

PANEL AGREEMENT SCHEDULE 4
ORDER FORM AND TERMS AND CONDITIONS

ORDER FORM

SECTION A

- (i) This Order Form dated 4th August 2021 is issued in accordance with the provisions of the Panel Agreement for the provision of general legal services.
- (ii) The Supplier agrees to supply the Ordered Panel Services specified below on and subject to the terms of this Legal Services Contract.
- (iii) For the avoidance of doubt this Legal Services Contract consists of the terms set out in this Order Form and the Terms and Conditions.
- (iv) By signing and returning this Order Form (which may be done by electronic means) the Supplier agrees to enter this Legal Services Contract with the Customer to provide the Ordered Panel Services in accordance with this Order Form and the Terms and Conditions.
- (v) The Parties hereby acknowledge and agree that they have read this Order Form and the Terms and Conditions and by signing below agree to be bound by this Legal Services Contract.
- (vi) In accordance with paragraph 7 of Panel Schedule 5 (Ordering Procedure), the Parties hereby acknowledge and agree that this Legal Services Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of this Order Form (together with the Terms and Conditions) from the Supplier within two (2) Working Days from such receipt.

1.1	Con_19354
1.2	The Secretary of State for Justice of 102 Petty France, London, SW1H 9AJ ("CUSTOMER")
1.3	Pinsent Masons LLP of 30 Crown Place, London, EC2A 4ES ("SUPPLIER")

1.4	Commencement Date: 14 th May 2021
1.5	Term From and including the Commencement Date up to and including the Expiry Date. Expiry Date of Legal Services Contract Term is 27 th December 2023
1.6	Signed for and on behalf of the Customer by an authorised representative:
	Name: [REDACTED]
	Title: [REDACTED]
	Signature: [REDACTED]
	Date: [REDACTED]
1.7	Signed for and on behalf of the Supplier by an authorised representative:
	Name: [REDACTED]
	Title: [REDACTED]
	Signature: [REDACTED]
	Date: [REDACTED]

