

**DATED**

**2008**

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**VERY HIGH COST CASE (CRIME) PANEL  
CONTRACT FOR PANEL MEMBERS**

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**between**

**THE LEGAL SERVICES COMMISSION**

**and**

**THE PANEL MEMBER**

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PARTIES

- (1) **THE LEGAL SERVICES COMMISSION** whose head office is at 85 Gray’s Inn Road, London WC1X 8TX; and
- (2) **THE PANEL MEMBER** whose details appear in the box below.

Name of Panel Member	
LSC account number (if applicable)	
Conditional Panel membership (yes or no)	
Holder of LSC General Criminal Contract (yes or no)	<i>Yes: Annex 18(1) applies</i> <i>No: Annex 18(2) applies</i>
Email contact	

RECITAL

The Very High Cost Case (Crime) Panel has been established in accordance with the Criminal Defence Service (General) (No. 2) Regulations 2001 as amended by the Criminal Defence Service (General) (No. 2) (Amendment No. 2) Regulations 2007.

Successful applicants in the 2007 tendering exercise have been selected to be members of the Very High Cost Case (Crime) Panel (“Panel Members”) and contracted to provide criminal defence work to clients on Very High Cost Cases (“VHCCs”). In order for those successful applicants to become Panel Members they are required to sign up to this Contract.

The Advocates nominated by the successful applicants in the 2007 tendering exercise have also been selected to provide criminal defence work to clients on Very High Cost Cases as part of the Very High Cost Case (Crime) Panel. Such Advocates must provide these services either as employees of a Panel Member or as Panel Advocates. Advocates who are self-employed are required to sign up to the contract for Panel Advocates in order to become Panel Advocates.

Panel Members are responsible for allocating Defence Teams to carry out work on individual VHCCs. Where a Panel Member wishes to instruct a self-employed Advocate to act on a VHCC (and become a member of the Defence Team), it will instruct a Panel Advocate (unless the CCU give authority for the instruction of a Non-Panel Advocate under clause 1.5 of Annex 9).

Both the Panel Member's Contract and the Panel Advocate's Contract place various obligations on the Defence Team, rather than on the Panel Member or the Panel Advocate. Where this is the case, Panel Members and Panel Advocates are required to act jointly, as members of the Defence Team, to ensure that the obligations are complied with. For the avoidance of doubt, the Panel Member is responsible for ensuring its own compliance (including the compliance of its Bid Team and employees) with the terms of this Contract and for using all reasonable endeavours to ensure that any other members of the Defence Team comply.

## 1. DEFINITIONS

1.1 In this Contract the words and expressions below will be interpreted to have the meanings adjacent to them:

“Act” means the Access to Justice Act 1999;

“Advocate” means a Barrister or solicitor having rights of audience in the Crown Court (and, for the avoidance of doubt, includes Panel Advocates, Panel B Advocates and Non-Panel Advocates);

“Audit Bundle” means the documents that the Defence Team must collate and provide to the CCU to enable the CCU to assess the payment due for completed VHCC Work;

“Barrister” means someone who is registered with The Bar Council of England and Wales as a practising barrister;

“Best Value Protocol” means the document attached to this Contract as Annex 6;

“Bid Team” means the team of Level A Litigators, Level B Litigators and Advocates who are employed by the Panel Member (or partners in the Panel Member firm) who were also put forward by the Panel Member as part of its tender for this Contract, as listed in Annex 2;

“Billing Guides” means any method of recording time or work done that can be or is used to prepare a bill and provide evidence to substantiate the bill;

“Case Category Assessment Sheet” means the document submitted by the Defence Team to the CCU with the first Case Plan, which contains the team’s detailed representations on the category of case;

“Case Manager” means the Litigator or Advocate nominated by the Panel Member to lead members of the Defence Team on any particular VHCC;

“Case Plan” means the document to be submitted to the CCU at the start of Stage 1 with the Stage 1 Task List;

“Category Criteria” means the criteria used by the CCU to determine the category of VHCC by which remuneration is determined;

“CCU” means the Complex Crime Unit, the department within the Legal Services Commission responsible for managing VHCCs;

“Closed VHCC” means a VHCC in respect of which all work by all Defence Teams working on that VHCC has been claimed, assessed, paid accordingly and concluded on the CCU finance system;

“Consultative Bodies” means The Law Society, the Legal Aid Practitioners Group, The Bar Council, the London Criminal Law Solicitors Association, the Criminal Bar Association and the London Criminal Courts Solicitors Association (and any other body we may agree with you to consult in accordance with this Contract);

“Contract” means this Very High Cost Case (Crime) Panel Contract for Panel Members;

“Contract Amendment Notice” means the notice setting out any amendments to this Contract, as contained at Annex 16;

“Contract Decision Letter” means the letter that the CCU will send the Panel Member if the CCU agrees that a notified case falls within the definition of a VHCC;

“Contract Manager” means the nominated CCU representative who will be responsible for the day-to-day running of this Contract;

“Counsel” means an Advocate;

“Defence Team” means the team of lawyers put forward by the Panel Member to carry out VHCC Work on any individual VHCC (and for the avoidance of doubt includes any Non-Panel Advocates authorised under Annex 9, clause 1.5);

“General Criminal Contract” or “GCC” means (except where the context requires otherwise) the General Criminal Contract January 2008 (including its Specification and any annexes) between the LSC and its providers of publicly funded criminal defence work;

“Guidance” means guidance issued by the CCU to Panel Members following Contract award and from time to time in connection with VHCC Work;

“Individual Case Contract” means the contract between the LSC and its (non-Panel) VHCC providers in the previous VHCC contracting scheme;

“Litigator” means any person that satisfies the definition of a Level A or Level B litigator as stated in Annex 2;

“LSC” means the Legal Services Commission;

“Non-Panel Advocate” means a self-employed Advocate who is not a Panel Advocate;

“Panel” means the Very High Cost Case (Crime) Panel, comprising Panel Members and Panel Advocates contracted to provide criminal defence work to clients in relation to VHCCs;

“Panel Advocates” means self-employed Advocates who have been offered and have entered into a Panel Advocate’s Contract, and are responsible for carrying out VHCC Work as part of a Panel Member’s Defence Team (and for the avoidance of doubt does not include Panel B Advocates);

“Panel Advocate’s Contract” means the contract between the LSC and its Panel Advocate providers, authorising the Panel Advocates to undertake VHCC Work;

“Panel B Advocates” means self-employed Advocates who have been offered membership of a second panel to provide criminal defence work to clients in relation to VHCCs where there is insufficient capacity on the Panel;

“Panel B Members” means the organisations who have been offered membership of a second panel to provide criminal defence work to clients in relation to VHCCs where there is insufficient capacity on the Panel;

