



Rail Legal Services (RM3756)

Customer Guidance Document



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1. Introduction

Purpose of this document

The Department for Transport (the “**DfT**”) and Crown Commercial Service (“**CCS**”) have developed this guidance to assist the DfT and other enabled Central Government customers (“**Customers**”) through each stage of their procurement of legal services using the Rail Legal Services Panel Agreement (RM3756) (the “**Panel Agreement**”).

Background to the Panel

DfT has a significant programme of rail franchises, major works and projects that require specialist rail legal services. Legal expertise is required that fully understands the rail industry, its complexity, structure and interdependencies. The Department recognises that it cannot fully satisfy internally the future demand for such services and as a result must procure these externally. Prior to the establishment of the Panel, such services were procured via the CCS Legal Services Framework RM919, primarily through Lot 8: Major and Complex Projects. It is recognised and accepted that, given the specialist nature of rail legal services, procuring them through a general legal framework is not ideal. In response to this, the Rail Legal Services Panel has been created. The Panel Agreement will last from May 2017 to May 2020, with the option to extend for up to a further one year.

Benefits of the Rail Legal Services Panel

The benefits of the specialist Rail Legal Services Panel include:

Market Capacity and Capability – Providing a more focused Panel will give the market greater availability of work and thereby encourage firms to invest in rail specialists and grow their expertise.

- Ready Access – the Panel will provide users with ready access to a pool of highly experienced specialist rail legal advisers.
- Choice and Competition – it will provide users with choice and engender competition within the market, thereby driving value for money.
- Reduce Complexity – the Panel provides users with visibility of suppliers that are best suited to meet specific requirements.
- Work Allocation – work will be shared more evenly (thereby delivering our commitment to the market, and ensuring their continued investment). This should also reduce our reliance on specific suppliers.



- Inclusiveness – whilst primarily a DfT Rail contracting vehicle – it has been designed to be as open as possible so that other organisations with rail legal service requirements (e.g. devolved administrations and authorities) can also use it.
- Collaboration and Partnerships – the Panel allows for the creation of “Dream Teams” formed with individuals from more than one supplier (specific individuals deployed for key tasks as part of wider projects and policy work). Please contact the DfT Panel Manager or CCS (see contact section) for advice on collaboration and partnerships.
- Streamlining – the Panel and Contracts are constructed in such a way so as to minimise the time required and administrative burden associated with procuring a particular piece of rail external legal advice.
- Cross Government Working – by being part of the Government Legal Department (GLD)/CCS replacement legal services construct, the Rail Legal Services Panel will fully support cross government working, avoid duplication and enable sharing of good practice.
- Value for Money (VfM) – the Rail Legal Services Framework will also deliver good VfM for the tax payer with pricing options available including traditional hourly rates and fixed project rates for delivery of work packages.

In summary, this Panel is about growing the external rail legal services market to support DfT’s Rail and High Speed Rail Groups and other rail organisations’ requirements. It is about better sharing of the work and enabling suppliers to invest in and grow their expertise in this area. It is about ensuring that the essential legal advice is readily accessible for relevant public sector organisations involved in rail, and that it provides choice, competition, quality, and in turn VfM. This will be underpinned with fit for purpose, yet streamlined, contracting, contract management and supplier management.

2. Scope

Range of Panel Services

The scope of the Rail Legal Services Panel is any legal services with a rail-related element. This includes all different types of rail throughout the UK.

The Panel Suppliers are allocated to two tiers: Tier 1 and Tier 2 (see Section 4 for further details).

There is no upper or lower limit on the value of contracts which can be awarded under the Panel, although lower value requirements below £20k may be exempted from the



Policy on use of the Panel by Central Government (see below). DfT will monitor the value of contracts awarded to ensure the Panel value of £30m-£50m over 4 years is not exceeded.

The range of Panel Services covered by this panel has been split into Core and Non-Core Specialisms. The former are listed in Appendix 3 and the latter are listed in Appendix 4. All panel suppliers can provide the Core Specialisms. The coverage of Non-Core Specialisms is set out in Appendix 5.

3. Authorised Customers and use of the Panel

Government Departments with a rail-related external legal services requirement

The primary user will be DfT, but the framework will be able to be used to award contracts by all Central Government bodies, including the Devolved Authorities, Agencies, NDPBs, Government-owned Limited Companies etc. with a rail legal services requirement (see Appendix 2). However, any non-DfT organisation will need prior written approval from DfT before using it, to make sure that capacity is available for any DfT projects, which will take priority.

Please note that the Panel is not enabled to cover use by the Wider Public Sector, or other bodies outside the categories of bodies listed above.

Exceptions Policy

The Principal Customer for the Panel is the Department for Transport (DfT), who intend to use this Panel Agreement wherever possible. Other organisations, as detailed in Appendix 2 may also use it from time to time. The use of this Panel is not mandatory across UK Central Government, although DfT customers must follow the exceptions process outlined below if they wish to go “off panel”. In recognition of the importance of ensuring the Panel is used in order to maximise savings and efficiencies as well as ensuring a high quality of service for DfT, an exceptions process must be followed if DfT wishes to contract for legal services which are within the scope of this Panel, but does not wish to use the Panel. This exceptions process is run by GLD with the full support of the Attorney General and the Minister for the Cabinet Office.