SECTION B**1. PANEL SERVICES**

1.1	<p>Panel Services:</p> <p>1. OVERVIEW of requirement for the project</p> <p>1.1 The external legal services provider will be required to advise on all aspects of the exit of the Tranche 1 prisons plus on any of the other prisons as needed. The external legal adviser will also be required to advise on call-off competitions from the HMPPS' Private Prison Operator Framework and any prisons that are brought back in house to HMPPS.</p> <p>1.2 The external legal services provider will be required to:</p> <p>1.2.1 advise on any issues arising as a result of exit of the existing PFIs / PPPs;</p> <p>1.2.2 advise on procurement documents and procurement strategy;</p> <p>1.2.3 advise on queries and clarifications raised through the procurement processes and evaluation criteria/evaluation of bids;</p> <p>1.2.4 assist in dialogue and negotiations with both the outgoing providers and bidders for the recompeted contracts; and</p> <p>1.2.5 advise on market risks and issues.</p> <p>1.3 The external legal services provider may be required to advise on ancillary issues such as TUPE, property, and planning and answer contract management queries after the contracts have been awarded, including any disputes.</p> <p>1.4 The advice will include drafting and advising on procurement strategy and documentation and drafting/amending the contract terms using the Private Prison Operator Framework Model Call-Off Contract.</p> <p>1.5 The legal services provider will also be required to work closely with other legal service providers and GLD in sharing documents and risk issues that may be relevant across MOJ more widely and will work closely with other advisors such as financial.</p> <p>1.6 Potential Providers must note that MOJ is not seeking a firm to review and amend the Operator Framework template Call-Off terms other than as is necessary for each prison. MOJ and GLD has undertaken intensive work in addressing the terms required for call-off and is not seeking to re-open these.</p> <p>GLD'S ROLE</p> <p>1.7 GLD Commercial Law Group will manage the external law firm and provide legal oversight of the Project, attending internal board meetings and working with the Supplier on legal input into governance and approvals. However, it does not have the capacity to provide the legal support required at the same time as being able to advise on other priority matters for MOJ. GLD Commercial Law Group lawyers will have oversight of the work carried out by the external law firm and will be involved throughout to ensure that work is carried out to the correct standard and cost effectively. GLD Commercial Law Group will monitor the spend and ensure that the cost of the work does not exceed the agreed estimate without prior approval and sufficient justification.</p> <p>1.8 MOJ retains the right to source legal advice within the scope of this specification from one or more other law firms or GLD so there would be no guarantee of any work. There will be</p>
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	<p>a right to terminate the appointment at the Authority's discretion and with no minimum guaranteed amount of work.</p> <p>REQUIREMENTS</p>
1.9	<p>The Legal Services Provider will be required to assist the HMPPS PFI team, the Commercial team and the In-House Legal team as required in relation to the expiry and re-procurement of private sector prisons (which include both operation and maintenance).</p>
1.10	<p>The current timetable for Tranche 1 is as follows:</p> <p>1.10.1 Work on the due diligence of Tranche 1, including detailed discussions with IPA and the SPVs, and a review of the contract provisions commenced some time ago.</p> <p>HMP Parc (expires 14/12/2022)</p> <p>1.10.2 April 2021 - The project intends to open the Parc data room and publish a range of information. During this window we would also seek to conduct an early site visit for all prospective bidders.</p> <p>1.10.3 16/08/21 – Competition launch (with complete ITPD and contract)</p> <p>1.10.4 27/05/22 – Competition award</p> <p>HMP Lowdham Grange (expires 15/02/2023)</p> <p>1.10.5 10/01/22 – Competition launch (with complete ITPD and contract)</p> <p>1.10.6 12/08/22 – Competition award</p> <p>HMP Altcourse (expires 31/05/2023)</p> <p>1.10.7 25/04/22 – Competition launch (with complete ITPD and contract)</p> <p>1.10.8 25/11/22 – Competition award</p>
1.11	<p>In summary, there up to three areas of work covered by this legal services requirement in relation to PFIs/PPPs in England and Wales:</p> <p>1.11.1 to assist HMPPS with any issues arising on the expiry (or the preparation for the expiry) on any PFI or PPP ending before 2027, with particular focus on the Tranche 1 prisons; and</p> <p>1.11.2 to assist HMPPS with the competition of the Tranche 1 prisons under the Private Prison Operator Framework and any assistance that may be required should a prison be brought back in house; and</p> <p>1.11.3 to advise on any matters ancillary to the above.</p>
1.12	<p>The advice will include:</p> <p>1.12.1 For the PFI exits, drafting and advising on general contract and property issues arising from contract closure, including dilapidation and termination surveys, maintenance settlement, lease transfers, TUPE advice and contract closure.</p> <p>1.12.2 For the competition, drafting and advising on procurement strategy and documentation, drafting the contract terms to use for the call-off contracts which will be based on the Private Prison Operator Framework, providing</p>

