

PANEL AGREEMENT SCHEDULE 5: ORDERING PROCEDURE

1. DEFINITIONS

1.1 In this Panel Agreement Schedule 5, the following expressions shall have the following meanings:

“Prospectus”	means the written description of the Supplier’s capabilities and Supplier Personnel and in the form set out in Annex 1 of Panel Agreement Schedule 11 hereunder required pursuant to paragraph 2 of Panel Agreement Schedule 5 (Ordering Procedure), as the same may be amended or updated from time to time in accordance with this Panel Agreement
“Direct Award”	means the award of a Legal Services Contract by the award procedure set out at paragraph 2 (Direct Award Procedure) of Panel Agreement Schedule 5 (Ordering Procedure), as the same may be amended or updated from time to time in accordance with this Panel Agreement

2. OVERVIEW

- 2.1 If a Panel Customer wishes to source Panel Services through this Panel Agreement then it will do so in accordance with either of the procedures set out at paragraphs 3 and 4 in this Panel Agreement Schedule 5 (Ordering Procedure) and the Guidance. For the purposes of this Panel Agreement Schedule 5, **“Guidance”** shall mean any guidance issued or updated by the Authority from time to time in relation to the use of the Panel Agreement.
- 2.2 The Supplier shall be fully responsible for all its costs of responding to invitations by Panel Customers to participate in both Direct Award and Further Competition Procedures. The Supplier acknowledges and agrees that in no event shall the Authority or any Panel Customer have any liability for such costs, in whole or in part, at any time and even where the Panel Customers decide not to appoint any Suppliers for any reason including but not limited to the circumstances set out in paragraph 6 below.

3. DIRECT AWARD PROCEDURE

- 3.1 The Supplier shall develop and maintain throughout the Panel Period a Prospectus in the form set out in Panel Agreement Schedule 11 (Marketing) and shall publish its Prospectus (which shall include all prescribed content as required pursuant to this Panel Agreement) in accordance with the requirements of Panel Agreement Schedule 11 (Marketing), as the same may be amended or updated from time to time. The Supplier’s Prospectus shall:
- 3.1.1 describe the scope, depth and breadth of the Panel Services (including the Optional Panel Services, if any), which the Supplier offers hereunder;
 - 3.1.2 identify the Supplier Personnel (at all grades) relevant to each Mandatory Specialism (and each Optional Specialism, if any), who will act as the Supplier’s key contacts in respect thereof, and provide an overview of the relevant experience and background of such Supplier Personnel;
 - 3.1.3 provide a summary of the Supplier’s experience and expertise in each of the Mandatory Specialisms and Optional Specialisms gained over the

