

# MEMORANDUM OF UNDERSTANDING

Between

THE OFFICE FOR NUCLEAR REGULATION

And

GOVERNMENT LEGAL DEPARTMENT

on

the provision of GLD legal services to ONR

## 1. Purpose

- 1.1. This Memorandum of Understanding (**MOU**) sets out the agreement between the Office for Nuclear Regulation (**ONR**) and the Government Legal Department (**GLD**) under which GLD provides legal services to ONR, largely through the HSE & ONR Legal Advisers team. It supersedes any previous agreement that may be in place for the provision of legal services by GLD to ONR.
- 1.2. ONR and GLD are committed to delivering the terms of this MOU but it is not intended to be legally enforceable. This MOU may be modified by agreement in writing between the parties.

## 2. Term

- 2.1. This MOU will have effect from the date of signature and will be reviewed every 3 years thereafter.

## 3. Services and Accountability

- 3.1. **Scope:** GLD will provide legal services to ONR on the full range of ONR's business, subject to the exclusions in paragraph 3.1.1.
  - 3.1.1. The matters on which GLD will advise ONR include legal advice on policy making, planning casework, the development of primary and secondary legislation and the conduct of public litigation. GLD will also provide ancillary services such as support in relation to ONR parliamentary questions, ministerial correspondence and subject access and freedom of information requests. ONR communications will continue to be responsible for the handling of press and media for all areas of its work but GLD will continue to provide legal advice to support communications activity.
  - 3.1.2. GLD will not provide advice to ONR on criminal enforcement, corporate issues (including commercial and employment matters), personal injury, property work or private law litigation related to any of these areas. ONR will obtain legal advice on such matters from external legal providers.
- 3.2. **Location:** GLD will provide advisory legal services largely through its co-located advisory service, HSE & ONR Legal Advisers located in GLD's offices. Litigation services will be provided by GLD Litigation Group located in GLD's offices working closely with HSE & ONR Legal Advisers.

- 3.3. **Planning:** HSE & ONR Legal Advisers will produce an annual business plan, as part of the cycle of business management required by GLD and ONR, setting out planned legal work agreed with the relevant business areas. GLD will aim to respond quickly and positively to requests for additional legal work which may require the provision of additional legal staff. GLD will accommodate such requests within the agreed financial arrangements in Annex A wherever possible.
- 3.4. **Specialist Legal Advice:** When GLD (including HSE & ONR Legal Advisers) procure external specialist legal services to supplement its own services, GLD will oversee and quality assure the advice and ensure that ONR's needs are met in an economical, efficient and effective way. Where such external legal services are procured directly by ONR, GLD will support ONR in accordance with any arrangements agreed.
- 3.5. **Legal awareness:** GLD will promote and enhance legal awareness within ONR to ensure that decisions are robust and informed by legal developments. This will include training sessions, workshops, seminars and intranet resources to be arranged and delivered via ONR Head of Policy.
- 3.6. **Corporate engagement:** Members of HSE & ONR Legal Advisers will take part in relevant ONR governance structures and engage in ONR corporate activities where this would contribute to the ONR's consideration of legal issues or to more effective working between GLD and ONR staff. Staff on loan to GLD will continue to engage in other ONR corporate events as appropriate.

#### 4. **Service quality and standards**

- 4.1. GLD will meet ONR's core requirements, which are:
  - 4.1.1. High quality, timely and flexible advice provided by suitably skilled legal staff.
  - 4.1.2. Easy access to legal staff and legal advice that enables ONR to make effective, risk-based decisions across the full range of its work.
  - 4.1.3. A good knowledge and understanding by legal staff of ONR's business and policy context.
  - 4.1.4. An effective service which provides advice on the potential impact of legal developments and legal horizon scanning.
  - 4.1.5. Clear, concise, value for money advice.
  - 4.1.6. Effective arrangements for managing the provision of legal services.
  - 4.1.7. Fast and efficient ancillary services, for example statutory instrument processing.
  - 4.1.8. The management of outsourced legal contracts, obtaining best value for money.
  - 4.1.9. Provision of management information.
- 4.2. **Ways of working:** GLD and ONR will work closely to ensure that appropriate legal advice is fully incorporated in decision making and that ONR get the best value for money from the legal services provided. The partnership will be

characterised by open and frank relationships, regular feedback, shared planning and priorities, and arrangements for evaluation and review.

