of Duty Slots available on that Scheme, and on the number of other Providers who have also joined and whose Duty Solicitors have applied to do Duty Solicitor work.
- 6.10 You must apply for your Duty Solicitors to undertake Duty Solicitor work on a Scheme by completing a CDS12 form for each of them by the deadline notified by us on our website. A properly completed CDS12 will allow that Duty Solicitor's name to be entered on the Rota or Panel of the Schemes you are a member of and will result in you being allocated Duty Slots on that Scheme.
- 6.11 New Duty Solicitors whom you employ and for whom you submit a CDS12 form may undertake Back-up work and cover Duty Slots already allocated to you, be included on the subsequent Rota or Panel (if the CDS12 form is received before the cut off date for the next Rota) or be added to the list of Panel members (if the Scheme is a Panel Scheme).

- 6.12 You must ensure that all Rota Duty Slots allocated to you (in respect of both Police Station and magistrates' court work) are covered by you using a Duty Solicitor. If you are unable to meet this obligation, you must notify us that you no longer require the Slot so that we may reallocate the Slot to another Provider.
- 6.13 We will use Back-up to deploy Duty Solicitors from neighbouring Schemes if membership of a particular Scheme becomes so reduced during the life of this Contract that the Scheme becomes unviable. In these circumstances, a consultation will follow where we will consider increasing the postcode area to increase Scheme membership.

Removal from Duty Solicitor Scheme

- 6.14 We may remove you from membership of a Scheme or Schemes by updating your Schedule where you are moving your Office (or one of your Offices) to a new postcode area, or your Office has moved to a new postcode area, which has the effect of making you no longer geographically eligible to be a member of the Scheme or Schemes listed on the Schedule relating to that Office.
- 6.15 Where we remove you from membership of a Scheme under Paragraph 6.14, provided at least four weeks notice is given to you of this decision, the removal will be effective at the end of the Rota in force at the time of this decision.

Competence requirements for becoming a Duty Solicitor

- 6.16 You must ensure that your Duty Solicitors are competent to do Duty Solicitor work. This can be done either by ensuring that your Duty Solicitors have been accredited under parts one and two of stage one of the Law Society's CLAS or previously been members of a Police Station and a magistrates' court Scheme as a Duty Solicitor (in accordance with this Contract, the Duty Solicitor Arrangements 2008, or a former version of those Arrangements).
- 6.17 We will verify that your Duty Solicitors are competent to undertake Duty Solicitor work by checking their Accreditation (when we consider it is appropriate to do so).
- 6.18 You must notify us, using form CDS12, of the Office Location from which your Duty Solicitor(s) work. You may only notify us of one such Office for each Duty Solicitor. This rule does not prevent a Duty Solicitor from being employed as an Agent or a locum by another Provider.
- 6.19 When you have notified us in accordance with Paragraph 6.18, your Duty Solicitors may undertake Duty Solicitor Work on the Schemes of which you are a member and which are listed on your Schedule for the Office from which that Duty Solicitor has been nominated to work.
- 6.20 Your Duty Solicitors must serve on the Police Station and the magistrates' court Schemes, for which you are a member.
- 6.21 Your Duty Solicitors must also serve on Virtual Court Duty Schemes if you have applied for membership of a Virtual Court Duty Scheme.

Continued entitlement to deploy Duty Solicitors

- 6.22 Your entitlement to deploy Duty Solicitors to undertake Duty Solicitor work under this Contract is dependent on them:

- (a) undertaking at least two hours CPD annually on issues relevant to the law, practice and procedure in the Police Station or magistrates' courts;
- (b) continuing to undertake Duty Solicitor work generally as evidenced by conducting at least 24 Police Station attendances and 12 magistrates' court attendances (Duty or Own Solicitor) in each 12 month rolling period, including at least one Police Station attendance each month and one magistrates' court attendance every four months; and
- (c) being employed by you.

6.23 An individual Duty Solicitor may satisfy the requirement in Paragraph **6.22(b)** by instead, demonstrating that they deliver training (internal and external) on Police Station practice and procedure, and are responsible for supervising at least four Designated Fee Earners, or Case-workers who themselves meet the requirements set out in this Contract.

