

AMENDMENTS TO THE 2010 STANDARD CRIME CONTRACT (STANDARD TERMS) EFFECTIVE FROM 1 APRIL 2013

The table below outlines the key amendments to the 2010 Standard Terms and the rationale behind each of the amendments:

We would encourage any provider who holds a 2010 Standard Crime Contract to review all the amendments.

In summary, the amendments are directed at:

- incorporating the requirements of the Legal Aid, Sentencing and Punishment of Offenders Act (“the Act”);
- compliance with government standards and legislation that have been introduced since the 2010 Standard Terms;
- clarifying minor changes to contract terminology and ambiguous terms¹; and
- taking into account comments/requests raised by legal representative bodies discussed in respect of the Contract consultation on the amendments to the 2010 Standard Civil Contract.

¹ N.B. The table does not intend to explain any of the minor drafting amendments which are self-explanatory in the comparison document published on the Justice website

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STANDARD TERMS		
Current Clause/Paragraph	LSC Proposed Amendment(s)	Rationale for LSC Proposed Amendment(s)
2. Relationship and Communication		
Clause 2.1	Duty to act as responsible public body deleted.	The Lord Chancellor, as a Minister of the Crown and as contracting authority (post statutory novation) is subject to public law obligations. It is not necessary to set this out in the standard terms and this is consistent with the position adopted by the Ministry of Justice in their contracts.
Clause 2.7	This clause has been deleted.	There has been significant improvement in communication between providers and the LSC and therefore clause 2.7 is no longer required.
Clause 2.9	First sentence has been deleted	This is a consequence of the different provisions in Part 1 of the Act.
5. Equality and diversity	This section has been redrafted.	This entire section has been redrafted to comply with our obligations under the Equality Act 2010, as the previous wording was drafted in accordance with legislation which pre-dates the Equality Act 2010.
5.4 Court or tribunal finding is fundamental breach	Deleted reference to “Fundamental Breach”.	We consider that a breach of this clause may not in all cases be sufficiently serious for us to terminate the contract. For the avoidance of doubt, where on the individual facts, a breach of this Clause is sufficiently serious to enable us to terminate the provider’s contract, we will do so in accordance with our powers in the standard terms.
5.5 – 5.7	Clause 5.5 has been amended. Clauses 5.6 and 5.7 have been deleted.	See above our general comment in relation to the amendments we have made to Clause 5. In addition, the Equality and Diversity Guidance, which is now referred to in this clause, may clarify the contract obligations further. We will continue to carry out our equal opportunities monitoring in relation to both applicants for legal aid and providers.

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<p>10. Standard of Contract Work</p> <p>Clause 10.7 to 10.9</p> <p>Clause 10.8</p> <p>Clause 10.9</p>	<p>These clauses have been redrafted to make the distinction between initial peer reviews and second peer reviews.</p> <p>The clauses include provision for us to charge providers who clearly do not meet the contract's Quality Standard.</p> <p>The clause has been redrafted to apply to providers who have received a rating of either 4 or 5 as determined by the independent peer review process at the initial peer review stage.</p> <p>The clause has been redrafted to apply to providers who have received a rating of either 4 or 5 as determined by the independent peer review process at the second peer review stage.</p>	<p>The clauses have been redrafted to clarify the distinction between the initial peer review and the second peer review, which is carried out if the provider does not receive a rating of either 1, 2 or 3.</p> <p>We are keen to minimise and recoup from the provider costs incurred in instructing peer reviewers to undertake Peer Review work in relation to a provider who clearly does not meet the Contract's Quality Standard. The costs that are to be reimbursed to us are those standard costs that are charged to us by those we instruct to carry out Peer Reviews. These costs are normally around £1,400 per Peer Review.</p> <p>This change has been made to clarify the action we can subsequently take in these circumstances. If the Provider's original rating is upheld at this stage, this is a breach of contract and the Provider will have to reimburse us for the costs we have incurred in instructing peer reviewers to carry out that initial peer review.</p> <p>As above (see Clause 10.8). If the Provider's original rating is upheld at this stage, this is a Fundamental breach of contract and the Provider will have to reimburse us for the costs we have incurred in instructing peer reviewers to carry out that second peer review.</p>
<p>11. KPIs</p>	<p>References to application of a sanction have been deleted from Clause 11.</p>	<p>The primary function of KPIs is to alert the LSC to problems which themselves may lead to a sanction, rather than the KPI itself.</p>
<p>13. Amendments to the Contract Documents</p>	<p>Clause 13 has been amended.</p>	<p>Clause 13 has been revised in the interests of certainty to specify the ability of the Lord Chancellor to amend the Contract to reflect legislative changes made by him and endorsed by Parliament. This does not give the Lord Chancellor powers to amend the Contract at will, as it is important to note that any contract amendments are subject to the materiality test in Clause 13.1.</p>
<p>14. Your account with us, Claims, payments and Assessments</p>	<p>We have replaced "BACS" with "either electronically or online (this includes BACS, Faster Payments, CHAPS and other relevant</p>	<p>We have clarified how we propose to pay providers going forward under the contract in a way which is consistent with current banking industry electronic payments' mechanisms.</p>