If DfT wishes to go “off Panel” GLD must be informed, with justifications for the reasons for doing so, based on the following –

- You have a specialist requirement for Panel Services which cannot be met through the Rail Legal Services Panel (this could be lack of specialism or lack of bandwidth in that specialist service); and/or



- You can demonstrate you can achieve significantly better value for money from an alternative arrangement.

The Exceptions Process is administered by Government Legal Department (GLD) Commercial Law Group (CLG) on behalf of the Treasury Solicitors Office. A copy of the process can be obtained by emailing:

GLASexceptionprocess@governmentlegal.gov.uk

The exceptions process is similar to the well-established one operated by the Attorney General for use of Non-Panel Counsel (barristers).

Instances where the exceptions policy does not apply

The Exceptions Process does not apply to low value procurements which go “off Panel”. If the value of the rates the Panel Customer expects to be incurred in relation to its requirement, aggregated with similar requirements relating to the same policy, project or exercise amounts to twenty thousand pounds (£20,000) or less.

4. Key Features of the Panel Arrangements

The Structure of the Panel

The Panel is divided into two distinct tiers:

Tier 1 consists of four (4) Suppliers; and

Tier 2: consists of four (4) Suppliers.

A full list of the Panel Suppliers can be found in Appendix 1.

Tier 1 contains suppliers with the expertise to provide advice on major rail related projects (e.g. a full Franchise Competition).

Tier 2 contains suppliers with excellent rail-related expertise.

Allocation of work onto Tiers

It is possible to invite Tier 1 suppliers, Tier 2 suppliers or all 8 suppliers to bid taking account of all relevant circumstances such as the current capacity of suppliers across the Tiers, any conflict issues and the legal expertise that is required.



Set out below is an indication of the type of work Panel Customers may require and how such work is anticipated to be allocated to each Tier. It is an indicative allocation only. It will be for Panel Customers, in consultation with the DfT Panel Manager, to determine which Tier their requirements will be targeted at (including, where appropriate, both Tiers) having regard to all relevant circumstances.

Tier 1 work

Indicative work (not an exhaustive list) includes instructions in respect of major, complex and long term projects such as:

- Passenger franchise competitions;
- Infrastructure concessions;
- Complex rolling stock procurements/maintenance arrangements/financings (e.g. fleets to be used by multiple franchises); and

Instructions in respect of shorter term or other strategically important projects (such as advising on structural reforms).

Tier 2 work

Indicative work (not an exhaustive list) includes instructions in respect of less complex transactions such as:

- In-life passenger franchise management/change which are considered to be relatively straightforward;
- In-life infrastructure concession management/change which are considered to be relatively straightforward;
- Direct Agreements for rolling stock leases/maintenance agreements – single franchisee; and

Direct Agreements for other franchise assets – single franchisee.

Tier 1 *and* Tier 2 work

Work that could be allocated to either or both Tiers (not an exhaustive list) include instructions in relation to:

- Passenger franchise direct awards;
- Rolling stock arrangements (procurements/maintenance arrangements/financings) for fleets used by a single franchisee;



- In-life passenger franchise management/change – complex instructions;
- In-life infrastructure concession management/change – complex instructions;
- Rolling stock arrangements (procurements/maintenance arrangements/financings) for fleets used by multiple franchisees;
- Direct Agreements for rolling stock leases/maintenance agreements – multiple franchisees;
- Direct Agreements for other franchise assets – multiple franchisees;
- Railways Pension Scheme; and

Participation in the development of industry standard documentation.

Free additional services for Customers

Customers should note that the following additional services must be supplied by Suppliers to Customers without further charge:

- Know-how: Suppliers are required to, regularly and periodically throughout the Panel Period, make available to Customers free of charge and on request know-how (including, but not limited to, printed publications, e-briefings, webinars, and invitations to briefings, seminars, conferences and events) and any legal resource available to the Supplier.
- Other: The Supplier must make available, if required, three serviced meeting rooms including refreshments in Central London (Zones 1 and 2). The Supplier must also provide virtual and physical storage as well as “data rooms” as requested by Panel Customers. The Supplier must also have available and maintain internet, telephone and video conferencing facilities and their use must be at no additional cost to the Panel Customer.
- Knowledge Transfer: Suppliers must facilitate a knowledge transfer at the end of each contract, including preparation and supply of physical/electronic document bibles.

Free additional services for the wider benefit of Central Government

Suppliers are also obliged to provide the following services free of charge to the Authority as a minimum. Some Suppliers have bid enhanced offerings and CCS have details of these commitments. GLD will allocate these services for benefit of the Customers on behalf of the Authority. Any Customer who wishes to access these Authority services should contact the DfT Panel Manager, the DfT nominated representative in the Contact Information section below.