6.24 Your Duty Solicitors (and any Accredited Representatives used by your Duty Solicitors) must not be special constables.

6.25 You must not submit a CDS12 for a Duty Solicitor during any period of his or her suspension or exclusion from Duty Scheme Work imposed below.

6.26 Where:

- (a) a Duty Solicitor is under investigation, faces an outstanding criminal charge or has been convicted of a criminal offence which is not treated as spent under the Rehabilitation of Offenders Act 1974; or
- (b) a Duty Solicitor has been the subject of any adverse findings by the Adjudication Committee of the Solicitors Regulation Authority or by the Solicitors' Disciplinary Tribunal, or where any complaint or application to either body has not been determined

we may refuse the CDS12 for that Duty Solicitor, provided that we give you and the Duty Solicitor written reasons for our decision.

Approval of applications

6.27 Where we approve a CDS12, we will notify you and the Duty Solicitor within 30 days of the date of receipt of the application.

Refusal of applications

6.28 If we refuse a CDS12 we will notify you and provide a statement of reasons for the decision within 30 days of receipt of the application. If you disagree with the decision to refuse to accept a CDS12 then you may have that decision informally reconsidered under **Clause 27** of the Standard Terms.

6.29 A refusal of an application under Paragraph **6.28** will be on the basis that we do not have adequate evidence that the Duty Solicitor who is the subject of that CDS12 is properly qualified or accredited.

6.30 There is no right of appeal to us against a refusal, revocation or suspension of Accreditation by the Law Society. Such appeals should be directed to the relevant accreditation assessment organisation or to the Law Society.

Suspension or exclusion of Duty Solicitors from undertaking Duty Solicitor Work

6.31 We may suspend for a period of up to 12 months or exclude a Duty Solicitor whom you employ from undertaking work on the Scheme or Schemes of which you are a member if he or she fails to meet any of the criteria in Paragraph **6.22** in relation to a Scheme. On suspension, we may impose conditions, which must be met before that Duty Solicitor resumes undertaking work on the relevant Scheme or Schemes.

6.32 We will not suspend or exclude a Duty Solicitor from undertaking Duty Solicitor Work on a Scheme or Schemes where any of the criteria in Paragraph **6.22** is not met because of an individual's disability or because of an absence from work of up to 12 months owing to sickness, injury, pregnancy, maternity leave or some other reasonable justification.

6.33 Without limitation to our rights under **Clauses 24** and **25** of the Standard Terms, we may, by way of a Sanction, suspend or remove your entitlement to use a particular Duty Solicitor to undertake Duty Solicitor work under this Contract on a Scheme or Schemes where:

(a) that Duty Solicitor: -

(i) is under investigation, faces an outstanding criminal charge or has been convicted of a criminal offence or is the subject of an investigation by their Relevant Professional Bodies;

(ii) does not demonstrate, or no longer demonstrates, the level of competence required for Accreditation or Accreditation has been suspended or revoked or (it transpires) has never been accredited);

(iii) becomes medically unfit to undertake Duty Solicitor Work;

(iv) is no longer employed by you.

(b) Where we are considering suspending or excluding one of your Duty Solicitors from undertaking Duty Solicitor work, we will:

(j) notify you and the Duty Solicitor of our reasons in writing;

(ii) offer you and the Duty Solicitor an opportunity to make written representations against the our decision.

6.34 Where we are considering suspending or excluding a Duty Solicitor from undertaking Duty Solicitor work under Paragraph **6.33(a)** or **(b)** we may suspend or exclude him or her immediately if we reasonably consider it necessary to do so.

6.35 Where a Duty Solicitor is suspended from undertaking Duty Solicitor work on a Scheme under Paragraph **6.33 (a)** or **(b)** you may apply to us using form CDS12 once the suspension period has expired for that Duty Solicitor to be able to undertake Duty Solicitor work again.