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Clause 14.8	payment services)" in relation to how we pay providers.	
Clause 14.14	Replaced reference to "14 days" with "7 days" in relation to notifying us when providers become aware of overpayments/mispayments.	We have made this change because of the potential consequences of overpayments/mispayments, the current status of our own accounts and management of debt. It doesn't preclude providers contacting us and asking for more time. A 7 days' requirement is consistent with our own accounting obligations.
16. Data protection Clause 16.1, Clause 16.1(c)	Made provision in Clause 16.1(c) for the provider to be the data controller.	Clarified that the provider may be the Data Controller or Data Processor on behalf of Clients and Former Clients in respect of other Personal Data. MoJ is registered as the Data Controller for the purposes of the contract post statutory novation. This is to avoid executive agencies such as the LAA, for example, which are part of MoJ, from having to register individually. For the purposes of the standard terms, therefore, we have retained references to the (revised definition of) LAA, as in the context of the contract, we consider using MoJ to be confusing given how the terms are currently drafted.
Clause 16.9 (c)	Removed the words " <i>use best endeavours to</i> ".	The current wording has been revised to comply with MoJ data security policy.
Clause 16.9 (g)	Inserted an obligation to report to the LAA any incident that results in the disclosure of LAA Data and Shared Data to unauthorised recipients.	This to ensure consistency with government standards.
18. Warranties Clause 18.1(f)	New warranty drafted.	An additional warranty has been added to address and capture the provider's obligations under the bribery legislation, namely clause 23.1 to 23.5. In practice, this will not be applicable to providers holding a 2010 Contract as the warranty relates to the point in time when the contract was executed.

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<p>21. Things you must tell us about</p> <p>Clause 21.1</p>	<p>Included a requirement for a provider to notify us if they intend to become a "Licensed Body".</p>	<p>This requirement has been drafted to ensure that we are informed of any plans a provider may have to become a Licensed Body under the Legal Services Act 2007.</p>
<p>23. Bribery, collusion, false tenders, fraud and unethical behaviour</p> <p>Clause 23.1 – 23.5</p>	<p>New clauses drafted.</p>	<p>The new clauses have been drafted to reflect the approach taken within Government Procurement Services contracts in the context of, the 2010 Bribery Act.</p>
<p>25. How this Contract can be ended</p> <p>Clauses 25.3 and 25.4.</p>	<p>Inserted the title "no fault termination" and "termination for breach".</p>	<p>Providers are sometimes confused by the difference between clauses 25.3 and 25.4(a), namely the former consists of a no-fault termination provision and the latter consists of a termination for breach provision. The purpose of the heading, therefore, is to highlight the difference between the two clauses and, therefore, to reduce any ambiguity.</p> <p>We have also clarified the termination for breach provisions, moving the "for the avoidance of doubt..." provision under Clause 25.4(j) to the start of Clause 25.4 and deleting the heading of "Termination and Linked Categories of Law".</p>
<p>27. Reconsidering decisions and the review procedure</p> <p>Clause 27.7</p>	<p>Reference to the "Public Interest Advisory Panel" has been deleted.</p>	<p>The Public Interest Advisory Panel was abolished under amendments to the Funding Code Procedures with effect from 1 April 2010 and replaced with the Special Controls Review Panel following the MoJ/LSC 'Legal Aid: Refocusing on Priority Cases' consultation in summer 2009. A special controls review panel is being retained from 1 April 2013 but its title has not been directly referred to in these amended Standard Terms. We consider the wording at clause 27 to be broad enough to accommodate a review panel of this nature.</p>

Legal Team
February 2013

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