“Panel Members” means the organisations who have been offered and have entered into a Panel Member’s Contract and are responsible for allocating Defence Teams to carry out VHCC Work (and for the avoidance of doubt does not include Panel B Members);

“Panel Member’s Contract” means the contract between the LSC and its Panel Member providers in the form of this contract, authorising the Panel Members to undertake VHCC Work;

“Panel Start Date” means 14 January 2008;

“Panel Term” means the period from the Panel Start Date to the date on which this Contract is terminated in accordance with its terms (whether by effluxion of time or otherwise);

“Peer Review” means the independent assessment, by experienced peer practitioners, of the quality of advice and legal work provided by the Panel Member;

“Plea and Case Management Hearing” means the hearing at which a defendant enters his/her plea where appropriate and at which directions are given for the future conduct of the VHCC including, if appropriate, fixing a trial date or warned period;

“Quality Standards” means the LSC’s Specialist Quality Mark;

“Representation Order” means a document issued by a court or the LSC granting a right to representation to an individual under Schedule 3 of the Act;

“Senior Executive” in the case of the LSC means the Head of the CCU and in the case of the Panel Member means a senior partner, director or equivalent with authority to make decisions on behalf of the organisation;

“Serious Crime Cases” means a case in which the main offence with which the defendant/s is/are charged, whether at common law or under any statutory enactment, is a triable either way or indictable only offence;

“Serious Fraud Office” means the government department that investigates and prosecutes serious or complex fraud;

“Stage 0” means the period between the date the Representation Order is granted and the start of Stage 1;

“Stage 1” means the first period of a VHCC (normally 12 weeks) for which the LSC and the Defence Team will agree a plan of VHCC Work;

“Stage 1 Task List” means the document prepared by the Defence Team detailing, on an item by item basis, the VHCC Work to be undertaken by that team during Stage 1 of the VHCC;

“Substitute Advocate” means any Advocate who attends court on behalf of a client on a VHCC in place of the instructed Advocate;

“Task List” means the document prepared by the Defence Team detailing, on an item by item basis, the VHCC Work in each stage;

“Terrorism Case” means a case in which the main offence with which the defendant or defendants is or are charged, whether at common law or under any statutory enactment, is

primarily, or substantially, founded on allegations of terrorism as defined in the Terrorism Act 2000;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“Unified Contract” means the contract between the LSC and its civil legal aid providers, which came into effect on 1 April 2007 and replaced the General Civil Contract;

“VHCC” means a Very High Cost Case as defined in the Criminal Defence Service (General) (No. 2) Regulations 2001 as amended by the Criminal Defence Service (General) (No. 2) (Amendment No. 2) Regulations 2007;

“VHCC Advocate List” means the list of the names of all the Panel Advocates;

“VHCC Appeals Committee” means the committee established to adjudicate on issues relating to payment and funding under this Contract;

“VHCC Notification Request Form” means the form provided by the CCU for Panel Members to use when notifying the CCU as soon as it appears that a case will be, or is likely to be, a VHCC;

“VHCC Work” means criminal defence work conducted for clients on VHCCs according to the terms of this Contract;

“We” and “us” means the CCU (on behalf of the LSC) (and “our” has the associated meaning); and

“You” means the Panel Member named at the beginning of this Contract (and “your”) has the associated meaning).

1.2 Clause and paragraph headings in this Contract are inserted for convenience only and do not affect its interpretation.

1.3 Words denoting any particular gender include all other genders. Words denoting the singular include the plural and vice versa.

1.4 In this Contract, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made there under and any conditions attaching thereto.

1.5 References to “approval” means approval as provided by this Contract or, if no express provision is made by this Contract, to approval in writing.

## 2. **CONTRACT DOCUMENTS**

2.1 All Annexes referred to in this Contract form part of the Contract.

2.2 The terms of the LSC’s General Criminal Contract (January 2008) specified in Annex 18 apply to the VHCC Work delivered under this Contract and will continue to be incorporated into this Contract notwithstanding the termination of the General Criminal Contract (January 2008) as the main contract governing the provision of non VHCC publicly funded criminal defence work. Annex 18(1) lists the provisions

that apply to Panel Members who also hold a separate contract with us entitling them to provide general criminal legal aid services (this may from time to time include, but is not limited to, the General Criminal Contract and the Unified Contract). Annex 18(2) applies to Panel Members who do not hold such a separate contract, and sets out in full these provisions, and additional provisions governing the provision of advice and assistance in the police station under Clause 6.2 below.

- 2.3 Where there is any conflict between the terms of this Contract and those of the General Criminal Contract, the terms of this Contract will prevail. A table setting out the terms of the General Criminal Contract that apply to this Contract are included in this Contract as Annex 18.

### **3. MEMBERSHIP OF THE PANEL**

- 3.1 Only Panel Members and Panel Advocates will be permitted to carry out VHCC Work on cases where the Representation Order is granted on or after the Panel Start Date except where:

3.1.1 a Panel Member instructs Non-Panel Advocates or Panel B Advocates under clause 1.5 of Annex 9; or

3.1.2 where the CCU allows a non-Panel solicitor to undertake work on a VHCC under clauses 5.2A/39; or

3.1.3 where additional arrangements are made under clause 11.6A below.

- 3.2 All VHCCs (fraud and non-fraud) where the Representation Order is granted on or after the Panel Start Date will operate under and be subject to the terms and conditions of this Contract. VHCCs where the Representation Order is granted prior to the Panel Start Date (irrespective of the fact that the VHCC is continuing at or after the Panel Start Date) will operate under the previous VHCC contracting system. Some Panel Members may, therefore, operate under two different schemes at the same time for different VHCCs.

- 3.3 Where the date on which the Representation Order is granted is on or after the Panel Start Date, Panel Members need not be members of the Specialist Fraud Panel in order to undertake a VHCC in relation to fraud.

### **4. CONDITIONAL PANEL MEMBERSHIP**

- 4.1 If a Panel Member has been awarded conditional Panel membership, this will be stated on the front page of this Contract. This section applies only to conditional Panel Members.

4.2 When your Peer Review result has been confirmed and (if necessary) all appeal procedures completed, the final Peer Review result will be applied. If you have been awarded conditional Panel membership and your final Peer Review result is a PR4 ('below competence') or PR5 ('failure in performance'), that conditional Panel membership may be withdrawn and any VHCC started under this Contract may be transferred to another solicitor.

- 4.3 Provisions on how this transfer should take place are set out at clause 39.