- three (3) preceding calendar years on a rolling basis throughout the Panel Period;
- 3.1.4 include any other information Panel Customers reasonably need to assist them in making award decisions, provided that all such other information shall first be submitted to the Authority for approval for inclusion in the Supplier's Prospectus, which the Authority shall have the sole and absolute right to grant or deny; and
 - 3.1.5 be kept reasonably up to date, and shall be updated by the Supplier at regular intervals at least once every six (6) calendar months, or more frequently if the details and/or content of the Supplier's Prospectus have changed significantly.
- 3.2 A Panel Customer which intends to place an Order using the Direct Award process shall follow the procedure set out in this paragraph 3 (Direct Award Procedure).
- 3.3 Before a Panel Customer decides to place an Order under this paragraph 3 (Direct Award Procedure), it must:
- 3.3.1 satisfy itself that it is appropriate, having regard to the circumstances, for it to make a Direct Award;
 - 3.3.2 identify its requirements for Panel Services, which may be either in the nature of a general requirement for legal support in any of the Panel Services, or a Statement of Requirements identifying and specifying the Panel Services required;
 - 3.3.3 identify which Panel Services are relevant to its requirements;
 - 3.3.4 identify the Panel suppliers capable and authorised to provide the relevant Panel Services using the information provided in the Panel suppliers' Prospectuses ;
 - 3.3.5 further review the Prospectuses of the Panel suppliers which it has identified as capable and authorised to provide the relevant Panel Services pursuant to paragraph 3.3.4 (above) and determine which such Panel supplier is best able to meet the Panel Customer's requirements identified pursuant to paragraph 3.3.2 (above).
- 3.4 Once a Panel Customer has identified the Panel supplier best able to meet its requirements in accordance with paragraph 3.3 (above), it may award an Order:
- 3.4.1 based on the Panel Prices tendered by the Supplier; or
 - 3.4.2 subject to paragraph 3.5 (below), based on an alternative fee arrangement, including (but not limited to):
 - (a) a capped price based on Panel Prices quoted by and agreed with the relevant Supplier; or
 - (b) a fixed price based on Panel Prices quoted by and agreed with the relevant Supplier; or
 - (c) any combination of the pricing models set out in paragraphs 3.4.1, 3.4.2(a) and 3.4.2(b) (above),provided that no Panel Customer shall seek discounts to the Panel supplier's Panel Prices as part of any alternative fee arrangement under this paragraph 3 (Direct Award Procedure).
- 3.5 Where a Panel Customer wishes to obtain an alternative fee arrangement (in accordance with paragraph 3.4 (above) it will seek a quote from the Panel supplier it has identified as best meeting its requirements pursuant to paragraph 3.3.5

(above). Once the alternative fee arrangement has been agreed, or if the Panel Customer is placing the Order on the basis of the Supplier's undiscounted Panel Prices, the Panel Customer may award the Order by issuing (whether electronically or otherwise) a signed and appropriately completed Order Form to the Supplier which the Supplier shall countersign and return promptly and without delay.

- 3.6 Where the Panel supplier is unable to accept the Order for one of the reasons set out in paragraph 3.2.1 of Part A (Panel Services) of Panel Agreement Schedule 2 (Panel Services and Key Performance Indicators), the Panel Customer may:
- 3.6.1 follow the procedure set out in paragraph 3.4 (above) in respect of the second Supplier identified as being best able to meet its requirements pursuant to paragraph 3.3 (above) and the Panel Customer may repeat this process until it identifies a Panel supplier which is able to accept the Panel Customer's Order; or
 - 3.6.2 if there is any change to the Panel Customer's requirements, re-perform the steps set out in paragraphs 3.3.3 to 3.3.5 to identify the Supplier capable and authorised to meet its requirements and follow the procedure set out at paragraph 3.4 (above); or
 - 3.6.3 run a Further Competition Procedure in accordance with paragraph 4 below,
- 3.7 Subject to complying with this paragraph 3, a Panel Customer may award a Legal Services Contract to the Supplier in accordance with paragraph 8 below.

4. FURTHER COMPETITION PROCEDURE

Panel Customer's Obligations

- 4.1 Any Panel Customer awarding a Legal Services Contract under this Panel Agreement through a Further Competition Procedure shall:
- 4.1.1 develop a Statement of Requirements setting out its requirements for the Panel Services; and
 - 4.1.2 either:
 - (a) invite all capable and authorised Panel suppliers to tender; or
 - (b) identify and invite to tender at least three (3) Panel suppliers capable of supplying the required Panel Services using the suppliers' Prospectuses, further to paragraph 4.1.2 (above). If a Panel Customer is unable to identify and invite at least three (3) such Panel suppliers from the Prospectuses it may:
 - i) invite all capable and authorised Panel suppliers to tender for the required Panel Services and follow the procedure set out in paragraphs 4.1.5 to 4.1.7; or
 - ii) where there is only one capable and authorised Panel supplier, proceed to direct award in accordance with paragraphs 3.4 to 3.7 above;
 - 4.1.3 Not used
 - 4.1.4 Not used
 - 4.1.5 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; and

- 4.1.6 on the basis set out above, award its Legal Services Contract to the successful Supplier in accordance with paragraph 8 below; and
- 4.1.7 provide 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.