- Training: Suppliers must provide to the Authority a minimum of 10 days of free training in every Contract Year throughout the Panel Period. This training may be bespoke or from the Supplier's current portfolio of training and may be provided through various mediums.
- Secondment Services: Suppliers must make available a minimum of two suitable secondees per contract year as selected and agreed from time to time between the supplier and the Panel Customer, where the Panel Customer is receiving Ordered Panel Services. Secondees must be seconded for a minimum of six weeks to support the delivery of the Ordered Panel Services.
- Free Legal Advice: The Supplier must offer a volume free legal advice or training based on the percentage of aggregate spend. The volume has been bid by each Supplier so varies from Supplier to Supplier.
- Exchange Scheme: On request by GLD, and subject to the Supplier having accepted at least one Order under the Panel Agreement, the Supplier must make available suitably qualified and experienced Supplier Personnel for a minimum of two exchange schemes per Contract Year across the Panel Customer base, in exchange for an equivalent number of Panel Customer personnel to work with the Supplier.

Other Panel Agreement terms to support Central Government

Removal from Panel for unreasonable refusal to accept Central Government orders:

In order to ensure that the places on the Panel Agreement are held by suppliers which are committed to Central Government work, Suppliers may have their Panel Agreements terminated if they decline to accept a Direct Award or to participate in Further Competitions, or have failed to improve their capacity/resources for Central Government work in response to an Authority requirement to do so.

Annual Supplier Self Audit:

All Suppliers are required to undertake a thorough Annual Self Audit based on sampling and signed by a senior member of the management team to ensure that charges are made correctly, all appropriate discounts applied and MI correctly supplied, backed up by an obligation to allow the Authority to Audit and supply an Audit Report.

Benchmark Reviews:

The Panel Supplier must carry out Benchmark Reviews of the Panel Services when requested by the CCS. However, CCS cannot request such a review during the first 24 month period of the Panel Agreement nor at intervals of less than 12 months after any previous Benchmark Review.



Audit:

Part of its contract management function, CCS has the right to conduct independent auditing of Suppliers' processes, procedures and application of their hourly rates. Customers should contact CCS if they believe that any particular Supplier should be audited. The Panel Suppliers should also provide CCS with a completed and signed Self Audit Certificate in respect of each Contract Year with an accompanying Audit Report.

Open Book Data:

Suppliers must supply full open book data including the cost of providing their services, profit and expenditure, on request.

5. Attorney General Guidelines

The Attorney General's 'Guidelines on use of the Private Sector for Government Legal Work' are as follows:

- set out the issues to be addressed when considering whether to use the Government Legal Service (GLS) or the private sector for particular types of legal work (paragraph 2);
- identify core-government work for the purposes of considering those issues (paragraph 3); and
- set out the procedures which should be followed in undertaking such a consideration (paragraph 4).
- These guidelines are addressed to all Government Departments, including the Health and Safety Executives and their Agencies, but not to Regulatory bodies or to the Competition Commission.

Their guidelines do not apply to the use of Counsel and agent solicitors in day-to-day business, or to restrict the discretion of Legal Advisers to seek a second opinion.

6. How to use the Panel

Before using the Panel Agreement, Customers should satisfy themselves that it is appropriate to use external rail legal services for their requirements. The Attorney General has produced guidelines on the use of the private sector for Government legal work (please see "Attorney General's Guidelines on the Use of the Private Sector for Government Work" detailed above.



Customers should also consider whether Cabinet Office consultancy controls and any internal procedures for accessing external legal advice apply to their prospective procurement of legal services via the Panel.

Customers within Central Government should also consider whether requirements for Employment Law and Litigation services can be met by the Government Legal Department teams.

The Issues to be considered

Broadly, Departments and Agencies should be ready to contract out legal work where:

- the necessary expertise does not exist in the GLD and there is no long term value in growing it;
- the GLD does not have the resources to do the work without undue delay; or
- it is more cost-effective for the work to be done in the private sector.

In considering whether to contract out legal work, the following factors and risks must be borne in mind:

- Long-term value for money: Departments and Agencies should satisfy themselves that they would receive a service which is cost-effective overall and of the right professional quality. The need to brief the external supplier, to keep the supplier in touch and to set up monitoring arrangements can add to cost.
- The particular experience and expertise required for the job. There are certain fields of law (e.g. public law and many areas of EU and ECHR law) where experience suggests that legal advice provided in-house, which can exploit inter-departmental legal networks, is unlikely to be matched outside. Equally, there are other areas such as the commercial aspects of a PFI contract, where the relevant expertise lies in the private sector.
- The risk that the nature of out-sourced work will tie the Department or Agency to one supplier. An external monopoly may lead to excessive cost in the medium and longer terms.
- Possible conflict of interest between a Department or Agency and another client of the supplier. Although any technical conflict can frequently be avoided, there may also be issues of public perception.
- Whether in the opinion of the relevant Legal Adviser the work constitutes core government work (see paragraph 3), in which case contracting out may not be in the Government's interests and the Legal Adviser must refer the proposal to the Attorney General



- The impact of the proposal on the ability of the GLS to continue to provide an in-house service. If a proposed out-sourcing might, in the opinion of the Legal Adviser, have a significant impact on the overall service provided by the GLS, perhaps by reducing its critical mass, the Legal Adviser must refer the proposal to the Attorney General.

Whether the requirement can be met in part, or in full, by provision of the Panel Supplier value added services, that are offered free of charge.