### **5. HOW THE VHCC SCHEME WILL OPERATE**

- 5.1 The CCU will manage all VHCCs and will be responsible for ensuring that Panel Members conduct VHCCs according to this Contract.
- 5.2 The CCU does not allocate VHCCs to Panel Members; it is up to clients to nominate their preferred Panel Member (subject to their availability) and for the Panel Member to instruct an Advocate(s) in accordance with the Representation Order and the terms of this Contract (detailed provisions relating to the instruction of Advocates are set out in Annex 9).
- 5.2A The CCU may allow non-Panel solicitors to conduct VHCCs in order to deal with any lack of capacity of the Panel and Panel B Members, in accordance with the process described at clause 39 below.
- 5.3 There is no limit on the number of VHCCs that Panel Members may accept during the term of this Contract. How many VHCCs a Panel Member takes on is entirely down to the capacity they have available and client choice. The CCU does not allocate VHCCs to particular Panel Members.
- 5.4 Panel Members are responsible for allocating Defence Teams to carry out VHCC Work.
- 5.5 Defence Teams must appoint a Case Manager to lead the members of a Defence Team on every VHCC in accordance with paragraph 2.1.3 of the Best Value Protocol (Annex 6) and clause 15.4 below. This person would normally, but not exclusively, be a Level A Litigator (as defined in Annex 2) or a Panel Advocate nominated to act in a leading role.
- 5.6 Panel Members may allocate a different Case Manager and different Defence Teams to different VHCCs. The Defence Team on any VHCC may consist of a number of Bid Team members, Level C fee earners, Panel Advocates and Non-Panel Advocates (where permitted under clause 1.5 of Annex 9). The Bid Team members are listed in Annex 2. This list must be revised as and when any Bid Team members change.

## 6. **POLICE STATION WORK**

- 6.1 Some Panel Members may also hold a separate contract with us entitling them to attend the police station and give advice and assistance to clients (such as the General Criminal Contract (January 2008) or the Unified Contract). They may provide these services to clients in relation to investigations which subsequently become VHCCs, but these services shall be provided in accordance with the terms of that separate contract in force at that time, not under this Contract.
- 6.2 Panel Members that do not hold a separate contract with us as referred to at clause 6.1 above have the right to attend the police station and give advice and assistance to clients under the terms of this Contract, provided they do so in accordance with the terms of the GCC (which for the avoidance of doubt is the General Criminal Contract (January 2008)). The terms of the GCC that relate to such police station work are set out in full in Annex 18(2). Annex 18(2) is only relevant (and only provided) to Panel Members who do not hold a GCC.

## 7. **VHCC CONTRACTING PROCESS TIMETABLE**

- 7.1 The timetable at Annex 4 sets out all the stages of the VHCC contracting process from the identification of a potential VHCC and notification stage through to the conclusion of a VHCC.
- 7.2 Each stage of the timetable includes a number of tasks to be carried out by the CCU and the Defence Team and the deadlines imposed.

## 8. **NOTIFICATION OF VHCCs TO THE CCU**

- 8.1 A Panel Member is only eligible for legal aid funding for VHCCs if it has obtained a Representation Order for the client.
- 8.2 You must notify the CCU of any case where the trial is likely to last for no fewer than 25 days.
- 8.3 You must notify the CCU by submitting a VHCC Notification Request Form as soon as it appears that the case will be, or is likely to be, a VHCC and, in any event, within five working days of the sooner of (a) the Plea and Case Management Hearing or (b) you having identified that the case will be or is likely to be a VHCC. A template VHCC Notification Request Form will be issued to Panel Members. This is the only form of notification that will be accepted by the CCU.
- 8.4 Failure to notify and delay in notifying the CCU of a potential VHCC may constitute a breach of contract (see Annex 13 for further information on breaches of contract and the likely consequences).

## 9. **CONTRACTING DECISION: IS THE CASE A VHCC OR NOT?**

- 9.1 After notification, the CCU will decide whether a case falls within the definition of a VHCC and, therefore, whether it can be conducted under the terms of this Contract.
- 9.2 On and from the Panel Start Date, a case will be deemed to be a VHCC where:
- 9.2.1 if the case were to proceed to trial, the trial would in the opinion of the CCU be likely to last for more than 40 days and the Commission considers that there are no exceptional circumstances which make it unsuitable to be dealt with under this Contract; or
- 9.2.2 if the case were to proceed to trial, the trial would in the opinion of the Commission be likely to last no fewer than 25 and no more than 40 days inclusive, and:
- 9.2.2.1. the case is prosecuted by the Serious Fraud Office; or
- 9.2.2.2. the case is a Terrorism Case; or
- 9.2.2.3 at least 2 of the following criteria (i) to (iv) apply;
- (i) there are more than 5 defendants;
  - (ii) there are at least 10,000 pages of served prosecution evidence;
  - (iii) there are at least 10,000 pages of unused or third party material;

- (iv) the case is a Fraud Case or one primarily involving serious drugs offences (as covered by Part 6 Class B of the Criminal Defence Service (Funding) Order 2007) and the value of the fraud (as described in the indictment or prosecution case statement/summary) or drugs (as estimated by the prosecution authority) exceeds £1 million.
- 9.2.3 Where paragraph 9.2.2 applies to a case, we reserve the right not to classify this case as a VHCC if exceptional circumstances apply which make it unsuitable to be dealt with under this Contract.
- 9.3 When making its decision, the CCU will consider the VHCC Notification Request Form and any supporting information it may hold at that time.
- 9.4 If the CCU agrees that a notified case falls within the definition of a VHCC, the CCU will send the Panel Member a Contract Decision Letter. This letter will state whether the Panel Member may carry out that individual case as a VHCC under this Contract. The letter will also confirm the date that the notified case became a VHCC.
- 9.5 Once the CCU has decided that the notified case is a VHCC, and confirmed this in the Contract Decision Letter, this letter is sufficient for the Panel Member (and any Panel Advocates instructed by that Panel Member) to be able to conduct the case as a VHCC in accordance with the terms of this Contract. Once the Contract Decision Letter has been issued, the Contract terms apply to any VHCC Work conducted on the VHCC. There is no separate document to sign for every new VHCC.
- 9.6 The Contract Decision Letter will confirm the particular VHCC number. Some VHCCs will involve more than one defendant but may still be dealt with under one VHCC number.
- 9.7 As set out in Annex 4 under 'case planning', the Case Manager must submit a Case Category Assessment Sheet to the CCU with its Case Plan and Stage 1 Task List. Once in receipt of these documents, the CCU will decide which category the case falls into, according to the Category Criteria set out in Annex 5.