The Supplier's Obligations

4.2 The Supplier shall in writing, by the time and date specified by the Panel Customer following an invitation to tender pursuant to paragraph **Error! Reference source not found.** above, provide the Panel Customer with either:

- 4.2.1 a statement to the effect that it is unable to tender for one of the reasons described at paragraph 3.2.1 of Part A (Panel Services) of Panel Agreement Schedule 2 (Panel Services and Key Performance Indicators); or
- 4.2.2 the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:
 - (a) a unique reference number and Supplier name, so as to clearly identify the Supplier;
 - (b) a brief summary, stating that the Supplier is bidding in response to the Panel Customer's Statement of Requirements;
 - (c) a proposal covering the Panel Customer's Statement of Requirements.
 - (d) summary CVs of Key Personnel – as a minimum any lead lawyer, with others, as considered appropriate along with required staff levels; and
 - (e) confirmation of the Charges, whether fixed price, capped price, Panel Prices including discounts (if any) for the proposed Panel Services, or any combination of the above.
- 4.2.3 The Supplier shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 4 shall be no higher than the Panel Prices and take into account any discount to which the Panel Customer may be entitled as set out in Panel Agreement Schedule 3 (Framework Prices and Charging Structure).
- 4.2.4 The Supplier agrees that:
 - (a) all tenders submitted by the Supplier in relation to a Further Competition Procedure held pursuant to this paragraph 4 shall remain open for acceptance by the Panel Customer for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Panel Customer in accordance with the Ordering Procedure); and
 - (b) all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:
 - i. communicate to any person other than the person inviting these tenders the amount or approximate

- amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
- ii. enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

5. NOT USED

6. NO AWARD

- 6.1 Notwithstanding the fact that the Panel Customer has followed a procedure as set out above in paragraph 3 (Direct Award Procedure) or 4 (Further Competition Procedure) (as applicable), the Panel Customer shall be entitled at all times to decline to make an Order. Nothing in this Panel Agreement shall oblige any Panel Customer to make any Order.

7. RESPONSIBILITY FOR AWARDS

- 7.1 The Supplier acknowledges that each Panel Customer is independently responsible for the conduct of its award of Legal Services Contracts under this Panel Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

- 7.1.1 the conduct of Panel Customers in relation to this Panel Agreement; or
- 7.1.2 the performance or non-performance of any Legal Services Contracts between the Supplier and Panel Customers entered into pursuant to this Panel Agreement,

except where the Authority is the Panel Customer.

8. AWARD PROCEDURE

- 8.1 Subject to paragraphs 3 (Direct Award Procedure), 4 (Further Competition Procedure) and paragraph 7 (Responsibility for Awards) above, a Panel Customer may award a Legal Services Contract to the Supplier by sending (including electronically) a signed Legal Services Contract.. which shall:

- (a) describe the Ordered Panel Services required, which may be either in the nature of a general requirement for legal support in any of the Ordered Panel Services, or a Statement of Requirements identifying and specifying the Ordered Panel Services required; and
- (b) describe the Charges payable for the Ordered Panel Services in accordance with the tender submitted by the successful Panel supplier.

- 8.2 The Parties agree that any document or communication (including any document or communication in the apparent form of a Legal Services Contract) which is not as described in this paragraph 8 shall not constitute a Legal Services Contract under this Panel Agreement.

- 8.3 On receipt of the Legal Services Contract as described in paragraph 8.1 from a Panel Customer the Supplier shall accept the Legal Services Contract by promptly and without

delay signing and returning (including by electronic means) a copy of the completed Template Order Form to the Panel Customer concerned.

- 8.4 On receipt of the countersigned completed Template Order Form from the Supplier, the Panel Customer shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and the Legal Services Contract shall be formed with effect from the Commencement Date stated in the completed Template Order Form.