Primary Government Work

In this area, the Government's interests are likely to be best served by a continuing relationship of close confidence between Ministers and Departmental Legal Advisers who, as specialists in public law, understand both the cross-Government implications of policy options and the public interest factors in play. Legal Advisers need to be involved in the development of policy in order to advise constructively and in order to minimise the risk of adverse judicial review of administrative action.

Primary governmental work cannot be precisely defined. It will include, but is not restricted to, the following categories:

- Work with national security or other specially sensitive implications;
- Work relating to major policy or constitutional issues;
- Government to government and other international non-commercial work;
- Work affecting the long-term interests of more than one department, e.g. claims of public interest immunity;
- Work where Cabinet Office co-ordination is necessary.

Procedures

In considering the source of provision of any rail legal service, therefore, the Legal Adviser to the relevant Department or Agency must be consulted at an early stage and their views sought on the application of these guidelines to the service under consideration.

In all cases where it is decided to out-source work, the Legal Adviser should be informed. It is desirable that he/she is given the opportunity to agree the specification and to approve the tendering arrangements. He/she should be invited to participate in the selection of the firm.

Once a firm is selected, the Legal Adviser should be satisfied that monitoring arrangements are put in place by the Department, and that the risk of inconsistent advice being given to the Department has been minimised, establishing good working relationships between GLS lawyers and the firms concerned.



Private sector firms, when instructing Counsel in litigation, must select Counsel from the Attorney General's panels. When going off list they do not need to seek a nomination but should seek the views of the Legal Adviser.

Registration

Any Customer which is within the scope of enabled organisations in Appendix 2 that wishes to use the Panel Agreement must register as a Customer with CCS and contact the CCS Panel Manager.

This can be done online at <https://ccsforms.cabinetoffice.gov.uk/using-esourcing-suite-0> or by calling the Customer Service Desk, Tel: 0345 410 2222. CCS' single sign-up arrangements mean that once a Customer has registered, it has access to all of our Panels. There is no joining fee and no commitment to use the Panel even after registering. Each individual wishing to use the panel and the e-sourcing tool must register separately.

Selecting Suppliers

All Panel Suppliers have prepared and host a light-touch Prospectus containing:

- the scope, depth and breadth of Services they offer;
- details of the experience and background of the Supplier personnel providing the Panel Services;
- a summary of the Supplier's experience and expertise in each of the Specialisms the Supplier provides over the last 3 years; and
- other information including key contacts and location of services.

When selecting which Tier(s) to utilise, consideration should be given as to whether:

- The Suppliers able to deliver the services have a conflict of interest in relation to a proposed Order which cannot be mitigated to the Customer's satisfaction;
or
- Suppliers have adequate resources available to properly service the services;
and/or
- Suppliers have the required level of expertise in the types of legal services, areas of legal practice and/or industry sector specialisms necessary.



You should keep full written reasons for your decision, which may be required by CCS/GLD in order to assess the proper working of the Panel.

Defining Scope and Requirements

The key stage in a successful contract exercise from the Panel is the careful and thorough definition of the Requirements for legal services to be outsourced, especially in the case of large and complex instructions where there is a risk of work extending beyond the initial brief. These should include:

- defining any areas where advice will be provided by the in-house team and is not within the scope of the Supplier's instructions such as advisory or legislative advice;
- specification of the structure of external legal team you require to support you;
- details of how you propose to manage the Supplier and keep up to date with work undertaken, risks, issues, costs etc.;
- consider the specialisms, grades and roles of Supplier Key Personnel you will require; and
- do you require the Supplier to engage with Project or Programme Management in the Department, with input into specific processes such as Gateway processes, risk registers e.t.c.?

Ordering Procedure

Once the Requirements have been established and the capability of Suppliers to supply those Requirements has been assessed, there are different ordering procedures available under the Panel Agreement. Customers have discretion as to how they procure from the Panel Agreement but for both further competition (the default) and direct ordering procedures, Customers should ensure that orders are placed in accordance with the ordering procedures laid down in the Panel Agreement, which are summarised below.

Your choice of ordering procedure should be influenced both by your requirement and the number of Suppliers that may be able to meet it. It is for Customers to satisfy themselves as to compliance with the EU requirements. You may need to obtain your own in-house legal advice on which approach is most appropriate in your circumstances.

All Suppliers awarded a place on the Panel have already been evaluated on the basis of offering best value for money, based on two key elements:



- Non-financial criteria – the Supplier’s capability, consisting of expertise and management capability; and
- Financial criteria - an assessment of the fee rates charged by the Supplier.

Therefore Customers’ evaluation criteria should concentrate on the Supplier’s capability and cost in relation to their specific requirements.

Further Competition Procedure

The default procedure on the Rail Legal Panel is a further competition to be held with Suppliers invited to tender for the Customer’s requirements (as set out in the Panel Agreement, Schedule 5 (Ordering procedure). The Customer may opt to run the further competition itself or request CCS to assist it (standard service customers only). The Further Competition process may be more appropriate for more complex, larger and/or higher value requirements where you wish to test different approaches or capabilities. It is also an opportunity to have a further competition on price and value for money that can be obtained from Suppliers. A further competition process under the Panel will still be far less resource intensive and much more rapidly executed than a full open procurement exercise.