## **10 CONFLICTS OF INTEREST**

- 10.1 Panel Members must check for conflicts of interest at the outset of a VHCC and as the VHCC progresses. In the event that a conflict appears during the progression of a VHCC, the conflicted party is obliged to notify the CCU in writing immediately and to cease work on the VHCC immediately.
- 10.2 In addition to notifying the CCU, if a Panel Member is the conflicted party, it has an obligation to inform the client that it has ceased work and make the required representations to the Court to transfer the Representation Order to an appropriate solicitor in accordance with the transfer provisions at clause 39.
- 10.3 Where the Panel Member represents more than one defendant in a VHCC and the CCU considers that there is sufficient risk (i.e. the risk is suitably grave) of a conflict of interest arising, the CCU may decide to contract the VHCC on a one defendant per Panel Member basis. Where necessary, the CCU will request the court to transfer all Representation Orders affected by this decision to another solicitor and in turn transfer the individual VHCC to that solicitor in accordance with the transfer

provisions at clause 39. The Panel Member's right of appeal against this decision is set out in clause 28.3.

## 11 **PANEL TERM**

- 11.1 Subject to the termination provisions set out in clause 38 and this clause 9, this Contract will commence on the date of this Contract and will expire on the Panel End Date (13 July 2009) (unless it is extended as set out in clauses 11.2 and 11.3). This Contract applies to all VHCCs where the Representation Order is issued during the Panel Term.
- 11.2 We may extend this Contract on its current terms or such other terms as we may agree with you by a maximum of a further 12 months from the Panel End Date. We will give you at least three months' written notice prior to the Panel End Date if we wish to do so - i.e. we will give you written notice of our intention any time prior to 13 April 2009.
- 11.3 Any extension will be subject to your written agreement. You must notify us in writing within one month of the date of our communication whether you agree to the extension. If we do not hear from you within this period, you will be deemed to have declined the extension.
- 11.4 If we wish a VHCC panel to continue after this extended period, we will run a fresh tendering exercise for a new VHCC panel – i.e. the maximum term of the Panel (and this Contract) will be 30 months (or 2.5 years) from the Panel Start Date.
- 11.5 If a VHCC has commenced prior to the Panel End Date, whether or not you are appointed to any subsequent VHCC panel, you may continue to conduct the VHCC on the terms of this Contract.
- 11.6 We may, at any time, serve no less than six months' notice on you terminating this Contract. We will exercise our rights under this clause 11.6 only when we consider it necessary or desirable to do so in order to facilitate a change in government policy. For the avoidance of doubt, this Clause and clause 11.6A below take precedence over any other clause in this Contract.
- 11.6A We will monitor the number of instances in which we are unable to place cases with Panel Members and Panel B Members (following the process at clause 39) and the number of Non-Panel Advocates instructed under clause 1.5 of Annex 9. If the demand for VHCC Work frequently exceeds the capacity of the Panel and the LSC reasonably believes that this level of demand is likely to persist, we may:
- 11.6A.1 make additional arrangements to deal with this lack of capacity (provided that the priority of the Panel (and Panel B Advocates and Panel B Members) to undertake VHCC Work is maintained); and/or
- 11.6A.2 serve no less than six months' notice on you terminating this Contract and the current Panel arrangements (for Panel Members and/or Panel Advocates).
- 11.7 You may, at any time, serve no less than three months' written notice on us terminating this Contract. We may be willing to consider a request from you to terminate this Contract on less than three months' written notice, provided your client/s is/are able to find another solicitor to take on your VHCC(s) within a timescale agreed by all parties. See the provisions on transfer of VHCCs at clause 39.

## 12 **RELATIONSHIP**

- 12.1 In funding services as part of the Criminal Defence Service we are bound by section 18(3) of the Act to aim to obtain the best possible value for money. Without prejudice to more specific provisions of this Contract and to your professional obligations in respect of clients, you and we agree to work together in mutual trust and co-operation to achieve this aim.
- 12.2 In relation to this Contract, you and we will act in good faith and we will act as a responsible public body required to discharge functions under the Act.

## 13 **CONTINUOUS IMPROVEMENT**

- 13.1 You will use your reasonable endeavours to improve the VHCC advice and representation provided by you during the term of this Contract, in:
- 13.1.1 VHCC turnaround time;
  - 13.1.2 VHCC handling (such as how quickly you refer a VHCC);
  - 13.1.3 the way VHCC advice is delivered (as assessed under Peer Review);
  - 13.1.4 use of your IT systems;
  - 13.1.5 procedures/ working practices; and
  - 13.1.6 interface between Panel Members.
- 13.2 You will use your reasonable endeavours, if reasonably requested by the CCU, to make proposals to increase efficiency within the VHCC contracting scheme; including the development of the Best Value Protocol.

## 14 **THE DEFENCE TEAM**

- 14.1 Members of the Defence Team are expected to be suitably experienced to carry out VHCC Work on a daily basis. Each member of the Defence Team must be able to meet the category specific requirements in the Quality Standards set out in Annex 19.
- 14.2 You must ensure that the Bid Team continue to meet the minimum requirements of the essential criteria (as set out in the Application Form at Annex 1, as amended) throughout the Panel Term. If a member of the Bid Team ceases to be employed by your organisation or otherwise becomes unable to conduct VHCC Work, for whatever reason, you must ensure that you replace him/her with someone with equivalent experience within six months – i.e. you will not be considered to be in breach of this provision for a period of six months.
- 14.3 Provisions relating to supervisors and training are set out in the Quality Standards.
- 14.4 You must notify us immediately in writing if any members of your Bid Team change from those listed in your Application Form (as set out in Annex 2).

## 15 **GENERAL CONDITIONS OF CARRYING OUT VHCC WORK**

- 15.1 In addition to other requirements set out in this Contract, you will (and you will use all reasonable endeavours to ensure that the rest of the Defence Team will):
- 15.1.1 comply with all relevant legislation, including any Acts of Parliament, Statutory Instruments and directions of the Lord Chancellor applying to this Contract;