	procurement, contract law, TUPE, pensions, property, public law, GDPR and disputes advice to HMPPS.
1.13	In addition, the Legal Services Provider may be required to advise on some contract management queries in relation to any call-off contracts awarded.
1.14	Further details are set out below.
	Expiry Work
1.15	Dilapidations surveys are being completed at each of the Tranche 1 prisons. HMPPS commissioned last year a summary of the key provisions of each of the Tranche 1 contracts including:
1.15.1	obligations on the Contractor to provide the Authority with Cell Certificates on expiry / termination;
1.15.2	obligations on the Contractor to provide the Authority with an operating manual (or similar) on expiry / termination;
1.15.3	the open book obligations on the Contractor;
1.15.4	obligations on the parties with regards dilapidations, surveys (including on expiry/termination), monitoring performance and remedying defects in the provision of the Services;
1.15.5	the handback and exit management obligations, including: agreement of Exit Plans; what information and data the Contractor must provide; any requirements to transfer or to provide registers and reports (including site issues, assets, plans, equipment, health and safety), statutory notices and registers (including health and safety), sub-contracts, assets, stock and equipment; the TUPE obligations on expiry / termination and relevant liabilities; the process for asset verification and surveys of the prison and wider site on expiry / termination; and obligations on the Contractor to provide information to the Authority for repurchase purposes and any obligations on the Contractor to work with bidders / incoming new contractors;
1.15.6	any references to lifecycle requirements on expiry / termination including any requirements with regards any lifecycle funds;
1.15.7	liabilities of each party on expiry / termination, particularly with regards any obligations on the Authority for payments with regards TUPE, redundancy and breakage costs, including any caps on liability;
1.15.8	ownership of assets, equipment and IPR;
1.15.9	any obligations on the Contractor to ring fence, hold on trust, transfer, repay, gain share any monies (including insurance proceeds, lifecycle payments and any Prisoner monies) and obligations with regards the use of such and the processes for any gain share, ring fenced accounts or monies on expiry / termination including details of the obligations during the term of the contract with regards such; and
1.15.10	any rights of the Authority to withhold monies to account for deductions in the final months of the contract.
1.16	In addition, the project has been working closely with the GLD's TUPE Hub to understand the risks arising from the TUPE exit provisions in the Tranche 1 contracts.
1.17	The Legal Services Provider will be required to provide legal advice to HMPPS on any issues arising from exit, including but not limited to:

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	1.17.1	for the PFI / PPP contracts other than those in Tranche 1, a review of key contract issues (as above);
	1.17.2	TUPE and pension risk and mitigations;
	1.17.3	any remedies of works and/or disputes arising from the dilapidation surveys;
	1.17.4	assistance in negotiating with the SPVs and operators to ensure HMPPS has all the exit information it requires and completion of current contract obligations; and
	1.17.5	any gaps in risk between the current PFI contracts and the Call-Off terms and conditions.
	Re-Competition Work	
1.18	Key service deliverables which the successful Legal Services Provider may be required to deliver may include but shall not be limited to the following:	
	1.18.1	drafting/reviewing procurement documents as required (ITPD, Evaluation Methodology, Award Decision Notices etc);
	1.18.2	undertaking reports on title and advising on any ancillary property issues needed for the purposes of the competition;
	1.18.3	assisting with the production of project specific procurement documentation and project specific amendments to the Framework Model Call-Off Contract;
	1.18.4	attending bidder clarification and dialogue meetings as required and addressing queries, including through clarification questions, relating to the legal aspects of the procurement process;
	1.18.5	assisting with the evaluation process as required;
	1.18.6	attending client and bidder meetings in order to provide expert legal and commercial advice (and market knowledge) as required;
	1.18.7	drafting and controlling the production of all legal/contractual documents, ensuring they accurately reflect commercial terms agreed and appropriately protect the position of HMPPS (including the main contract, collateral warranties, leases and or related property documents, parent company guarantees);
	1.18.8	assisting and advising the project team to reach agreement in relation to a reasonable, deliverable and sustainable set of commercial terms for the delivery and subsequent operation of the prisons concerned;
	1.18.9	engaging with HMPPS' technical, financial, insurance, property, planning and other expert teams, advisers and consultants in a clear, effective and efficient way in order to ensure that all legal risks are appropriately identified and reflected in contract documents;
	1.18.10	advising HMPPS on any ancillary legal issues including but not limited to associated tax, employment (TUPE), pensions and environmental law issues as required;
	1.18.11	advise on matters arising from the procurement of ancillary services, including Education, that reflect the uniqueness of the devolved administration in Wales. engaging and negotiating with bidders as required - ensuring that the interests