Any Customer intending to award a Legal Services Contract under the Panel Agreement through a Further Competition Procedure shall:

- Develop a Statement of Requirements setting out its requirements for the Panel Services;
- Set its evaluation criteria, including the basis of any further competition on price;
- Assign a Quality/Price split (default is 70% Quality/30% Price but this can be varied within the limits 60-80% for Quality and correspondingly 20-40% for Price).
- Consider whether any amendments to the standard Contract terms and conditions are required;
- Identify the Panel suppliers capable of supplying the required Panel Services using the Panel suppliers’ Prospectuses;
- Invite tenders by conducting a Further Competition Procedure for its requirements in accordance with the guidance and:
- Invite the Panel suppliers identified to submit a tender in writing for each proposed Legal Services Contract to be awarded by giving written notice to the relevant Supplier Representative of each supplier;



- Set a time limit for the receipt by it of the tenders which takes into account factors such as the proposed Legal Services Contract and the time needed to submit tenders; and
- Keep each tender confidential until the time limit set out for the return of tenders expires.
- Apply the Further Competition Award Criteria to the Panel Suppliers' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Legal Services Contract.
- Provide the unsuccessful Panel suppliers with written feedback within thirty (30) days of the date of award in relation to the reasons why their tenders were unsuccessful.

Price is one area which may be competed under a Further Competition and Customers should note that, under the terms of the Panel Agreement, Suppliers may not bid higher rates than the Panel prices.

For a complex requirement, Customers may wish to talk to all Suppliers before sending the invitation to tender for a Further Competition so that:

- they understand the requirement;
- you have confirmation that what you are asking for is feasible;
- you know that they are interested and able to bid (i.e. that they have available resource with appropriate experience and skills and there are no conflicts of interest issues);
- there is some awareness of price expectation on both sides; and
- there is an understanding of the time-scales (i.e. how long does the Supplier need to provide a reasonable proposal and length of assignment).

In order to minimise the risk of Supplier challenge, Customers are advised to conduct a formal Request for Information (RFI), sent to all appropriate Tier suppliers through an auditable portal.

Customers should ensure that orders are placed in accordance with the principle of achieving best value for money. This is necessary to ensure compliance with EU Procurement rules as well as Governmental best practice.

Customers must treat all potential Suppliers fairly and equally without discrimination and allow a reasonable amount of time for proposals to be submitted. Proposals must remain confidential until the time limit has expired and, where requested, you should give feedback to Suppliers in support of your decision.



Direct Award Procedure

In certain circumstances, Customers may select and place an order with a single Supplier without a further competition (see Panel Agreement Schedule 5 (Ordering Procedure)) taking account of information set out in the Panel Supplier prospectuses, the nature of the requirement, and/or the Suppliers' Panel prices. The Customer may choose a Supplier with whom to place an order by reviewing the Suppliers' Prospectuses to determine which Supplier is best able to meet the Customer's identified requirements. Please note that although you may negotiate any combination of fixed, capped fees and hourly/daily/monthly rates on direct awards, you may not negotiate discounts to the actual hourly/daily/monthly rates as this would require a competition. The Panel Supplier rates represent the maximum rates that may be charged. Wherever possible Customers are urged to utilise the most cost effective rate, in particular the Daily or Monthly rates.

Customers must always satisfy themselves that value for money is being achieved through this approach and that a single tender is acceptable under their own internal and any relevant Government processes.

Responsibility for Contract Awards

Each Customer is independently responsible for the conduct of its award of contracts under the Legal Services Contracts under this Panel Agreement. CCS is not responsible or accountable for and will have no liability whatsoever in relation to:

- the conduct of Customers in relation to the Panel Agreement; or
- the performance or non-performance of any Legal Services Contract between a Supplier and a Customer entered into pursuant to the Panel Agreement.

7. Terms and Conditions of the Standard Contract

The Standard Contract is at Schedule 4 to the Panel Agreement and comprises the Order Form and terms contained in Schedule 4 (Template Order Form and Terms and Conditions), which forms part of the Panel agreement between CCS and each Supplier. It will constitute the entire understanding between you, as the Customer, and the Supplier relating to the services ordered. A summary of the key terms is set out below.



Amending the Standard Terms and Conditions

Customers should consider whether they require any special terms or amendments to these terms and make these in advance of commencing their process, ensuring they are communicated to all Suppliers involved in the process.

For example, a Customer may decide to allow a Supplier to claim travel costs or travel time (which are normally not claimable over and above Panel rates).

Amendments must not include any such variations or supplementary terms that represent a substantial amendment or material variation to the Contract terms.

Customers should also be aware that changes to the standard contract terms could lead to increased costs and lengthen the timescale for the procurement, as Suppliers need to assess the implications of the changes and undertake risk analysis. You should therefore only use variations and/or supplementary terms that are specific to the matter when they are really needed. They should be set out in an appendix to the Letter of Appointment and where they supersede an existing term this must be stated explicitly.