- 4.3. **Relationship Manager:** The HSE & ONR Legal Advisers' Legal Director ("the GLD ONR Director") will be the relationship manager for all GLD services ensuring that ONR needs are met. GLD will provide a seamless service to ONR clients wherever they are located and the relationship manager will establish effective arrangements within GLD to ensure that they are kept advised of significant issues and legal risks. On a day-to-day basis the HSE & ONR Legal Advisers' Deputy Director ("the GLD ONR Deputy Director") will manage the relationship and keep the GLD ONR Director informed of any significant issues.
- 4.4. **Flexibility and Emergency Cover:** GLD will work flexibly to meet ONR's business needs, keeping business plans and priorities under regular review and making appropriate arrangements for cover outside normal office hours and in emergencies.
- 4.5. **Timescales:** Timescales for advice will be discussed and agreed on a case by case basis between clients and legal staff as part of the ongoing collaborative working relationship that will be the core feature of this service. Where work is not part of a planned programme, HSE & ONR Legal Advisers will work closely with ONR colleagues to identify how existing work can be rescheduled or re-prioritised in order to release capacity for important work. HSE & ONR Legal Advisers will keep ONR colleagues informed about progress, give regular updates and advance notice of any difficulty in meeting an agreed timetable.
- 4.6. **Clear, risk-based, solution-focused advice:** HSE & ONR Legal Advisers will provide clear and comprehensible advice which avoids legal jargon, assesses legal risk and focuses on finding solutions meeting ONR's objectives.
- 4.7. **Partnership:** GLD and ONR will work in partnership to maximise effective working between teams and the value for money of legal services. GLD will play a full role in the risk management arrangements within ONR including escalating key legal risks where necessary. GLD will work closely with legal teams in other Government departments, ALBs and external legal teams to protect and promote the interests of ONR.
- 4.8. **Early involvement and effective team-working:** When legal matters are in issue, ONR will involve the relevant GLD legal staff as early as possible, identify the issue, explain the background and provide additional information where necessary so that the legal staff are able to give informed advice. Multi-disciplinary team working (e.g. between legal staff, policy officials, planners, finance and/or analytical colleagues) will be the norm to facilitate high quality decision making.
- 4.9. **Information security:** GLD (including HSE & ONR Legal Advisers) will secure and manage ONR information in accordance with ONR and GLD standards for information security. ONR retains its rights to have access to information handled by GLD.
- 4.10. **Knowledge management:** ONR agrees to the use of its information by GLD for knowledge management (KM) purposes in GLD, including storing it on a GLD electronic KM system(s), for and in connection with providing high quality legal services to all its clients. GLD will take appropriate measures to protect the confidentiality of (and any privilege over) such information.

- 4.11. **Feedback:** GLD will conduct an annual survey to measure client satisfaction in ONR to help GLD to ensure that the needs of the clients are being met. The survey covers (a) quality of service, (b) understanding of business environment, (c) speed of response, (d) keeping clients informed of progress, and (e) quality of individual relationships.
- 4.12. **Annual Report:** The GLD ONR Deputy Director will prepare an annual report for the ONR Head of Policy. The delivery measures reported on will be agreed between the GLD ONR Deputy Director and the ONR Head of Policy.

## **5. Finance**

- 5.1. Financial arrangements in respect of the services covered by this MOU are set out in Annex A. GLD and ONR will work together to ensure that the financial arrangements are mutually beneficial and comply with HM Treasury policy, rules and guidance. GLD charges and fees are reviewed annually and set each year to ensure that costs are fairly recovered from all clients without cross subsidy. The agreed advisory fee for ONR will be set out each year in separate correspondence from the GLD ONR Deputy Director to the Director of Policy and Communications in ONR. This means that all clients will directly and proportionately benefit from any future efficiency gains and savings achieved. The GLD ONR Deputy Director will also provide the assurance required by the ONR Accounting Officer that will allow them to discharge their responsibilities.