- 15.1.2 perform the VHCC Work from the location(s) set out in this Contract (at Annex 3);
- 15.1.3 perform the VHCC Work with reasonable skill, care and diligence;
- 15.1.4 perform your obligations to record and report data accurately;
- 15.1.5 monitor the quality of the VHCC Work you are providing in such a way that you are able to report back to us in accordance with our reporting requirements (see Annex 4);
- 15.1.6 inform us immediately in writing if you discover that the quality of the VHCC Work you are providing is falling or has fallen below what is expected and put in place an appropriate action plan to improve the quality (subject to approval by the CCU);
- 15.1.7 meet the minimum essential criteria (as amended) as set out in the Application Form at Annex 1 at the Panel Start Date and continue to meet the criteria throughout the Panel Term;
- 15.1.8 notify us immediately in writing if, at any time, you cease to meet any of the minimum essential criteria (as amended) set out in the Application Form (at Annex 1); and
- 15.1.9 notify us immediately in writing if your organisation changes in any way (name, constitution, status, ownership, etc) from that named in your Application Form (at Annex 1).
- 15.2 Your claims must be true, accurate and reasonable.
- 15.3 Where the Panel Member is conducting VHCCs in relation to fraud cases, they must satisfy themselves that the Defence Team is appropriately skilled and experienced.
- 15.4 The Case Manager on any fraud VHCC must have experience of two fraud VHCCs where the Individual Case Contract was signed after 20 May 2004 (at least one of which should have been prepared to trial) or 300 hours of work on a fraud VHCC. A "fraud VHCC" means a VHCC where the defendant is charged with fraud or with serious financial impropriety.
- 15.5 Notwithstanding that your Defence Team may be based at more than one site, you will be responsible for complying with the supervision, management and technical requirements of this Contract. Your office address(es) is as set out in Annex 3.
- 15.6 If at any time during the Panel Term, you cease to meet any of the criteria set out in your Application Form (as amended), when you notify us, you must provide details of the action you propose to take to enable you to meet those criteria. Unless a different time limit is stipulated elsewhere in this Contract (e.g. clause 14.2), we will allow you a reasonable time to meet the criteria, normally up to a maximum of three months. If you have not taken satisfactory action within the agreed timescale, the CCU may, at its option, and depending on how serious the failure is, suspend your membership of the Panel until you have taken such action. During this period you will not be permitted to carry out any further VHCC Work.
- 15.7 Where the CCU suspends your membership, you will inform the Court and the client(s) in writing of the suspension.

**16 PROVISION OF INFORMATION**

- 16.1 You agree to give us information we request relating to VHCC Work to enable us to manage this Contract as soon as reasonably practicable, subject to confidentiality constraints as specified herein and applicable at law (including but not limited to solicitor-client privilege).
- 16.2 Notwithstanding clause 16.1, if requested by the LSC you will provide to any person authorised by the LSC to request it such information or documentation as the LSC may from time to time require for the purpose of discharging its functions under the Act or the Legal Aid Act 1988 or under the Legal Services Commission (Disclosure of Information) Regulations 2000, subject to the restrictions on disclosure contained in the Legal Services Commission (Disclosure of Information) (Amendment) Regulations 2001.
- 16.3 Subject to clause 16.4, the information we may request under clause 16.1 includes access to any Bid Team member's electronic case management and/or time recording records for VHCC Work but excludes access to electronic/paper diaries.
- 16.4 Subject to clause 18 below, Bid Team members are not required to provide information on any client not in receipt of legal aid. If Bid Team members' records contain details regarding both legally aided and non-legally aided clients, the Bid Team member will edit the records so as to remove any reference to any non-legally aided party.
- 16.5 We agree to give you any information you reasonably request as soon as reasonably practicable, subject to confidentiality constraints (see clause 36 on 'Confidentiality').

**17 ACCEPTING INSTRUCTIONS TO ACT PRIVATELY**

Where you have been carrying out VHCC Work on behalf of a client, you may not accept instructions to act privately in respect of the same matter for that client unless that client has first been advised by you in writing of the consequences of ceasing to be in receipt of services under this Contract and as to the further services which may be available under the Criminal Defence Service, whether from you or another supplier, and has nevertheless elected to instruct you privately. In such circumstances you shall apply for withdrawal of the Representation Order with the client's consent at the earliest opportunity under Regulation 17 of the Criminal Defence Service (General) (No 2) Regulations 2001. A copy of your application must be submitted to the CCU within two working days of the application being made.

**18 PREVIOUS WORK CONDUCTED FOR THE SAME CLIENT ON THE SAME MATTER**

- 18.1 Where you have previously advised the client on the same matter, you must make all records relating to that matter (including any records of work carried out under insurance contracts and Billing Guides) available to the CCU.
- 18.2 This clause applies to work for which payment has already been received and for which you have yet to submit a claim for payment.

**19 QUALITY STANDARDS**

- 19.1 You must comply with the Quality Standards throughout the Panel Term. A copy of the Specialist Quality Mark can be found in Annex 19.
- 19.2 Pursuant to Requirement F1 of the Specialist Quality Mark you are required to send a copy of your initial costs advice to the Contract Manager assigned to the appropriate VHCC within two working days of sending the letter to the client. In any event, this should be no later than the start date for Stage 1 (see Annex 4).
- 19.3 If, during the Panel Term, the CCU or the LSC implements any specific quality standards in relation to Advocates (e.g. a new quality mark for the Bar), you must use all reasonable endeavours to ensure that any Advocates you instruct comply with those standards.

## **20 BEST VALUE PROTOCOL**

- 20.1 The Best Value Protocol forms part of this Contract and must be adhered to, unless you have agreed otherwise in writing with your Contract Manager – i.e. the Best Value Protocol is not simply a guide to best practice when carrying out VHCC Work; it is a binding document that must be followed, except where it has been varied by agreement in writing by both parties. A Panel Member wishing to vary any element of the Best Value Protocol must make representations to the Contract Manager as part of their stage negotiations. Any agreed variations to the Best Value Protocol will apply only to the individual VHCC in respect of which the variation has been agreed.
- 20.2 We will monitor your performance and the performance of the Defence Team against the Best Value Protocol.

## **21 RATES OF PAY**

The provisions relating to the rates of pay for VHCC Work are set out in Annex 7.

## **22 PAYMENT AND DISBURSEMENTS**

- 22.1 The provisions relating to payment for VHCC Work and disbursements are set out in Annex 8. Provisions on auditing your claims for payment are set out in Annex 4.
- 22.2 The CCU will not pay for VHCC Work that is not agreed in advance and confirmed as such as set out in this Contract, unless one of the exceptions set out in Annex 8 applies.
- 22.3 For the avoidance of doubt, notwithstanding any delay by us in confirming that a case is a VHCC or in agreeing to the relevant Case Plan, Task List or any other document or fact requiring our confirmation, the Panel Member shall be entitled to payment for all VHCC Work from the date of the Representation Order, in accordance with the provisions set out in Annex 4.

## **23 INSTRUCTING ADVOCATES AND EXPERTS**

- 23.1 The provisions on instructing Advocates are set out in Annex 9.
- 23.2 The provisions on instructing experts are set out in Annex 10.

## 24 **COMMUNICATION AND KEY CONTACTS**

- 24.1 During the Panel Term we will agree with you a list of key contacts that will manage this Contract.
- 24.2 The CCU will name a Contract Manager for each VHCC, who will be responsible for the day-to-day running of the Contract in relation to that individual VHCC. The Contract Manager will liaise with the Defence Team's Case Manager. The CCU will assess the VHCC Work carried out by the Defence Team, as set out in Annex 4. Both parties will identify a Senior Executive, responsible for dealing with strategic issues.
- 24.3 The names and contact details of each key contact are set out in Annex 11. You and we will endeavour to maintain as much continuity in the identity of these key contacts as possible.