Customers should also note that the Panel agreement allows variations and or supplementary terms to be added only when the further competition procedure is used – this is not permissible on a Direct Award.

Variations and supplementary terms can be proposed only by the Customer – they cannot be proposed by the Supplier. Suppliers are not obliged to accept variations and or supplementary terms and acceptance of any proposed term should be detailed in their proposal.

Any variations or amendments to these terms should, in the first instance, be discussed and agreed with the DfT Panel Manager.

8. Charging Arrangements

Fee Rates

The Panel Agreement contains the Panel Prices, for:

Trainee / Paralegal or equivalent

Junior Solicitor or equivalent,

Solicitor/Associate or equivalent,

Senior Solicitor/Senior Associate/Legal Director or equivalent, and

Partner (including Senior/Managing) or equivalent for each Panel Supplier.



The same rates apply to all the different Core and Non-Core Specialisms, giving simplicity of charging and invoicing.

Suppliers have bid prices for Hourly, Daily and Monthly Rates and Customers should consider carefully which represents best value for money for their requirement. Customers should note that generally, the rates for longer periods of time are better value for money, but clearly this requires a greater commitment to work for the Customer.

These prices apply to any Direct Award and represent the starting point for any Further Competition on price. Any prices submitted in relation to a Further Competition Procedure held in accordance with the Ordering Procedure shall be equal to or lower than the Panel Prices.

Hourly rates are based on a standard hour of 60 mins. Daily rates are based on 8 hours and above and monthly rates are based on a standard 20 days. Where ever possible and applicable Daily and Monthly rates should be utilised.

Discounts

All Suppliers have offered during the bidding process discounts for volumes of work/spend secured under the Panel Agreement. Under the terms of the Panel Agreement these discounts are built into the Hourly Panel rates up front to produce a net hourly rate which is the rates in the respective tables.

Expenses

The Panel Prices include all costs and expenses relating to the Panel Services provided and no further amounts shall be payable. In respect of a Legal Services Contract, the Panel Supplier will be entitled to be paid the following: Reimbursable Expenses, Disbursements, any additional training costs and Secondment Charges provided that such costs are supported by Supporting Documentation and that the Customer has stipulated in the Order Form that such costs are payable.

Travel, Subsistence and Disbursements

Under the Panel Agreement, Services must be supplied anywhere in England and Wales and costs for travel expenses, travel time may not be claimed by the Supplier in addition to Panel rates unless otherwise agreed in the contract. This enables Customers to agree to pay travel costs if they wish to. Secretarial supports and photocopying are also included in Panel rates. Other disbursements may only be incurred and claimed with the authorisation of the Customer.



The Supplier may instruct barristers from the Attorney General's Panels of counsel only once written approval (including in relation to the specific barrister's nomination) has been provided by the relevant Customer.

In the event written approval is granted by the Customer, the Attorney General Panel counsel's fees will apply to the instructed Panel counsel members.

Supplier obligation to review work for efficiency and cost reduction

Suppliers are under an ongoing obligation to regularly review their instructions, the lawyers undertaking it, and to ensure that they are acting efficiently and providing value for money, including re-use of other Central Government work where possible.

Key Personnel

Any Key Personnel specified in the Order Form may only be removed or replaced with the Customer's consent (which must not be unreasonably withheld) and 3 months' notice must usually be given.

Other Terms of Contract

Set out below is a summary of the key terms relevant to the delivery of all services in accordance with the dates to be set out in the Letter of Appointment.

- Unless otherwise agreed in the Letter of Appointment the Customer must pay the Supplier all the charges following successful completion of the contracted work set out in the order within 30 days of receipt of a valid invoice.
- The Supplier must disclose to the Customer any actual or potential conflicts of interest arising from the Supplier's provision of the services immediately on becoming aware of the relevant conflict or potential conflict.
- The Supplier must not sub-contract any of the services it has undertaken to provide without the express prior written consent of the Customer.

Suppliers must not issue any publicity statements concerning specific assignments without gaining the prior written approval of the Customer.

Financial arrangement between CCS and Panel Suppliers

In consideration of CCS establishing, managing and administering the Panel Agreement, Suppliers are required to pay CCS a management fee of 1.5% of any charges for their services in respect of which they invoice Customers (net of VAT).



Chapter 9 of the SRA Code of Conduct (the “**Code**”) applies whenever a firm of solicitors has an arrangement with a third party who introduce business to the firm and/or with whom the firm shares its fees. These provisions are aimed at protecting the trust on which the solicitor/Customer relationship is built from anything which might jeopardise that trust, for example, by compromising the firm’s independence or its professional judgement. The provisions are directed primarily at catching referral fees (which can compromise a solicitor’s independence), but may also catch arrangements of the type CCS has with the Suppliers on the Panel.

Under Chapter 9 of the Code, the Suppliers are required to ensure that Customers are informed of any financial or other interest which CCS has in any referral of Customers to Suppliers and that Customers are informed of any fee sharing arrangement that is relevant to their matter. In order to help the Suppliers comply with that obligation, CCS is therefore giving you the following information:

- as outlined in paragraph 5.8.1, CCS has a financial arrangement with each of the Suppliers; and
- the amount each Supplier is required to pay CCS under the Panel is a sum equal to 1.5% of any charges for their services in respect of which they invoice you (net of VAT).