## **6. Organisation**

- 6.1. GLD may revise its structure and organisation to respond to levels of work and other business needs. The ONR Head of Policy will be consulted on any significant proposals affecting the service which GLD provides under this MOU.

## **7. Human Resources**

- 7.1. GLD will be responsible for the recruitment, management and training of the HSE & ONR Legal Advisers staff providing the services set out in this MOU.

## **8. Client Side Arrangements**

- 8.1. ONR's interests in this MOU will be represented by the ONR Head of Policy acting as the intelligent customer for ONR. This key part of the governance and control arrangements will ensure that service levels remain appropriate, the quality of service is monitored, that issues are addressed, and that VFM and efficiencies are delivered and appropriate savings are returned to ONR.

## **9. Escalation and dispute resolution**

- 9.1. The GLD ONR Legal Director is ultimately responsible for managing the relationship between GLD and ONR. Any complaint, difficulty or dispute should, in the first instance, be referred to the GLD ONR Deputy Director who will seek to resolve it with senior managers in ONR. If ONR are dissatisfied with the GLD ONR Deputy Director's response to any such complaint, difficulty or dispute, they may refer the matter to the GLD ONR Director to whom the GLD ONR Deputy Director reports from time to time (currently Daniel Denman), or the GLD Director General to whom the GLD ONR Director reports (currently Jessica de Mounteney) who will endeavour to resolve the matter to the satisfaction of ONR. Ultimately ONR's Chief Executive/Chief Nuclear Inspector may refer the matter to the Treasury Solicitor.

## 10. Disclosure of information

- 10.1. GLD will follow the requirements of the Energy Act 2013 and other relevant legislation with respect to the disclosure of information shared under this agreement.
- 10.2. ONR and GLD are subject to the Freedom of Information Act 2000; the Environmental Information Regulations 2004; the UK General Data Protection Regulation and the Data Protection Act 2018. Arrangements in relation to the processing of personal information are set out in Annex B.

### Signatories

**Name:** Katie Day

**Position:** Director of Policy and Communications

*(On behalf of ONR)*



Date: 20 July 2022

Signed



**Name:** Daniel Denman

**Position:** Director, DCMS/HSE/ONR Legal Advisers

*(On behalf of GLD)*

Date: 20 July 2022

## **ANNEX A**

### **Financial Arrangements**

#### **Basis of charging**

1. ONR will be charged a fixed annual fee for advisory services provided under this MOU.
2. ONR will be charged on an hourly basis for litigation services provided.
5. GLD will provide rates for hourly charged work at the beginning of each financial year and otherwise when there are changes to the previously advised rates.

#### **Setting fixed annual fees**

6. The fixed annual fee for a particular year starting 1 April will be agreed between GLD and ONR by the end of the preceding January and will be confirmed in a letter from GLD to ONR which ONR will counter-sign by way of acknowledgement.

#### **Scope of the fixed annual fee**

7. The litigation services provided under this MOU comprise all contentious matters provided by GLD Litigation Group. The cost of these services will not form part of the fixed annual fee, but will be charged at hourly rates.
8. The fixed annual fee includes the provision of all services provided by HSE & ONR Legal Advisers but excludes:
  - 8.1. The costs of all legal services procured from external firms.
  - 8.2. The costs of seeking advice from Counsel.

#### **Scope of service covered by the fixed annual fee**

9. As GLD does not aim to generate an overall surplus/deficit or profit/loss from any individual client or service line, any structural efficiency gained will automatically be reflected in the following year's fixed annual fee.
10. The fixed annual fee will also vary according to planned or anticipated changes in demand. Changes in demand will be agreed in consultation with ONR.

#### **Responding to changes in demand**

11. GLD and ONR will work together to resolve any major budget issues arising from a significant in-year unplanned change in demand for legal advisory services. In principle, it is expected that if there is a significant:
  - 11.1. increase in demand: this will be accommodated within the original fixed annual fee, unless GLD is set materially to under-recover its costs for ONR advisory work and will also under-recover its costs from fixed fee advisory work in general.
  - 11.2. decrease in demand: the fixed annual fee will not be reduced, but the change in demand will feed into the following year's fixed annual fee.