- 6.36 Where a Duty Solicitor is excluded from undertaking Duty Solicitor work on a Scheme under Paragraph **6.33(a)** or **(b)** a fresh CDS12 will be considered. The reasons for the Duty Solicitor's suspension or exclusion may be considered by us in deciding whether to allow that CDS12.
- 6.37 A Duty Solicitor who has been suspended or excluded from undertaking Duty Solicitor Work on conduct grounds under this Contract may appeal to a Regional Duty Solicitor Committee.
- 6.38 We may decide not to suspend or exclude a Duty Solicitor from undertaking Duty Solicitor Work until an appeal to the Regional Duty Solicitor Committee is heard unless we consider that it is reasonable to suspend or exclude the Duty Solicitor from undertaking Duty Solicitor work prior to their appeal to the Regional Duty Solicitor Committee. A Duty Solicitor will be notified in writing of our decision under this Paragraph.
- 6.39 Where a Duty Solicitor is suspended or excluded from undertaking Duty Solicitor work, you must ensure that your other Duty Solicitors are able to cover any remaining Duty Slots on the current Rota in that Duty Solicitor's name. If your other Duty Solicitors are unable to do so, then you must notify us so that those Duty Slots may be reallocated to other Providers on the Scheme.

Changes in circumstances

- 6.40 You must notify us immediately in any of the following circumstances:
- (a) if a Duty Solicitor gives formal notice of leaving or leaves your employment as a Duty Solicitor;
 - (b) if any of your Duty Solicitors are under investigation for or have been charged with a criminal offence;
 - (c) if any proceedings have been instituted before the Adjudication Committee of the Solicitors Regulation Authority, the Solicitors' Disciplinary Tribunal or another Relevant Professional Body; or
 - (d) if the Adjudication Committee of the Solicitors Regulation Authority or the Solicitors' Disciplinary Tribunal has made an adverse finding;
 - (e) a failure to notify us under Paragraph **6.40(a)** which results in additional Rota Duty Slots being allocated to you to the detriment of the other members of the Scheme will result in an equivalent reduction in the number of Duty Slots being allocated to you when the next Rota is drawn up.
- 6.41 If you wish voluntarily to withdraw from a Scheme or Schemes (and have your Schedule amended accordingly) you must notify us in accordance with **Clause 21.10** of the Standard Terms and you give us at least three months written notice.

Management of Schemes

Rotas, Panels and Call Ins

6.42 We shall decide:

- (a) in consultation with the Scheme members and appropriate magistrates' courts, whether there should be attendance or Call In (whether by Rota or Panel) cover, or a combination of both, for each magistrates' court Scheme;
- (b) whether there should be Rota or Panel cover, or a combination of both, for each Police Station Scheme; and

the times during which such arrangements shall be in operation. For the avoidance of doubt, in both instances we will also consult with the relevant Scheme members by local consultation.

Slot allocation

6.43 For each Scheme (run by Rota) we shall create a list of Duty Slots. Providers who are members of that Scheme will be allocated Duty Slots on the Rota in proportion to the number of Duty Solicitors who submitted properly completed CDS12 forms for that Provider at least two months before the start of the Rota.

6.44 For Police Station Schemes run by Panel, Providers who are members of that Scheme will be allocated one place on the Panel List for every Duty Solicitor employed by them and who have submitted properly completed CDS12 forms.

Rotas

6.45 If additional Duty Solicitors are required at short notice to respond to unusual demands, the DSCC will call Duty Solicitors from Providers on that Scheme using Back-up.

6.46 We will normally produce Rotas covering a period of three to six months and will normally issue Rotas one month before the start date of the Rotas. Operational requirements may necessitate Rotas of a shorter length being produced.

6.47 We may amend the last three months of a six-month Rota (or second half of a Rota of shorter length) to correct errors or omissions of Duty Slot allocation in the first two months of that Rota (or equivalent period in a Rota of shorter length). One month's notice will be given of any such amendment unless operational reasons outside our control necessitate having to give a shorter period of notice.

6.48 Duty Solicitors who are new to a particular Scheme of which you are a member will have their details from their completed CDS12 form processed within 7 days of receipt. Initially, that Duty Solicitor will be eligible to undertake Back-up Duty Solicitor work on that Scheme and to cover other Duty Slots already allocated to you on Schemes.

6.49 Entitlement to Duty Slots on a Scheme will be determined in accordance with the numbers of Duty Solicitors whom you employ. A Duty Solicitor who is new to a Scheme will not increase your Duty Slot allocation until the subsequent Rota is produced, and you should note the provision in Paragraph **6.43** that new Duty Solicitors must submit their CDS12 to us at least two months before the Rota start date.