	of HMPPS are protected and that an appropriate balance of risk transfer is achieved with private sector partners;
1.18.12	assisting and where necessary leading commercial negotiations on behalf of HMPPS;
1.18.13	providing support (including logistical) to HMPPS as necessary in the lead up to and at contract award and completion;
1.18.14	attending such performance monitoring and client care meetings as required in order to ensure the efficient and effective delivery of legal services to the project team at all times;
1.18.15	working with and in support of HMPPS' internal legal team as reasonably required – including accessing additional and/or specialist resources quickly as necessary;
1.18.16	facilitating skills and knowledge transfer to HMPPS as required;
1.18.17	assisting HMPPS as required in relation to the production of an appropriate contract management manual; and
1.18.18	assist with any issues or disputes arising on contract award.
1.19	HMPPS reserves the right to tailor the Scope of Services to suit the evolving requirements of the Project. The precise scope will depend on the particular skills and resources available to the Project at any given time. On that basis the Legal Services Provider will need to be capable of delivering a flexible and responsive service as the specific requirements of the project evolve.
1.20	Where incidental and necessary services, functions or responsibilities are not specifically set out in this Statement of Requirements, but would reasonably be expected to form part of the proper and satisfactory provision of legal services from an external supplier, they shall be deemed to be included in the scope of Services.
1.21	The GLD Commercial Law Group will retain oversight of the Services as it sees fit and the Legal Services Provider shall liaise with GLD leads as necessary in order to facilitate such oversight
	Knowledge, Skills, Competence and Experience of the Legal Services Provider
1.22	The Legal Services Provider is expected to provide a specialist legal resource with extensive experience and current knowledge and expertise of PFI and PPPs, in particular contracts for operation and maintenance where there are specific obligations concerning the control and operation of facilities and those within them to carry out the work within the expected timescale and to the required standard. The precise scope of the appointment of the Legal Services Provider will be determined once appointed but the Legal Services Provider shall:
1.22.1	have extensive experience and current knowledge and expertise of drafting and advising on complex operate and maintain contracts, PFI contracts, PFI expiry and property matters. Previous experience of advising on prison contracts is not necessary but is desirable;
1.22.2	have extensive experience and current knowledge and expertise of drafting on and advising on the procurement of complex operation and maintain contracts for public sector clients;
1.22.3	have extensive experience and current knowledge and expertise of advising on and drafting procurement documentation;

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	<p>1.22.4 have the ability to work creatively and in a cost-effective manner with GLD Commercial Law Group;</p> <p>1.22.5 have the ability to draft contracts for use in a secure environment e.g. a custodial environment like a prison and experience of doing so shall be desirable but not essential;</p> <p>1.22.6 provide a team which has the skill set and expertise (and is sufficient in number, suitable qualification and has a mix of solicitor levels needed) to deliver the work requirements at different stages of the Project and across each of the PFIs/PPPs, to achieve the relatively short timescale for MOJ to effect the expiry and re-competition of its PFIs/PPPs and bring in additional resources to the team when required, on short notice and shall make resources available to meet peak demands in tasks to ensure that tasks are completed on time and work remains within timescales;</p> <p>1.22.7 support GLD's employment and team if required;</p> <p>1.22.8 support GLD's property law team if required;</p> <p>1.22.9 work with MOJ's legal advisers who specialise in public law advice if required, for example in relation to the use of prison labour;</p> <p>1.22.10 attend meetings in person in London and Leeds on behalf of/with MoJ and provide meeting rooms in London at no additional charge for meetings connected with the Project (if required);</p> <p>1.22.11 ensure effective knowledge transfer to MOJ and GLD.</p> <p>2. The Supplier shall provide 2 hours of free consultation and legal advice in relation to each new matter which arises under this Order Form and the Customer may reasonably request that several requirements within the above are classed as new matters.</p> <p>3. In providing the Services, the Supplier shall adhere to its Tender unless requested by the Customer not to do so.</p> <p>4. The Parties agree, for the avoidance of doubt:</p> <ul style="list-style-type: none"> i. that this Legal Services Contract is not an exclusive appointment and the Customer retains the right to source legal advice on matters within the scope of this Legal Services Contract, from one or more other law firm or GLD; and ii. that the total maximum potential contract value is £4,000,000 but the Authority shall not be committed to any minimum spend with the Supplier and shall only be liable to make payments in respect of services provided in accordance with this Legal Services Contract including where the Authority has expressly confirmed that it requires the Supplier to provide such services.
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1.2	<p>Management and review of the Services</p> <p>As reasonably requested by the Customer taking into account key stages of the programme and as a minimum no less frequently than as stated in clause 3.2 of this Legal Services Contract.</p> <p>The Supplier and the Customer shall use reasonable endeavours to agree reasonable and appropriate contract milestones, KPIs, performance measures, and any additional monitoring arrangements for the five areas of work identified in 1.1 above and any individual matters within item iii identified in 1.1 above.</p>
1.3	<p>Place of performance</p> <p>The Supplier shall provide a working arrangement/location that best meets the Customer's objectives and aims of the Programme and offers the most cost-effective solution. The Customer's teams undertaking the Programme are usually based primarily at 102 Petty France, London SW1H 9AJ and also Wellington Place, Leeds LS1 4AP as a secondary location.</p> <p>If the Customer requests meetings at the Supplier's offices it shall be in London and attendance meetings at the Customer's and Government Legal Department's offices shall be as required by the Customer.</p>