9. Management Information

Performance Management

In order for CCS to carry out its contract management functions, certain management information will be required from both Suppliers and Customers. CCS will monitor Customer satisfaction with the Suppliers’ performance across the range of legal services covered by the Panel Agreement. It will also assess the Suppliers’ ongoing ability to meet Customer requirements. CCS will provide regular updates to Customers and Suppliers which may include news items, details of any overarching Panel Agreement contractual changes and management information.

Information required from Panel Suppliers

Suppliers are required to maintain systems and processes to provide timely and accurate Management Information (MI). Suppliers are required to complete and submit the MI template by the 7th of every month. Information requested is detailed below;

Management Reports, including the following details:

- number of orders placed in the preceding reporting period;



- description of the matter and the services to be delivered;
- a record of the charges invoiced in the preceding reporting period on a Customer by Customer basis; record of the overall charges invoiced to all Customers including expenses and disbursements
- record of the practitioner grade invoiced
- record of the hours per grade
- confirmation of the method of procurement.

The authority may also request:

- details of the number and nature of any complaints from any Customer;
- a forecast of the charges expected to be paid by all Customers for the forthcoming reporting period;
- record of any failure to provide services in accordance with the relevant contract;

Suppliers should notify CCS and DfT if any key individuals leave or are likely to leave its employment or if a key individual will be unavailable for a period exceeding one month; and

Attendance at Authority service review meetings, SRM quarterly reviews, which are all non-chargeable by the Panel Suppliers, with CCS on an agreed basis.

Panel Customers are also required to provide CCS with the following:

- details of any major, material and or high profile procurements planned to be sourced via the Panel Agreement or as separate procurement exercises;
- a record of any significant failures by any Suppliers to provide services in accordance with a contract;
- a completed annual survey form;
- confirmation that the management information provided on your use of the Panel is accurate and complete; and
- changes to Customer contact details so that records can be updated promptly ensuring that all information goes to the correct person within the Customer's organisation.



10. Contact Information

For further information contact the DfT Panel Manager, Giles Price:
giles.price@dft.gsi.gov.uk

CCS website: <http://ccs.agreements.cabinetoffice.gov.uk>

CCS e-mail: legal.services@crownccommercial.gov.uk



Appendix 1 – Rail Legal Services Panel Suppliers

Tier One Panel Suppliers	Tier Two Panel Suppliers
Addleshaw Goddard	Linklaters
Ashurst	Norton Rose Fulbright
DLA Piper	Osborne Clarke
Eversheds	Stephenson Harwood

Suppliers listed by Tier in alphabetical order



Appendix 2 – Authorised Panel Customer List

The following organisations are authorised and enabled to use the Panel:

- All Ministerial and Non Ministerial UK Government Departments, including their Executive Agencies and other subsidiary bodies;
- Other parts of Central Government holding Crown Status employing Civil Servants:
- All non-Crown Status Government Companies wholly or partly owned by Central Government Departments and their subsidiaries;
- The non-Departmental Public Bodies, other Public Bodies, Public Corporations and their subsidiary bodies sponsored by Central Government Departments which are not covered by the above categories but are named at paragraph 2 of this Appendix 2;
- Any successor bodies to any of the above; and
- All new bodies created which fall within the criteria set out above.
- The non-Departmental Public Bodies, other Public Bodies, Public Corporations and their subsidiary bodies sponsored by Central Government Departments are listed below:

Office of Rail and Road (ORR)
London and Continental Railways (LCR)
Network Rail (NR)
HS2 Ltd
Rail Accidents Investigation Investigations Branch (RAIB)
Nuclear Decommissioning Agency (NDA)



Appendix 3 – Core Specialisms

Mandatory Specialism No.	Service	Scope
1	Rail regulatory Law	<p>All aspects of rail regulatory law such as: Interpretation and application of relevant Primary Legislation (including draft legislation), including:</p> <ul style="list-style-type: none">a) Railways Act 1993;b) Railways Act 2005;c) Crossrail Act 2008;d) Transport Act 1968;e) Local Transport Act 2008; andf) High Speed Rail (London - West Midlands) Bill. <p>For so long as the UK remains subject to EU law the interpretation of relevant European Union (EU) legislation including Regulation 1370/2007 on public passenger transport services by rail and by road and the four Railway Packages. Advice in relation to the key regulatory and commercial documents relating to the UK rail industry such as the Ticketing and Settlement Agreement, regulated access arrangements, licensing arrangements.</p> <p>This shall include all aspects of legal advice for the end to end delivery of rail related projects such as:</p> <ul style="list-style-type: none">a) Rail franchise awards or rail passenger concessions (including advising on competitions, extensions and single tender actions);b) Rolling stock transactions (including advising on standalone fleet procurements, maintenance arrangements and financings, advising on procurement/maintenance arrangements/financings for fleets used by single or multiple franchisees);c) Infrastructure concessions and other infrastructure related rail projects; andd) Other rail related projects including without limitation advising on (1) the development of standard industry documentation, (2) regulatory projects such as the implementation of access charges reviews or modifications to licensing or access arrangements or (3) in respect of structural issues relating to the rail sector).