- 6.50 Copies of any Scheme list showing Rota Duty Slot allocation (or list for a Call In Scheme) will be sent, as appropriate, to the magistrates' court, the DSCC and each CDS Provider who is a member of that Scheme.

Panels

- 6.51 Duty Solicitors who are new to a particular Scheme, which is operated by Panel, (as opposed to Rota) will be added to the end of the Panel List within 7 days of receipt.
- 6.52 Panel work will be allocated by the DSCC (for Police Station Advice and Assistance) in a consecutive sequence. Court Panel schemes may be organised by a 'rota' arrangement, whereby the members of that Panel are told in advance when they are to attend the court, or by way of a 'panel', whereby the court telephones the Solicitors in a consecutive sequence when they are required to attend.
- 6.53 You must ensure that requests to accept Panel and Back-up cases are considered by Duty Solicitors and you must use reasonable endeavours to ensure they are accepted.

Client awareness

- 6.54 We will take steps to ensure that potential Clients are made aware of the availability of the Duty Solicitor at Police Stations and magistrates' courts.

Services cases

- 6.55 We may introduce a special panel for cases where Services Persons require Advice and Assistance and Advocacy Assistance.

Client's right to instruct another Solicitor

- 6.56 You must ensure that all staff undertaking Police Station Duty Solicitor work carry an identification card as specified by us for production when attending Police Stations.
- 6.57 In all matters, a Duty Solicitor must inform every Client that he or she is not obliged to instruct the Duty Solicitor.
- 6.58 If a Client wishes another Solicitor to act, the Duty Solicitor must not act unless the named Solicitor is not available and the Client asks the Duty Solicitor to act on that occasion.
- 6.59 If a Duty Solicitor does not continue to act for a Client, he or she must make available to any Solicitor subsequently instructed any relevant information or papers.
- 6.60 Subject to Paragraph **6.62** below, a Duty Solicitor (including a Virtual Court Duty Solicitor) must not act for a Client who has his Own Solicitor unless
- (a) the court session takes place on a non-Business Day; or
 - (b) the Client is unable to secure his Own Solicitor's attendance; or

(c) the court is unable to determine whether the Client has his Own Solicitor (because no Representation Order has been granted to that Client).

6.61 If a court Duty Solicitor represents a Client in the circumstances mentioned in Paragraph **6.60** above, he must take all reasonable steps to notify the Client's Own Solicitor as soon as possible after the hearing.

6.62 A court Duty Solicitor may act as an Agent for a Client's Own Solicitor, but this cannot not be claimed as Duty Solicitor work.

Duty Solicitor Transitional Arrangements

6.63 The Duty Solicitor Arrangements 2008 cease to have effect from the Contract Start Date.

7 VERY HIGH COST CASES (VHCCS)

- 7.1 For the avoidance of doubt, VHCC work is not within the scope of this Contract and is subject to separate contracting arrangements. However, you must comply with the obligations set out below in this Specification in relation to cases that may become VHCCs.
- 7.2 Any question as to whether a case should be classified as a VHCC within the meaning of regulation 2 of the CDS (General) (No. 2) Regulations 2001 will be referred to and decided by us.
- 7.3 You must notify us in writing of a potential VHCC as soon as it appears that the case will be, or is likely to be, a VHCC within the meaning of regulation 2 of the CDS (General) (No.2) Regulations 2001. If it does, or if you are in any doubt, you must notify us within five Business Days of:
- (a) the earliest hearing at which the court sets a trial estimate; or
 - (b) you identifying that the case will be or is likely to be a VHCC.
- 7.4 You must make a note on file to confirm that you have complied with Paragraph 7.3 above.
- 7.5 You must not carry out any further Contract Work under this Contract on a case which we classify as a VHCC from such date as we may specify and must not make any claim for any further work under this Contract on that VHCC.
- 7.6 Where we instruct you to pass the VHCC to another Provider, you may only claim under the terms of the CDS (Funding) Order 2007 (as amended) for work properly done up to the date of such instruction by us.
- 7.7 Where Paragraph 7.6 applies, if you retain the case on a *pro-bono* basis then you must provide us with a signed confirmation from the Client that he or she agrees to you continuing to represent them on a *pro-bono* basis and that they understand that they could, if they so wish, have their Representation Order transferred to another Provider that is authorised by us to undertake VHCC work.