2. CHARGES

2.1a	<p>Hourly Rates [used]</p> <p>AND</p> <p>Daily Rates [used]</p> <p>[REDACTED]</p>
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2.1b	<ul style="list-style-type: none"> Where any Supplier Personnel have completed more than eight (8) hours of work but less than ten (10) hours on any given day, the daily rate as set out in 2.1a above shall apply. Where any Supplier Personnel have completed more than ten (10) hours of work on any given day, the daily rate as set out in 2.1a above shall apply to all time up to a maximum of ten (10) hours, but anything over this will be subject to our normal hourly rates as set out in 2.1a above. The maximum value of the contract is £4,000,000.00. The Authority is not committing to spend any amount of this approved budget through this contract. It is not a fixed price contract and what is actually spent and what it's spent on will be controlled and managed by the Authority.
2.2	Estimate of Charges - not used
2.3	Fixed Price - not used
2.4	Capped Price - not used
2.5	<p>Other Costs</p> <p>Reimbursable Expenses</p> <p>Payable in the following circumstances:</p> <p>For physical meetings outside of the Customer's and Supplier's locations, reimbursement of reasonable travel and subsistence costs will be considered by the Customer and will need to adhere to the Customer's standard travel and subsistence arrangements. Requests for travel or subsistence must be agreed in advance by the Customer and before any expenditure is agreed.</p> <p>Disbursements</p> <p>Payable in the following circumstances:</p> <p>Disbursements shall only be payable where the Customer has authorised in advance that the Disbursements may be incurred.</p>

3. MISCELLANEOUS

3.1	CUSTOMER REPRESENTATIVE [REDACTED]
3.2	SUPPLIER REPRESENTATIVE [REDACTED]
3.3	KEY PERSONNEL [REDACTED]
3.4	NOTICES FOR THE CUSTOMER: [REDACTED] FOR THE SUPPLIER: [REDACTED]
3.5	CUSTOMER BILLING ADDRESS <p>The Supplier and the Customer shall agree how many monthly draft invoices are required depending upon the different matters covered by this Legal Services Contract and to which of the instructing lawyers the draft invoice should be sent by email to:</p> <p>[REDACTED]</p> <p>Once the instructing lawyer has approved the draft invoice the finalised invoice should be submitted to Shared Services in both hard and electronic copy at the addresses below: SSCL MINISTRY OF JUSTICE PO BOX 743 NEW PORT GWENT NP10 8FZ</p>
3.6	SUPPLIER BANK DETAILS <p>For direct money transfers, which should include the invoice number as a reference, our bank details are as follows:</p> <p>[REDACTED]</p>