## 25 **IT REQUIREMENTS**

- 25.1 Panel Members are required to have a case management system in place, which complies with the essential criteria (from the Application Form) relating to IT capability.
- 25.2 All Defence Team members must have access to the necessary IT resources during the Panel Term in order to:
- 25.2.1 adequately prepare a VHCC;
  - 25.2.2 keep computerised time recording systems detailing time spent preparing both VHCCs and other cases; and
  - 25.2.3 transact with the CCU in an efficient manner.
- 25.3 The minimum necessary IT resources required are:
- 25.3.1 a PC with CD ROM / DVD capabilities;
  - 25.3.2 Microsoft Word and Excel (or comparable);
  - 25.3.3 access to email and the internet (to communicate with the CCU and prosecution agencies); and
  - 25.3.4 access to trained personnel who can use IT skills to achieve great efficiencies in searching large amounts of prosecution material.

## 26 **PEER REVIEW**

- 26.1 We reserve the right to review the quality of the Panel Member's advice via Peer Review during the Panel Term.
- 26.2 If we choose to exercise the right referred to in clause 26.1, the peer reviewer will make an assessment of a sample of a Panel Member's Closed VHCC files based on the advice given by the Defence Team and will write a report based on their assessment of the Panel Member's performance. We will send the peer reviewer's report to the Panel Member, with a note of any action we propose to take as a result of the report. A table setting out the possible assessment findings and consequences is set out in Annex 13 on breaches of contract. A confirmed rating of PR4 ('below competence') or PR5 ('failure in performance') may lead to termination of a Panel Member's Contract.
- 26.3 Provisions relating to the Peer Review process are set out in Annex 12.

27 **BREACH OF CONTRACT**

Annex 13 sets out what will happen if you breach this Contract in any way and contains examples of what constitutes a breach of contract under this Contract.

28 **APPEALS AND DISPUTE RESOLUTION**

28.1 Any disputes under this Contract concerning payment and funding issues will be dealt with by the VHCC Appeals Committee, as set out in Annex 14.

28.2 A system for handling complaints made by the Panel Member or the CCU about one another is set out in Annex 15 on complaints.

28.3 Any disputes that do not fall within either clause 28.1 or clause 28.2 and which cannot be resolved between the CCU and the Panel Member will be dealt with according to the disputes resolution procedure set out in the General Criminal Contract at Annex 18, in particular clauses 23 and 24 of the General Criminal Contract's Standard Terms.

29 **GUIDANCE**

We may issue Panel Members with Guidance under this Contract following Contract award and from time to time during the Panel Term. Examples of Guidance we may issue include: standard forms and documents and notes on how to complete them; internal management manuals used by CCU Contract Managers; guideline rates for experts and other disbursements; and (without limitation) Guidance on other issues relating to the meaning and operation of, and compliance with, this Contract. Like you, we must comply with Guidance.

30 **AMENDMENTS TO THE CONTRACT**

30.1 Provisions relating to changes to your Task List are set out in Annex 4.

**Ongoing changes – from us**

30.2 We may make such amendments to this Contract as we consider necessary in the circumstances to comply with, or take account of, any U.K. legislation or any EU legislation having direct effect, or as a result of any decision of a U.K. court or tribunal, or a decision of the European Court of Human Rights or of the European Court of Justice or any other institution of the European Union, or to comply with the requirements of any regulatory body or tax or similar authority. Such amendments may include (without limitation) changes to payment provisions, imposing controls not previously imposed, and amending procedures in the Contract.

30.2A Subject to the provisions of this Clause 30 we have the right to amend the Contract from time to time if the proposed amendments have been approved by the Consultative Bodies.

30.3 Except for amendments made under any other provision of this Contract authorising us to make amendments, we may not amend the Contract without prior consultation in accordance with this clause.

- 30.4 If a proposed amendment affects only one Panel Member, we will consult with that Panel Member. Otherwise, we will consult with the Consultative Bodies.
- 30.5 If we consider that there is an urgent need to make the amendment, consultation with the Consultative Bodies may last no longer than 21 days. Otherwise it may last no longer than 42 days.
- 30.6 You must comply with any amendment from such date as we may specify for it. Subject to any other provision of this Contract authorising us to make amendments on other notice, such date shall not be less than 28 days after notice of the amendment is given if we consider that there is an urgent need for compliance with it and shall not be less than 42 days after notice of the amendment is given in any other case.
- 30.7 If you wish to terminate this Contract following an amendment you may do so at any time before the amendment comes into effect and any such notice shall take effect on the day before the day on which the amendment would otherwise have come into effect.
- 30.8 Any changes to this Contract will be recorded by means of a Contract Amendment Notice (see Annex 16). On such occasions, where it is appropriate, we will amend and re-issue the relevant Annex. Any new Annex issued will replace the earlier version.
- 30.9 Such changes will come into effect on the 'effective date' set out in the Contract Amendment Notice.

## **31 COMPLIANCE WITH LEGAL AND REGULATORY RULES**

- 31.1 You must comply with the rules of your relevant regulatory bodies including The Law Society, the Solicitors Regulation Authority, the Bar Council and the Bar Standards Board. All solicitors and solicitor-advocates who carry out VHCC Work must have a current practising certificate. All Barristers who carry out VHCC Work must be registered with The Bar Council of England and Wales as practising barristers.
- 31.2 It is your responsibility to ensure you comply (and to use all reasonable endeavours to ensure that the rest of your Defence Team comply) with any relevant regulatory and legal rules and requirements relating to carrying out work on VHCCs.

## **32 SUB-CONTRACTORS**

- 32.1 VHCC Work may only be carried out by:
- 32.1.1 Bid Team members and other employees of the Panel Member; and/or
  - 32.1.2 Panel Advocates; and/or
  - 32.1.3 Panel B Advocates; and/or
  - 32.1.4 Non-Panel Advocates where the CCU has given permission under clause 1.5 of Annex 9.
- 32.2 You may use sub-contractors only if we agreed to this during the tendering exercise (in which case they will be named on the front page of this Contract) or if we agree to it in writing during the Panel Term.