8 CLAIMS, COSTS ASSESSMENTS AND REVIEWS

Claims

- 8.1 You must submit Claims to us in accordance with the specific provisions applicable to each Unit of Work in this Contract.
- 8.2 Unless this Contract otherwise provides, at the conclusion of any Matter or Case or Duty Period, you must submit a Claim for costs to the relevant Director on the Contract Report Form claiming an amount to be reconciled against the payments made to you under the Contract (a “credit”). The Claim must be submitted on a form and in a format approved by us. Credits claimed will be set off against the Standard Monthly Payments. The UFN must be inserted on each Claim, except where a Claim for court Duty Solicitor work is made in which case the relevant part of the Contract Report Form should be endorsed. You must retain the information specified in Paragraphs **4.39** and **4.40** of this Specification and in Guidance on file. We may call upon you to produce this either for Audit or Assessment purposes. You must supply such further particulars, information and documents in support of your Claim as we may require.
- 8.3 Except where a warrant of arrest is issued in magistrates’ court proceedings, you must submit your Claim for payment to us within three months (or such longer period as we may direct) of the Matter or Case or Duty Period ending.
- 8.4 All Claims made under the same Representation Order or relating to the same Case or Matter must be submitted together.
- 8.5 If the Claim form is not properly completed, your Claim will be rejected. The original submission date remains the relevant date for the purpose of any Sanctions to be applied under **Clause 24** of the Standard Terms.
- 8.6 If you are acting for more than one Client in the same Case and that Case concludes at a different time for each Client, then you must submit a single Claim once the Case covering all relevant Claims has concluded. The trigger date for submitting a Claim is the latest date on which the proceedings concluded for all Clients.
- 8.7 If you have already submitted a Claim and the same Client seeks further Advice and Assistance, Advocacy Assistance or Representation from you on the same Matter or Case, then any subsequent work will be treated as supplemental to the original Claim and, where relevant, the original limit (as extended) will continue to apply. You must notify us at the time that you submit the supplemental Claim that a Claim has been made previously.
- 8.8 When a supplemental Claim is submitted in accordance with Paragraph **8.7** above, the UFN which was assigned to the original Claim must be used.
- 8.9 Where a Client seeks further Advice and Assistance, Advocacy Assistance or Representation on the same Matter you may need to consider an extension to the costs limit, where appropriate, unless the previous limit was not exhausted. The Upper Limit will continue to apply to the cumulative costs throughout the lifetime of the Matter.

Inter partes costs

- 8.10 In accordance with s22(2) of the Act, where an agreement or order provides for costs to be paid by any other party in favour of a Client for whom you have been providing Representation in the High Court, Crown Court or magistrates' court under this Contract then you may retain the element of any costs recovered under that agreement or order which exceeds the amount paid or payable to you by us in relation to the relevant dispute or proceedings under the terms of this Contract.
- 8.11 Where interest has been received on the costs, you may retain a proportion of the interest which equates to the proportion of the total costs recovered which you are authorised to retain under Paragraphs **8.10 to 8.12**.
- 8.12 The balance of any costs and interest after you have retained any element authorised by Paragraphs **8.10** and **8.11** above must be forwarded to us immediately.

Assessment of Claims – general

- 8.13 Where an Assessment is carried out after a credit has been given in relation to any Matter or Case, then that credit may be adjusted by us accordingly.
- 8.14 The setting off of credits against your Standard Monthly Payments will be without prejudice to our right to assess your Claims.

Applying findings generally on Assessment

- 8.15 When we Assess a sample of Claims, we may apply any Findings to your other Claims for payment for Contract Work.
- 8.16 When we apply Findings in this way, we may do so for all Matters and Cases commenced under this Contract (or any previous contract it has replaced) where costs have been claimed from us either:
- (a) in the case of Mis-Claiming, at any time within the two years following its submission to us (or within six years if (i) an Official Investigation is underway) or (ii) we have received a report that we reasonably consider requires us to Assess such Claims;
 - (b) in the case of Over-Claiming or other claiming issues:
 - (i) since the date of the last Contract compliance Audit; or
 - (ii) from a date 12 months immediately preceding the date the file sample was requested for Assessment,

whichever is the most recent.