2	Company, Commercial and Contract Law	All aspects of legal advice in respect of contracts and contract law including advising on the modification of and interpretation of commercial contracts. All aspects of corporate law including but not limited to: a) company law; b) public and private company transactions c) share acquisition, disposals, capitalisations; d) entity selection and formation of Government companies and Government joint ventures; e) directors' duties; f) company secretarial services; g) operating, partnership, joint venture and alliancing agreements
3	Public procurement law	All aspects of public procurement law including but not limited to: a) the application of domestic and EU public procurement law; and b) end-to-end support on procurement exercises, including as appropriate drafting and commenting on specifications, evaluation criteria, tender documentation and associated procurement and contractual documentation.



Appendix 4 – Non-Core Specialisms

Optional Specialism No.	Service	Scope
1	EU Law	All aspects of EU law including but not limited to: a) advising on the application of EU law, its Treaties and Regulations; b) advising on relevant European case law which has a direct or indirect impact on Rail operations; c) advising on European rules and jurisprudence around the provision of state aid; d) advising a Panel Customer on EU Infraction proceedings that may be issued against it.
2	International Law	All aspects of international law.
3	Competition Law	All aspects of competition law including but not limited to contentious and non-contentious advice and support in relation to EU, domestic and international competition law, including cartels, abuse of a dominant market position and merger control.
4	Dispute Resolution and litigation law	All aspects of litigation and dispute resolution including but not limited to dispute handling and resolution and civil litigation against and on behalf of Panel Customers including alternative dispute resolution, arbitration, mediation, advice and litigation support may be required on commercial disputes, High Court litigation (including judicial review) as well as arbitration, adjudication, mediation and tribunal proceedings.
5	Employment Law	All aspects of employment law including but not limited to: a) non-contentious employment matters relating to TUPE, COSOP, redundancies, restructuring, outsourcing, changes in terms and conditions, and reorganisations; b) advice on industrial relations issues affecting the rail industry such as the introduction of driver only operations; and c) contentious employment law including litigation and dispute resolution.
6	Environmental Law	All aspects of environmental law including but not limited to the interpretation and application of the Environmental Protection Act 1990.
7	Health and Safety Law	All aspects of health and safety law the interpretation and application of the Health and Safety at Work Act 1974 and other applicable regulations and directives.



8	Information law including protection law data	All aspects of information law including but not limited to: a) the law surrounding the use and control of information by public and private sector bodies, including domestic and EU data protection legislation; b) international data transfers; c) data protection laws, data requests and complying with the principles of transparency; and d) Freedom of Information.
9	Information Technology Law	All aspects of information technology law including but not limited to: a) information technology and telecoms procurement and contracting; b) design, development, maintenance and support contracts; c) re-structuring of contracts and/or services; d) exit and migration/transition; e) hardware purchasing, software licensing, managed services, E-commerce, cloud based services, convergent technologies and the internet; and f) advice on the implications of emerging technologies .
10	Intellectual Property Law	All aspects of intellectual property law including but not limited to: a) contentious and non-contentious support and advice relating to patents, copyright, trademarks, trade secrets and rights in confidential information, database rights, design rights, and other forms of intellectual property; and b) assignment and licensing of rights and commercialisation and exploitation of intellectual property.
11	Pensions Law	All aspects of pensions law.
12	Planning Law	All aspects of planning law including but not limited to: a) planning strategy; b) development projects and schemes; c) applications for development, construction and change of use; d) compulsory purchase orders and s106 agreements; and e) planning/development inquiries and appeals.
13	Real Estate Law	All aspects of the law relating to real estate
14	Restructuring Insolvency Law	All aspects of the law relating to restructuring/insolvency.
15	Tax Law	All aspects of tax law.
16	Insurance Law	All aspects of insurance law.



Appendix 5 – Non-Core Specialism coverage

	Tier 1				Tier 2			
	Addleshaw Goddard LLP	Ashursts LLP	DLA Piper LLP	Eversheds Sutherland (International)	Linklaters LLP	Norton Rose Fulbright LLP	Osborne Clarke LLP	Stephenson Harwood
EU Law	x	x	x	x	x	x	x	x
International Law	x	x	x	x	x	x		x
Competition Law	x	x	x	x	x	x	x	x
Dispute Resolution and Litigation Law	x	x	x	x	x	x	x	x
Employment Law	x	x	x	x	x	x	x	x
Environmental Law	x	x	x	x	x	x	x	x
Health and Safety Law	x	x	x	x	x	x	x	x
Information Law including Data Protection	x	x	x	x	x	x	x	x
IT Law	x	x	x	x	x	x	x	x
Intellectual Property Law	x	x	x	x	x	x	x	x
Pensions Law	x	x	x	x	x	x	x	x
Planning Law	x	x	x	x	x	x	x	x
Real Estate Law	x	x	x	x	x	x	x	x
Restructuring/Insolvency Law	x	x	x	x	x	x	x	x
Tax Law	x	x	x	x	x	x	x	x
Insurance Law	x	x	x	x	x	x		x