

THIS AGREEMENT is made on 3 April 2017.

BETWEEN:-

- (1) **THE SECRETARY OF STATE FOR EDUCATION** whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "**Department**"); and
- (2) **BURGES SALMON LLP** (No: OC307212) whose registered office is situated at 1 Glass Wharf, Bristol, BS2 0ZX ("**Contractor**").

RECITALS:-

- (A) The Department and the Contractor entered into a contract for the provision of legal services to support the creation of Sandwell Children's Services Trust dated 27 January ("**Original Contract**") for the purposes of providing legal advice and a full range of corporate, commercial and related legal services to help setting up the children's services Trust.
- (B) The Department and the Contractor have agreed to vary the terms of the Original Contract as set out in this Agreement.
- (C) The Department's reference number for this Variation Agreement is 01.

IT IS AGREED as follows:-

1. CONSIDERATION

In consideration of each of the parties entering into this Agreement (such consideration being agreed by the parties to be good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and agreed), the parties have agreed to vary the Original Contract in accordance with Clause 16.2.

2. VARIATION OF THE ORIGINAL CONTRACT

- 2.1 The parties agree with effect from the date of this Agreement the Original Contract shall be varied as set out in Annex 1 attached.
- 2.2 Subject to the variations set out in Annex 1, the Original Contract shall continue in full force and effect in all respects.
- 2.3 In addition to the amendments set out in Annex 1, the Original Contract shall be construed and interpreted with such further consequential amendments as are necessary to give effect to the amendments set out in Annex 1 of this Agreement, as if such further amendments were also expressly set out in Annex 1.
- 2.4 Except as provided in Clause 2.3 and Annex 1, the parties agree that no other liabilities, financial or otherwise, shall accrue to the Department because of this Variation Agreement.

3. SEVERABILITY

The provisions of this Agreement are intended by the parties to be severable in the event that any part of it is held to be illegal or unenforceable (in whole or in part) and such part shall not affect the validity and enforceability of the remaining provisions or the remainder of the affected provision under this Agreement.

4. AUTHORITY AND COSTS

Each party undertakes that it has full power and authority to enter into and shall be responsible for its own costs arising in relation to this Agreement.

5. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

5.1 Subject to Clause 5.2 below, this Agreement is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person who is not a party to this Agreement. Accordingly, the parties confirm that no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

5.2 It is the intention of the parties that any other department, officer or agency of the Crown, may as required from time to time act as the Department's agent in enforcing the Department's rights under this Agreement.

6. GOVERNING LAW AND JURISDICTION

The parties agree that this Agreement and any dispute arising under or in any way connected with the subject matter of this Agreement (whether of a contractual or tortious nature or otherwise) shall be governed by and construed in accordance with the laws of England, and the parties submit to the jurisdiction of the English Courts.

EXECUTED by the parties on the first date in this Agreement.

**Authorised to sign for and on behalf of
the Department of Education**

Signature



Date

26.4.17

Name in Capitals

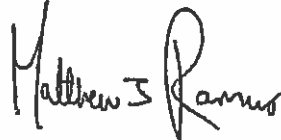
SUZANNE LUNN

Address in full

As above

**Authorised to sign for and on behalf of
Borges Salmon LLP**

Signature



Date

25.4.17

Name in Capitals

MATTHEW RAMUS
(PARTNER)

Address in full

As above.

ANNEX 1

VARIATIONS TO ORIGINAL CONTRACT

All references to Clauses in this Annex 1 are to Clauses in the Original Contract.

1. Clause 12.1 shall be amended in its entirety to read:

The Department shall pay the supplier at the fixed price of £238,250.00 (excluding VAT) from the period of 3 April 2017 to 31 October 2017 as set out in the service description (see Appendices 3 and 4).

Where the Contractor has been asked to undertake tasks that were not specified in the original contract, there will be a call off element for the contractor to charge a fixed hourly or daily rate after 31 October 2017, which has been agreed between the Department and the Contractor with the following rates:

Grade	Hourly rate	Daily rate
Partner	£275	£2,360
Senior Solicitor (5+ PQE)	£245	£2,120
Solicitor (2 – 5 PQE)	£200	£1,760

All work invoked in the call off will need to be evidenced by the Contractor, and agreed by the Department.

The Department has capped the number of days in the call off period to 10 working days.

2. Clause 18.1.1.1 shall be amended in its entirety to read:

The Contractor shall fully indemnify and keep indemnified the Department on demand in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the supply, purported supply or late supply of the Contract Services or the performance or non-performance by the Contractor of its obligations under the Framework Agreement and the Client's financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused by any act or omission of the Contractor.

For the avoidance of doubt, the Contractor's total liability to the Department under or in connection with this Agreement shall be limited to £10,000,000 (£10 million).

1 TAX INDEMNITY

- 1.1** Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 1.2** Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the

Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

- 1.3** The Department may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with Clauses 1.1 and 1.2 above or why those Clauses do not apply to it.
- 1.4** A request under Clause 1.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 1.5** The Department may terminate this contract if-

 - (a) in the case of a request mentioned in Clause 1.3 above if the Contractor:

 - (i) fails to provide information in response to the request within a reasonable time, or
 - (ii) provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 1.1 and 1.2 above or why those Clauses do not apply to it;
 - (b) in the case of a request mentioned in Clause 1.4 above, the Contractor fails to provide the specified information within the specified period, or
 - (c) it receives information which demonstrates that, at any time when Clauses 1.1 and 1.2 apply, the Contractor is not complying with those Clauses.
- 1.6** The Department may supply any information which it receives under Clause 1.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 1.7** The Contractor warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.
- 1.8** The Contractor will account to the appropriate authorities for any income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.
- 1.9** The Contractor shall indemnify Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim.
- 1.10** The Contractor authorises the Department to provide the HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this

Contract whether or not Department is obliged as a matter of law to comply with such request.