- 8.17 If the sample relates only to a specific group of your files or Unit or Class of Work, then we will only apply the Findings to that specific group.
- 8.18 When Findings are applied to a Claim under Paragraphs **8.15 to 8.18**, then that Claim has been assessed by us.

Appeals

- 8.19 If you or Counsel are dissatisfied with any decision of the Director as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor (“the Assessor”). For the avoidance of doubt, subsequent references in this rule and its related Guidance include “Assessors” in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.
- 8.20 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. The Director will only extend the 28 day time limit where it is reasonable for you to have requested an extension within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.
- 8.21 If you fail to comply with any of the requirements set out in Paragraph **8.20** above you must accept the decision of the Director and lose your right to dispute it.
- 8.22 Where an appeal is to proceed the Director also has the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If the Director does so, these will be sent to you not less than 21 days before the appeal papers are sent to the Assessor. If you receive such further representations from the Director then you may, within 14 days, provide a written response to them.
- 8.23 The appeal must be dealt with by the Assessor on the papers only. There is no general right for either party to attend or to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing, to the Assessor. Such an application must be made at the same time as:
- (a) in your case, you submit your written appeal; and
 - (b) in the case of the Director, at the same time as he or she makes any written reply (or, where no written reply is made, during the period allowed for making such reply).
- 8.24 The Assessor must consider the request and notify both parties of his or her decision.
- 8.25 If:
- (a) neither party has made a request for an oral hearing but the Assessor believes that his or her review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or
 - (b) having considered a party’s request for an oral hearing, s/he is of the opinion that the request should be granted,
- he or she must notify the parties of this. If either party chooses to attend at an oral hearing, having been given permission from the Assessor, the other party will also have a right of attendance and representation at the appeal and must confirm whether or not they intend to exercise that right.

- 8.26 In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and/or value that it should not be considered by a single Assessor alone s/he may, in his or her sole discretion, refer the appeal to a panel of three Assessors either to deal with on the papers only or by way of an oral hearing. If the Assessor is of the opinion that the appeal must be dealt with by way of an oral hearing, the provisions set out in the Paragraph **8.25** apply save that a panel of three Assessors will deal with the appeal rather than a single Assessor alone.
- 8.27 For the avoidance of doubt, the Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on the papers only or an oral hearing basis.
- 8.28 On appeal, the Assessor must review the Assessment whether by confirming, increasing or decreasing the amount assessed. In a Controlled Work Assessment, applicable to Associated CLS Work, the Assessor may apply his or her Findings generally across files outside the sample before him or her under the terms of Paragraphs **8.15 to 8.18**. However, no such decision will apply to any completed Assessments that you have not appealed within the time limit.
- 8.29 Where in dealing with an appeal on the papers only the Assessor identifies new issues (those which have not been raised by either party under the appeal) the Assessor will, as s/he considers appropriate in the circumstances, either:
- (a) adjourn the appeal and seek representations from the parties before making his or her final decision; or
 - (b) refer the matter back to the Director for a new decision.

Points of Principle of General Importance

- 8.30 At any point after the submission of an appeal to the Assessor, but no later than 21 days after receipt of the Assessor's final decision, either you, the Director or the Assessor may seek certification of a Point of Principle of General Importance.
- 8.31 An application for certification of a Point (or Points) of Principle of General Importance must be made as follows:
- (a) in your case, by sending your application to the Director and, if one has already been appointed and their identity notified to you, to the Assessor. The Director will, within seven days of receipt of your application, forward that application to our Legal Director and, if an Assessor has been appointed but their identity not notified to you, to the Assessor also; and
 - (b) in the case of the Director, by sending an application directly to our Legal Director and copying that application to you and to the Assessor (if appointed);
 - (c) in the case of the Assessor, by sending the application to the Director. The Director will, within seven days of receipt, send the application to our Legal Director and notify you that the Assessor is seeking certification of a Point of Principle of General Importance.
- 8.32 All applications for certification of Points of Principle of General Importance, whether made by you, the Director or the Assessor, must set out the exact

wording of the Point of Principle of General Importance being sought and explain, in detail, the basis of the application.