12. If the increase in unplanned demand cannot be met through the provisions of paragraph 10.1, GLD will either work with ONR to reprioritise legal work or ONR will need to make additional funding available.
13. Without prejudice to paragraph 11.2, ONR may at any time approach GLD to identify how the legal fee could be reduced in-year where a significant decrease in demand occurs (i.e. >10% of staff time in a given quarter). Factors that will determine how much the fee can be reduced by will include: any forecast over-recovery for both fixed fee advisory work provided to ONR and fixed fee advisory work in general; GLD's ability to reduce the scope of the legal services being delivered under this MOU; and the ability and speed with which surplus staff can be redeployed.

### **Invoicing arrangements**

14. Services charged on an hourly basis will be invoiced monthly in arrears.
15. Fixed annual fees will be invoiced in four equal amounts quarterly in advance.
16. Third party legal costs that fall outside the fixed annual fee, and which do not relate to litigation services provided by GLD, are expected to be invoiced by the supplier to ONR and settled direct.

## **ANNEX B**

### **GDPR Article 26 – Joint Data Controller Declaration**

#### **Purpose**

1. The purpose of this annex is to explain the respective roles that ONR and GLD will play in managing the processing of personal data associated with the provision of legal services. ONR and GLD are considered joint controllers of the data collected, as both parties (independently) determine the means and purpose of processing personal data as part of the functions defined in this broader MoU.

#### **Data Protection**

2. ONR and GLD will comply with all relevant provisions of the Data Protection Act 2018 (and with both the UK General Data Protection Regulation (UK GDPR) and the EU General Data Protection Regulation). ONR and GLD will act as joint data controllers, in respect of any personal data pursuant to this MoU; they will only process such personal data to the extent defined in the relevant regulatory framework.
3. Neither ONR nor GLD will transfer any personal data they are processing outside of the UK, unless appropriate legal safeguards are in place, such as the International Data Transfer Agreement (IDTA) or Addendum.
4. ONR and GLD will ensure that they have appropriate technical and organisational procedures in place to protect any personal data they are processing. This includes any unauthorised or unlawful processing, and against any accidental disclosure, loss, destruction or damage. ONR will promptly inform GLD, and vice versa, of any unauthorised or unlawful processing, accidental disclosure, loss, destruction or damage to any such personal data. Both parties will also take reasonable steps to ensure the suitability of their staff who have access to such personal data.

#### **Specific Responsibilities**

5. ONR has the following specific responsibilities:
  - i. Carrying out any required Data Protection Impact Assessment for any element of business or process change.
  - ii. Following ONR Data Security Guidance to ensure that the necessary measures are taken to protect personal data.
  - iii. Ensuring ONR staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
  - iv. Ensuring ONR staff have appropriate security clearance to handle personal information collected as part of these processes.
  - v. The secure transfer of personal data to GLD where necessary for the fulfilment of GLD functions.



- vi. Responding to Subject Rights Requests, in accordance with approved processes, when and where required.
  - vii. Reporting any data breaches within ONR to the Data Protection Officer and the Information Commissioner's Office (where appropriate).
  - viii. Maintaining any Article 30 processing records for data held on ONR systems.
6. GLD has the following specific responsibilities:
- i. Carrying out any required Data Protection Impact Assessment for any element of business or process change.
  - ii. Following GLD Data Security Guidance to ensure that the necessary measures are taken to protect personal data.
  - iii. Ensuring GLD staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
  - iv. Ensuring GLD staff have appropriate security clearance to handle personal information collected as part of these processes.
  - v. The secure transfer of personal data to ONR where necessary for the fulfilment of ONR's regulatory functions.
  - vi. Responding to Subject Rights Requests, in accordance with approved processes, when and where required.
  - vii. Reporting any data breaches to the Data Protection Officer and the Information Commissioner's Office (where appropriate).
  - viii. Maintaining any Article 30 GDPR processing records for data held on GLD systems.

### **Individual Rights**

- 7. GDPR specifies rights for individuals in regard to the processing of their data. These rights, and the process an individual should follow when making a request, are listed in both ONR and GLD privacy notices. Both parties should ensure they consult and comply fully with their respective data protection policies in the event of a Data Subject seeking to exercise any of their rights under data protection legislation.
- 8. In response to any Subject Rights Request, ONR and/or GLD will undertake a proportionate and reasonable search and respond within one month of the original request.