- 32.3 If you are using sub-contractors (as agreed by us) to provide work under this Contract, you accept that this Contract is between you and us and that, notwithstanding that all or any of the VHCC Work may be carried out by a sub-contractor, you remain solely responsible for the performance of all VHCC Work.
- 32.4 Provisions relating to instructing experts who are sub-contractors (for example, forensic accountants, translators etc) are set out in Annex 10 (Instructing Experts).
- 32.4A Provisions relating to instructing Non-Panel Advocates are set out in Annex 9 (Instructing Advocates). For the avoidance of doubt, Non-Panel Advocates instructed under clause 1.5 of Annex 9 will not be treated as sub-contractors for the purposes of this contract.
- 32.5 You will remain our contractor throughout the Panel Term. If any authorised sub-contractor ceases providing services to you in connection with this Contract:
- 32.5.1 you must also notify us in writing of this fact immediately; and
- 32.5.2 you are responsible for ensuring that you continue to carry out VHCC Work in accordance with this Contract.
- 32.6 If you are using sub-contractors (as agreed by us) to provide work under this Contract, the nature of your relationship with them and the work conducted under such an arrangement may necessitate you to supervise the non-Panel organisation or individual to carry out VHCC Work. Any supervisory arrangements must be discussed with the Contract Manager as part of the case planning requirements set out in Annex 4 'VHCC Contracting Process Timetable'.

### 33 **NON-ASSIGNMENT**

- 33.1 This Contract is personal to you. You must not give, bargain, sell, assign (or otherwise dispose of) the benefit of its rights, or sub-contract (or otherwise delegate) any of your obligations under this Contract (other than as specified in clause 32) without our written consent.
- 33.2 If your organisation changes its status in any way from that named in this Contract (e.g. from a partnership to a limited liability partnership or a limited company), this Contract shall be deemed to have novated to the new organisation. You must inform us immediately of any such change in writing.

### 34 **INSURANCE**

- 34.1 Panel Members that are solicitors organisations must have current professional indemnity insurance as required pursuant to section 37 of the Solicitors Act 1974 and comply with current Solicitors' Indemnity Insurance Rules (as evidenced by indemnity insurance that complies with minimum terms and conditions, and, where appropriate, a current practising certificate).
- 34.2 Panel Members that are not solicitors organisations must comply with any minimum terms and conditions set by their recognised representative body, and must in any event provide, if requested, a certificate(s) of indemnity insurance showing continuous cover since the Panel Start Date, of up to £1 million in each and every claim. Such indemnity insurance must be reasonably equivalent to that required of solicitors under the Solicitors' Indemnity Insurance Rules.

### 35 **NOTICES**

- 35.1 Any notice or other communication given under this Contract shall be in writing and shall be served by delivering it personally, sending it by DX, by pre-paid first-class post, recorded delivery or registered post, sending it by fax, or sending it by email to the address and for the attention of the key contact set out in Annex 11 (unless otherwise specifically stated). Any such notice shall be deemed to have been received:
- 35.1.1 if delivered personally, at the time of delivery;
  - 35.1.2 in the case of DX, pre-paid first-class post, recorded delivery or registered post, 48 hours from the date of posting;
  - 35.1.3 in the case of fax, at the time of transmission (as verified by the fax transmission report);
  - 35.1.4 in the case of email, four hours after the email was sent, provided no automatic response email denoting non-receipt is received by the party sending the original email within 12 hours.
- 35.2 Notices terminating this Contract (from us or you) shall not be validly served if sent solely by e-mail. If either party elects to give notice of termination (see clause 38) by email, they must also give notice by another method set out in this clause (e.g. by recorded delivery or registered post).

## 36 **CONFIDENTIALITY**

- 36.1 You and we:
- 36.1.1 shall treat all confidential information belonging to the other as confidential and safeguard it accordingly;
  - 36.1.2 shall not disclose any confidential information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of this Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract; and
  - 36.1.3 shall not use any confidential information received from the other party otherwise than for the purposes of this Contract.
- 36.2 The provisions of clause 36.1 shall not apply to any confidential information received by one party from the other which:
- 36.2.1 is or becomes public knowledge (otherwise than by breach of this clause);
  - 36.2.2 was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
  - 36.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 36.2.4 is independently developed without access to the confidential information; or

36.2.5 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 (“the FOIA”), unless it is exempt under the FOIA.

## 37 **FREEDOM OF INFORMATION**

37.1 You acknowledge that we are obliged to act openly and transparently and are subject to the requirements of the FOIA and shall assist and cooperate with us to enable us to comply with these information disclosure requirements.

37.2 You further acknowledge and agree that we are responsible for determining at our absolute discretion whether any information in our possession or under our control is either exempt from disclosure or is to be disclosed. If the information that we propose to disclose relates to you and, in our view, could be subject to any of the FOIA exemptions referred to in Clauses 37.4.1 to 37.4.5, we will give you five working days’ written notice prior to disclosure to enable you to make representations under clause 37.4.

37.3 You shall and shall procure that your sub-contractors (if any) shall:

37.3.1 transfer any request for information to us as soon as practicable after receipt and in any event within four working days of receiving it;

37.3.2 provide us with a copy of all information in your possession or power in the form that we require within five working days (or such other period as we may reasonably specify) of us requesting it; and

37.3.3 provide all necessary assistance as reasonably requested by us to enable us to respond to a request for information within the time for compliance set out in the FOIA.

37.4 If you object to the disclosure of any information held by us then, having been given notice under Clause 37.2 you must, within three working days, write to us identifying the information that you do not wish us to disclose, setting out your full and detailed reasons for objecting to the disclosure. You should specifically refer to the relevant FOIA exemption(s), which may be one or more of the following:

37.4.1 that the information is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under section 42(1) of the FOIA;

37.4.2 that the information constitutes a trade secret and is eligible for exemption under section 43(1) of the FOIA;

37.4.3 that the disclosure of the information would prejudice the commercial interest of any person under section 43(2) of the FOIA;

37.4.4 that the information will be disclosed by the Panel Member to the LSC and that the nature of the information, or the circumstances in which it is imparted or the circumstances are otherwise such, as to justify the acceptance by the LSC of an obligation of confidence in respect of it under section 41(1) of the FOIA;

37.4.5 that the information is personal data or otherwise relates to the private life of an individual which is appropriate for protection under section 40 of the FOIA;