- 8.33 Upon receipt of an application for certification of a Point of Principle of General Importance our Legal Director will decide whether the matter should progress to the Costs Appeals Committee. If our Legal Director decides that the matter should not progress to the Costs Appeals Committee for certification then the Legal Director will send the reasons for refusal to the Chair of the Costs Appeals Committee for approval and, if approved, to you, the Director and, where appropriate, the Assessor.
- 8.34 If our Legal Director or the Chair of the Costs Appeals Committee consider that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.
- 8.35 Applications for certification of Points of Principle of General Importance are, unless permission to attend is granted by the Chair of the Costs Appeals Committee, considered by that Committee on the papers only.
- 8.36 On considering an application under this rule, the Costs Appeals Committee will either:
- (a) decide whether to certify the Point of Principle of General Importance sought and, where appropriate, amend any of the Assessments of the Assessor to give effect to this determination, or refer the matter back to the Assessor for him to do so; or
 - (b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.
- 8.37 You, the Director and, where appropriate, the Assessor will be notified of the decision of our Legal Director and/or the Costs Appeals Committee.
- 8.38 Any Point of Principle certified by the Costs Appeal Committee, whether or not made under this Contract, is binding on all Assessments carried out by the Commission and any appeals in relation to such Assessments.

Basis of Assessments and appeals

- 8.39 All Assessments of Contract Work are to be on the Standard Basis as defined by the Civil Procedure Rules, Rule 44.4(2), subject to the other provisions of this Specification and any Guidance issued by us.
- 8.40 You must only Claim for work that has been actually and reasonably done and Disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the Claim and Assessment.
- 8.41 The relevant remuneration rates in the **Payment Annex** to this Specification will then be applied to the time allowed and the resulting sum will be added to any Disbursements allowed and to any VAT to produce a figure for the costs of the case. Allowance will not be made for work which was not evidenced on the file at the time the Claim was made in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or perused.

- 8.42 We may ask you to provide an attendance note or other record of time spent. If your Claim is not supported by written evidence, then it will not be paid under the Contract.
- 8.43 When assessing Claims we will apply our published Guidance and the LSC Costs Assessment Manuals. The LSC's published Guidance on the Assessment of costs of Controlled Work will apply to the provision of Free Standing Advice and Assistance so far as it is consistent with the terms of this Contract. You must be familiar with the contents of these manuals and any other Guidance on criminal costs assessment produced by us and ensure that Claims are made in accordance with the published Guidance.
- 8.44 Whilst the Director reserves the right to assess all Claims, for the avoidance of doubt, Claims for Police Station Advice and Assistance will not be reduced on Assessment to below the level of the relevant Fixed Fee (unless the attendance was not justified or the matter was out of the scope of Contract Work).
- 8.45 Claims for Exceptional Cases claimed under this Contract may be reduced on Assessment but will not be reduced to less than the value of the relevant Fixed Fee (unless the attendance was not justified or the matter was out of the scope of Contract Work).

Appeal by Assigned Counsel

- 8.46 Where Assigned Counsel's fees have been reduced on any Assessment by us, Paragraphs **8.15 to 8.38** above will apply to any appeal by Assigned Counsel.
- 8.47 Assigned Counsel will have a direct right of appeal when his or her fees have been reduced on an Assessment. This does not apply in a magistrates' court Standard Fee case where Counsel is unassigned. Paragraphs **8.15 to 8.38** of this Part will apply to such an appeal by Assigned Counsel save that the time limit for the purposes of Paragraphs **8.30 to 8.38** will be 21 days from the date of receipt by Counsel of the notification of the Assessment.

Payment of costs

- 8.48 Once we have assessed the amount of costs payable under this Specification to you and any Counsel instructed, payment will be authorised by us, subject to any provisions elsewhere in this Contract.
- 8.49 Where the costs payable are varied as a result of a review, redetermination or appeal in accordance with this Contract, then:
- (a) where costs are increased, we will authorise payment of the increase;
 - (b) where the costs are decreased, you or Counsel will repay to us the amount of such decrease.