### **Data Breach**

- 9. ONR is responsible for reporting any breach occurring within its authority to its Data Protection Officer and the ICO (where appropriate). ONR will also inform GLD of the breach if there is any direct impact on their staff or wider interest.
- 10. GLD is responsible for reporting any data breaches within its authority to its Data Protection Officer and the ICO (where appropriate), as well as to ONR if there is any direct impact on their staff or wider interests.

11. Any personal data breach, as defined by GDPR Article 4(12), that meets the relevant threshold criteria, as defined by GDPR Article 33(1), will be reported to the Information Commissioner's Office (ICO) within 72 hours of notification. If necessary, the affected data subject(s) will be informed of the personal data breach, as defined by GDPR Article 34(1). The appropriate Data Protection Officer (see below) will be responsible for making the report, following consultation with their respective Chief Information Security Officer.
12. If financial penalties are imposed by the Information Commissioner on a party in relation to any data processed under this agreement and if in the view of the Information Commissioner, one party is responsible for the imposition of those penalties, the party deemed responsible shall be responsible for the payment of the penalties imposed.
13. If the Information Commissioner expresses no view as to responsibility, then each party shall bear responsibility for half of the penalty imposed.
14. If either GLD or ONR are the defendant in a legal claim before a court of competent jurisdiction by a third party in respect of data processed under this agreement, then the party determined by the final decision of the court to be responsible for the damage shall be liable for the losses arising from such damage. Where both parties are liable, the liability will be apportioned between the parties in accordance with the decision of the court. If the court does not apportion liability between the parties then each party shall bear responsibility for half of the penalty imposed, unless it can prove to the other party that it is not in any way responsible for the event giving rise to the damage.
15. The provisions of this clause do not prevent the parties coming to a mutual agreement as to the apportionment of financial responsibility for any losses, cost claims or expenses arising from the processing of data under this agreement.

### **Data retention**

16. ONR and GLD will retain only adequate, relevant and necessary personal data. Each party is responsible for ensuring appropriate technical and procedural functions are in place to ensure the secure and timely destruction of personal data in line with their respective organisational policies.

### **Information Disclosure**

17. Either party to this MoU may receive a request for information from a member of the public or any other person under relevant information disclosure legislation.
18. *For requests under the Environmental Information Regulation 2004 (EIRs) and Freedom of Information Act 2000 (FOIA) only*

The party receiving any request for information is ultimately responsible for making the final decision on disclosure. All requests for information will be considered on a case-by-case basis, and all resulting disclosures must be lawful. The default position for both parties is to disclose unless one or more absolute exemptions (as defined by the appropriate legislation) apply to a specific request. Where the party receiving the request wishes to apply a qualified exemption (as defined by the appropriate legislation) to all or part of the request, they must ensure this is validated by a documented public interest test.

19. If a party receives a request for information that has been supplied by the other party (“the information supplier”), the party that has received the request for information will consult the information supplier as early as possible and before any information is disclosed in response to the request to enable sufficient time for the views of the information supplier, including any objections to disclosure, to be taken into account when determining whether the information is to be disclosed or withheld.
20. If a party receives a request for information that it holds and knows or believes the information is held by the other party, the party that received the request will consult the other party as early as possible and before any information is disclosed in response to the request. The purpose of this consultation is to ensure that the party that received the request is able to share any concerns about information that might be disclosed to the requester, that the party holding the information is able to take those concerns fully into account in its decision-making, and that the parties can co-ordinate their handling of requests.

### Data Protection Officers

The contact details of the Joint Controller Data Protection Officers are:

ONR	GLD
Charlotte Cooper Data Protection Officer Office for Nuclear Regulation Redgrave Court Merton Road, Bootle L20 7HS Email: <a href="mailto:Dataprotection@onr.gov.uk">Dataprotection@onr.gov.uk</a>	Karim Hussain Head of Information Rights & DPO Government Legal Department 102 Petty France London SW1H 9GL Email: <a href="mailto:Karim.hussain@governmentlegal.gov.uk">Karim.hussain@governmentlegal.gov.uk</a>