- 37.4.6 any other specific exemption under the FOIA.
- 37.5 We shall be responsible for determining at our absolute discretion whether any commercially sensitive information and/or any other information:
- 37.5.1 is exempt from disclosure in accordance with the provisions of the FOIA;
- 37.5.2 is to be disclosed in response to a request for information, and
- 37.5.3 in no event shall you respond directly to a request for information unless we expressly authorise you to do so.
- 37.6 You acknowledge that we may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of Functions of Public Authorities under section 45, Part I of the FOIA, be obliged under the Code or the FOIA to disclose information:
- 37.6.1 without consulting you, or
- 37.6.2 following consultation with you and having taken your views into account.
- 37.7 If we determine that information must be disclosed we shall notify you of that decision at least four working days before disclosure.
- 37.8 You shall ensure that all information produced in relation to all your VHCC Work pursuant to this Contract is retained for disclosure and shall permit us to inspect such records as requested from time to time.
- 37.9 You acknowledge that any lists or schedules provided by you outlining confidential information are of indicative value only and that we may nevertheless be obliged to disclose confidential information in accordance with clause 37.6.
- 38 TERMINATION**
- 38.1 You are entitled to terminate this Contract by giving written notice to us pursuant to:
- 38.1.1 clause 11.7; and
- 38.1.2 clause 30.6.
- 38.2 We are entitled to terminate a conditional Panel Member's Contract by giving written notice to that Panel Member in the event that their conditional membership is withdrawn pursuant to clause 4.2.
- 38.3 We are entitled to terminate a Panel Member's Contract by giving written notice in the event of a breach or breaches of this Contract by the Panel Member pursuant to clause 27 and Annex 13.
- 38.4 We are entitled to terminate a Panel Member's Contract by giving written notice in the event of a Panel Member being rated as PR4 or PR5 pursuant to clause 26.2.
- 38.4A We are also entitled to terminate a Panel Member's Contract by giving written notice under clauses 11.6 and 11.6A.

- 38.5 In addition, if a Panel Member is party to a General Criminal Contract, or an existing VHCC contract (an Individual Case Contract), and that contract(s) is terminated for any reason excepting effluxion of time, we may terminate the Panel Member's Contract immediately on written notice.
- 38.6 For the avoidance of doubt, we are also entitled to terminate a Panel Member's Contract on any of the grounds set out in the General Criminal Contract's Standard Terms (see in particular clauses 20, 21 and 22 at Annex 18).
- 38.7 The express rights to terminate this Contract do not limit either party's common law rights to terminate it.
- 38.8 Where we have the right to terminate this Contract, we may, depending on the reason for deciding to terminate:
- 38.8.1 terminate your entitlement to carry out VHCC Work on an individual VHCC or VHCCs (i.e. terminate a particular VHCC number or numbers per the Contract Decision Letter); or
- 38.8.2 terminate this Contract and remove you from the Panel.
- 38.10 Where we issue a Panel Member with a termination notice for any reason, the Panel Member will assist the court and the client to transfer the Representation Order to another solicitor in accordance with the transfer provisions at clause 39 below.
- 38.11 Where we have terminated your Contract, you have a right of internal review in accordance with the terms of the General Criminal Contract, set out in Annex 18 (see clauses 23 and 24 of the General Criminal Contract's Standard Terms).

## 39 **TRANSFER OF VHCCs**

- 39.1 If a client approaches you to take on his/her VHCC and you do not have sufficient capacity within your organisation to take the VHCC on, or you are unable to constitute a Defence Team to conduct the case, you must:
- (a) use all reasonable endeavours to refer the case to a Panel Member. Contact details for all Panel Members will be provided by the CCU; and
- (b) if you are unable, under clause 39.1(a) above, to refer the matter to a Panel Member with the appropriate level of skill, expertise, capacity and ability to conduct the VHCC in accordance with the terms of the Panel Member's Contract, inform the CCU. The CCU will then send all Panel Members notification to the email address specified on page 5 of the Panel Member's Contract to request that any Panel Members interested in undertaking the case contact you within 21 days; and
- (c) if no such Panel Member responds within this deadline, you must inform the CCU. The CCU will then contact all Panel B Members. The CCU will contact you to advise whether there are any Panel B Members with the appropriate level of skill, expertise, capacity and ability to conduct the VHCC in accordance with the terms of the Panel Member's Contract; and
- (d) if there is no such Panel B Member then you may refer the matter to a non-Panel solicitor, provided that the CCU has given prior written agreement.

- 39.1A If the CCU receives notification of a VHCC from a non-Panel solicitor who has been unable to instruct a Panel Member to take on the case, it will follow the email procedure in clause 39.1 above in order to locate a suitable Panel Member/Panel B Member and may refer the matter to a non-Panel solicitor where no Panel Member or Panel B Member with the appropriate level of skill, expertise, capacity and ability to conduct the VHCC in accordance with the terms of the Panel Member's Contract responds within the stated deadline.
- 39.1B It is the responsibility of all Panel Members to monitor emails circulated by the CCU under clauses 39.1 and 39.1A above if they wish to have the opportunity to conduct VHCC Work on those cases.
- 39.2 We will require you to report on the VHCCs you refer to other Panel Members and non-Panel solicitors so that we can monitor the reasons for this.
- 39.3 If you stop providing VHCC Work, whether through termination of this Contract at any stage, for any reason, or at the Panel End Date, we will agree an exit management strategy with you. The Case Manager (your representative) and Contract Manager (our representative) will make every effort to agree on a strategy acceptable to both us and any new solicitor taking on any of your VHCC Work.
- 39.4 Issues to be addressed in determining an exit strategy will include: whether you complete any open VHCCs for clients, stop work on these VHCCs and transfer them immediately to another solicitor, or perform some limited work on any open VHCCs for clients; and whether the payments we have made to you are correct.
- 39.5 If we terminate this Contract before the Panel End Date and while you have ongoing VHCCs, or if a new solicitor is assigned by an amendment to the Representation Order, you must, without delay, transfer all the VHCC papers and any other material in your possession relating to the proceedings to the solicitor that takes over conduct of the VHCCs.
- 39.6 If the Representation Order is amended to show a new solicitor, the original Panel Member will not be paid for any further VHCC Work from the date of the amendment of the Representation Order.
- 39.7 We will carry out a final assessment of your claims for payment as provided for in Annex 4.
- 39.8 Where a VHCC is transferred from one Panel Member to another, the Panel Member receiving the VHCC must endeavour to continue to instruct the Advocate(s) representing the defendant(s).

#### 40 **TUPE**

The provisions relating to TUPE are set out in Annex 17.

#### 41 **GENERAL**

- 41.1 This Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this agreement.

- 41.2 This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 41.3 Nothing in this Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 41.4 A person who is not a party to this Contract shall not have any rights under or in connection with it.
- 41.5 No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 41.6 If any provision of this Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Contract which shall remain in full force and effect.
- 41.7 If any provision of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

<p><b>Signed for the Legal Services Commission by:</b></p> <p>.....</p>	<p><b>Signed for the Panel Member by:</b></p> <p>.....</p>
<p>Name:</p>	<p>Name:</p>
<p>Status:</p>	<p>Status:</p>
<p>This Contract is valid only if it is signed by a person with the specific written authority of the Commission's Chief Executive.</p>	<p>A person who can bind the Panel Member to this Contract must sign this Contract for the Panel Member. If the Panel Member is a partnership a partner must sign. If the Panel Member is a sole practitioner solicitor, the sole practitioner (principal) must sign. If the Panel Member is a company, a director must sign. If the Panel Member is a limited liability partnership, a designated member must sign.</p>