Payment other than through this Specification

- 8.50 Subject to Paragraph **8.52** below, you must not charge a fee to the Client or any person for the services provided under this Specification or seek reimbursement from the Client or any other person for any Disbursements incurred as part of the provision of such services. This Paragraph does not apply to services you provide which cannot be funded under this Contract or the Act, but which are in connection with a funded Matter or Case.

- 8.51 Where you have been carrying out Contract Work on behalf of a Client, you may not accept instructions to act privately in the same matter from that Client unless the Client has been first advised by you in writing of the consequences of ceasing to be in receipt of services and as to the further services which may be available under the CDS, whether from you or another Provider, (including the possibility of an extension of the limit for Advice and Assistance or Advocacy Assistance, an application for Representation or the availability of Advocacy Assistance or the Duty Solicitor) and has nevertheless elected to instruct you privately.
- 8.52 Where an application for prior authority for costs to be incurred under a Representation Order has been refused and the Client has expressly authorised you to: -
- (a) prepare, obtain or consider any report, opinion or further evidence, whether provided by an expert witness or otherwise; or
 - (b) obtain or prepare any transcripts or recordings of any criminal investigation or proceedings, including police questioning; or
 - (c) instruct Counsel other than as provided for under any Representation Order,
- then Paragraph **8.50** will not apply to payment by the Client on a private basis for that work.
- 8.53 You must not charge the Client for the provision of Contract Work or seek payment of Disbursements incurred from the Client unless an exception under this Contract applies. All payments for Contract Work must come through us. You cannot be retained to act for the Client in the same Matter or Case under this Contract and on a privately paying basis at the same time. Where a Client elects to instruct you privately in relation to a Matter or Case in which you have been providing Contract Work, a copy of the letter dealing with the requirements of Paragraphs **8.50 to 8.53** must be kept on the file.

Wasted costs

- 8.54 Where a wasted costs order has been made under section 19 of the Prosecution of Offences Act 1985 against you or Counsel instructed by you in proceedings in which Advocacy Assistance or Representation is provided under this Contract, you must submit a copy of the order with your Claim.
- 8.55 If the court orders that you are not entitled to be paid for Contract Work, then that Contract Work must not be included in your Claim.
- 8.56 On Assessment, we may disallow the amount of work done to which the wasted costs order relates. In those circumstances, the amount disallowed will be that amount or the amount of the wasted costs order, whichever is the greater.
- 8.57 If a wasted costs order is made in your favour and you have received payment, you must deduct the amount of wasted costs paid from your Claim. If you have not received payment of wasted costs at the time you submit your Claim, you may Claim the full sum due and pay us the amount of any wasted costs as soon as they are received by you.
- 8.58 Where you can show that the costs to which the wasted costs order made in your favour relates to costs which would not otherwise be claimable from or payable

from the Legal Aid Fund, you are entitled to keep those costs, provided you set out in writing to us the circumstances in which the wasted costs order was made, and we confirm that you may keep those costs in addition to the costs payable for that Contract Work.

- 8.59 The fact that a wasted costs order has been made against you or Counsel is a factor which we may take into account on Assessment.

Payment from central funds

- 8.60 If you have made, or will make, a Claim for costs from central funds, in proceedings funded under this Specification, you must notify us when you submit a Claim to us.

- 8.61 If you can Claim for the work done under this Specification, then you must do so, prior to making any Claim from central funds.

Recovery of overpayments

- 8.62 Where following an Assessment you or Counsel are to be paid under this Contract and, for whatever reason, you or Counsel are paid an amount greater than that sum, we may either: -

(a) require immediate repayment of the amount in excess of the amount due ("the excess amount") and you or Counsel will on demand repay the excess amount to us; or

(b) deduct the excess amount from any other sum which is or becomes payable to you or Counsel under this Contract.

- 8.63 Paragraph **8.62** applies notwithstanding that you or Counsel to whom the excess amount was paid is exercising, or may exercise, a right of appeal under Paragraphs **8.19 to 8.38**.