3.7	CUSTOMER'S PURCHASE ORDER NUMBER To be confirmed by the Customer
3.8	APPROVED SUB-CONTRACTORS None
3.9	BCDR No specific requirements in addition to those in the Terms and Conditions and the Panel Agreement
3.10	Exit Management: In Schedule 2 (Exit Management)
3.11	Transparency Reports In Contract Schedule 4 (Transparency Reports)
3.12	Call Off Guarantee (Clause 10 of the Legal Service Contract): Not required

4. VARIATIONS TO THE TERMS AND CONDITIONS

4.1	Liability cap £100M Please be aware that the Authority requires a £100m (one hundred million pounds) liability cap and professional indemnity cover. The Authority recognises that this is relatively unusual but is being requested because of the estimated spend and the need to ensure these prisons remain operational.
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4.2	Conflicts of Interest In the event of a conflict which cannot be managed, the Supplier shall prioritise the Customer over any other client of the Customer so that a conflict would not give the Supplier a right to terminate this appointment with the Customer. None declared.
4.3	Confidentiality
4.5	Intellectual Property Rights
4.6	

SECTION C



Appendix B -
Statement of Requirer

Part 2 – Terms and Conditions



Call Off Order Form
Terms and Conditions

CONTRACT SCHEDULE 4: TRANSPARENCY REPORTS

1. GENERAL

- 1.1 Within three (3) Months from the Commencement Date or the date so specified by the Customer in the Order Form the Supplier shall provide to the Customer for Approval (the Customer's decision to approve or not shall not be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements in Annex 1 below.
- 1.2 If the Customer rejects any proposed Transparency Report, the Supplier shall submit a revised version of the relevant report for further Approval by the Customer within five (5) calendar days of receipt of any notice of rejection, taking account of any

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recommendations for revision and improvement to the report provided by the Customer. If the Parties fail to agree on a draft Transparency Report the Customer shall determine what should be included.

- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency referred to in Annex 1 of this Contract Schedule 4 below.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a dispute.
- 1.5 The requirements in this Contract Schedule 4 are in addition to any other reporting requirements in this Legal Services Contract.

ANNEX 1: LIST OF TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
Performance information	Information about any aspect of our performance that is suitable for publication	As specified by the Authority	On written request
Charges	Information about our overall Charges suitable for publication	As specified by the Authority	On written request
[Key Sub-Contractors]	[]	[]	[]
[Technical]	[]	[]	[]
[Performance management]	[]	[]	[]

Contract Schedule 5 –Record of Personal Data Transfer under Legal Services Contract

1. The contract details of the Authority Data Protection Officer is:
[REDACTED]
2. The contract details of the Service Provider Data Protection Officer is:
[REDACTED]
3. Any such further instructions shall be incorporated into this Schedule.

Contract Reference:	CON_XXXXX
Date:	21/07/2021
Description Of Authorised Processing	Details
Identity of the Controller and Processor	<p>Each Party is an independent controller of the following Personal Data which it receives:</p> <ul style="list-style-type: none"> • Personal Data of Staff of either Party • Personal Data of Staff of Customer's Suppliers (including contractors, agents, professional advisors) • Personal Data of Customer's service users (if not staff)
Use of Personal Data	Management of this Legal Services Contract and any case of claim supported under it.

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Duration of the processing and retention.	From the outset of the Legal Services Contract date, and up to 7 years after it expires
Nature and purposes of the processing	Provision of legal services under this Legal Services Contract.
Type of Personal Data	Staff of either Party: Full name Workplace address Workplace Phone Number Workplace email address Date of Birth Photocopy of ID documents
Categories of Data Subject	<ul style="list-style-type: none"> • Personal Data of Staff of either Party • Personal Data of Staff of Customer's Suppliers (including contractors, agents, professional advisors) • Personal Data of Customer's service users (if not staff)