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Department
for Education

Department for Education
Sanctuary Buildings
London
SW1P 3BT

Tel: 0370 000 2288
www.gov.uk/dfes

27 January 2017

To whom it may concern,

Contract for the provision of legal services to support the creation of Sandwell Children's Services Trust, by Burges Salmon LLP as Contractor to The Department for Education as Client pursuant to the Legal Services Framework Agreement (RM 919) dated 27 January 2017 between the Minister for the Cabinet Office acting through Government Procurement Service as the Authority (1) and the Contractor as the Supplier (2).

1. We refer to the above Legal Services Framework Agreement (the "Framework Agreement"). For the purposes of this Letter of Appointment:
 - capitalised terms and expressions used in this Letter of Appointment have the same meanings given to them in or pursuant to the Call-Off Terms attached to this Letter of Appointment unless the context otherwise requires;
 - references to Appendices are references to the appendices to this Letter of Appointment; and
 - the Appendices shall form part of this Letter of Appointment.
2. This Letter of Appointment constitutes an Order for the provision by you to us of the Contract Services specified in Appendix 1 on the basis of the Contract Charges set out in Appendix 2 in accordance with the Call-Off Terms, as detailed in the schedules to the contract.
3. The contract period shall be from 30 January 2017 to 2 April 2017.
4. We are not capping the contract for the avoidance of doubt the charges of the engagement shall not exceed those represented in Schedule 2 of the contract.
5. The services provided will be delivered in accordance with service description document in Annex A.
6. an element of this tender is a call off contract and as such the Contracting Authority cannot guarantee volumes of work for this element.
7. For the purposes of the Contract, the address of each Party is:
 - for the Client:

The Department for Education Sanctuary Building Great Smith Street London SW1P 3BT

For the attention of: Suzanne Lunn

Tel: 02073407457

Email: Suzanne.LUNN@education.gov.uk

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for the Contractor:

Burges Salmon LLP

One Glass Wharf Bristol BS20ZX

For the attention of: Matthew Ramus

Tel: 0117 902 7183

Email: Matthew.Ramus@burges-salmon.com

Please would you sign and return the attached duplicate of this Letter of Appointment with the acknowledgement signed by a partner of your firm.

You should be aware that by signing and returning this Letter of Appointment you will have entered into a legally binding contract with us to supply the Contract Services specified in Appendix 1 and represent and warrant that you have carried out a conflict check in relation to such contract that revealed no conflicts of interest.

Yours faithfully



For and on behalf of Department for Education

I hereby confirm receipt of the above Letter of Appointment and the agreement of Burges Salmon LLP to provide to The Department for Education the Services as specified in the Letter of Appointment in accordance with its terms.

Signed: Matthew Ramus

Date: 30-1-17

Name: MATTHEW RAMUS

Status: PARTNER

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**Appendix 1
(Contract Services)**

1. INTRODUCTION

- 1.1 Secretary of State for Education has decided that the most effective and appropriate way of ensuring high-quality services for children, young people and their families in Sandwell is to establish a new independent organisation – a Trust – to deliver children’s social care functions on behalf of Sandwell Metropolitan Borough Council (“the Council”). Sandwell Metropolitan Borough Council has a long history of failing to provide children, young people and their families with an acceptable standard of service. Initially rated as ‘inadequate’ by Ofsted in January 2010, the authority has repeatedly failed to make and sustain the necessary improvements. After the latest ‘inadequate’ Ofsted rating (5 June 2015), the Minister appointed Malcolm Newsam to examine the Council’s capability and capacity to improve with the aim of providing a recommendation as to what arrangements would secure and sustain the required improvements. The Secretary of State for Education has entered into a Memorandum of Understanding with the Council to set out the model for the Trust, and roles and responsibilities in establishing it. Legal services are required to support the establishment of the Trust.

2. PURPOSE

- 2.1. To transform children's social care in Sandwell by establishing the Trust as an effective, independent organisation.
- 2.2. The Trust should exist in ‘shadow form’ by 30 September 2017 will include being incorporated and having a Chair appointed, to enable it to prepare to commence delivery of children’s social care functions in accordance with the project timetable.
- 2.3. The Trust should be fully operational as soon as reasonably possible after 30 September 2017. This will include all agreed children’s social care functions being delivered by the Trust.

3. BACKGROUND TO THE AUTHORITY

- 3.1. The Interventions Unit is part of the wider Children’s Social Care policy division at the Department for Education. We work with local authorities that have been judged by Ofsted to have ‘inadequate’ children’s services, and help to secure their improvement.
- 3.2. In cases of longstanding or deep-rooted failure, Ministers have taken a different approach and used their powers – under section 497A of the Education Act 1996, as applied by s.50 of the Children Act 2004 – to direct whatever action they deem necessary and expedient to secure the required improvements
- 3.3. Children’s Services Trusts have been established under statutory direction in Doncaster and Slough. In Sunderland and Birmingham, local authorities are working on a voluntary basis to set up Children’s Services Trusts to deliver children’s social care services, and now the Sandwell Trust will be established on a statutory basis.

4. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT

- 4.1. In March 2010 the Secretary of State issued an improvement notice to the Council for the purpose of securing 'adequate' performance of children's services. The improvement notice followed an 'inadequate' rating in the January 2010 safeguarding and looked after children inspection. In October 2013 the Secretary of State issued a statutory direction to the council following 'inadequate' inspection reports for child protection and looked after children in 2013. In July 2014 a second statutory direction was issued as the Secretary of State considered that the service remained 'inadequate'. The action taken did not, however, result in service improvement to an adequate standard.
- 4.2. The Council was found to be 'inadequate' as detailed in Ofsted's inspection report of 5 June 2015. The Secretary of State carefully considered the 2015 Ofsted report and the findings of the independent diagnostic report conducted by the appointed Commissioner, Malcolm Newsam. Both reports found that the Council's delivery of children's services, particularly in relation to child protection, continue to be 'inadequate'.
- 4.3. The Secretary of State for Education has therefore agreed to the establishment of an independent Trust to transform children's social care in Sandwell. The Secretary of State for Education has appointed Malcolm Newsam as Commissioner for Children's Social Care in Sandwell, to oversee the establishment of the Trust, and ensure ongoing improvement. A Direction was issued on 7 January 2016 and is available here:
<https://www.gov.uk/government/publications/direction-issued-to-sandwell-metropolitan-council>
- 4.4. The Trust will be an autonomous organisation, independent of the Council. The services agreement between the Council and the Trust will govern their relationship; the Secretary of State for Education will have third party consent rights. The services agreement will operate alongside a Direction issued pursuant to s.497A(4) of the Education Act 1996 to secure the performance of children's social care functions by the Trust on behalf of the Council.
- 4.5. The Trust will be responsible for, and have control over, its own finances, recruitment, human resource arrangements and property requirements and will have responsibility for the day to day delivery of children's social care services on behalf of the Council.
- 4.6. The Trust will be governed by a Trust Board comprising a Chair appointed by the Secretary of State, Non-Executive Directors, a Chief Executive and Executive Directors. The Chief Executive will be appointed by a Trust appointments panel comprising the Commissioner, the Chair, the Council and the DfE.

5. SCOPE OF REQUIREMENTS

The Supplier will provide legal advice and a full range of corporate, commercial and related legal services, as indicated by the following summary:

5.1. Project Objectives

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- The purpose of the project is to establish a new, operationally-independent Trust to deliver effective children's services for children and families in Sandwell.
- The trust to be operational as soon as is reasonably possible and no later than the end of the calendar year 2017.

Requirements for Legal Services Provider:

The legal services supplier will provide legal advice to the DfE, and act for the Trust (and as the Trust until it is created), as indicated below:

5.2. General

- To participate fully as a key partner in the project, attending key project meetings in Sandwell where needed, working closely with the DfE, the DfE's appointed commissioner for children's services, Sandwell Metropolitan Borough Council, and other partners such those that provide professional services.
- To provide legal advice to the Department for Education in relation to the set-up of a Trust in Sandwell; and
- To advise on the relevant law, draft necessary documents, negotiate and review legal corporate and commercial documents; advise on procurement risks and mitigation strategies; and advise and assist with the structuring of commercial transactions; construction of contracts, licences and other legal documents; provide legal risk assessment.

5.3 Establishing the Trust – mandatory requirement

- Advise on appropriate governance arrangements for the Trust, and on corporate law issues relating to proposed governance structure, in particular the relationship between the Council, the Trust, the Chair and the Department for Education.
- Draft incorporation documents as may be appropriate, including the Memorandum and Articles of Association, coordinating legal and other input, and advising on the appropriate provisions including those provisions that may be necessary in light of the nature of the Trust's operational business;
- Advise on and manage the company registration of the Trust;
- Advise on duties and appropriate remuneration of Directors, including training for Directors once appointed;
- Advise the Trust, once established, on corporate and constitutional matters prior to the Trust becoming fully operational, to include advising about future risks and risk minimisation particularly in light of the nature of the Trust's areas of business;

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- Advise on tax issues, including on where the Trust will be liable for VAT;
- Ensure that appropriate buildings leases are in place for the new Trust; and
- Advise on any other legal issues relevant to the setting up and the operation of the Trust.

5.4 *Drafting the Services Contract agreement – mandatory requirement*

- Work closely with the professional services provider on the negotiation of the services contract between the Council and the Trust;
- Act for the Trust (and as the Trust until it is created) in negotiations with the Council for the transfer of business systems, corporate services, etc., and to advise on and draw up and negotiate relevant contractual or service level arrangements;
- Advise on and draw-up the services agreement between the Council and the Trust, including associated and related contractual documentation, which will enable the Trust to perform children's social care functions on behalf of the Council. This task will involve liaising with, and co-ordinating input from the Department for Education, the Government Legal Department, the Trust, and the Council and its lawyers. The task will involve careful consideration of issues such as termination, step-in, the Secretary of State's third party consent rights, performance management, amongst others.
- Advise on and undertake work to enable the transfer of third party contracts to the Trust and or procurement of new ones, or the establishment of formal service agreements where appropriate.
- To ensure that appropriate buildings leases are in place for the new Trust.
- Provide for all requirements to comply and be consistent with the Safeguarding Vulnerable Groups legislation as may be necessary.

5.5 *Commencement – mandatory requirement*

- To co-ordinate with and lead other stakeholders to ensure that the Trust commences the provision of services on time and in accordance with statutory directions.

5.6 *Post-Commencement support – desirable requirement*

- To provide advice and support for up to 50 days beyond September 2017 following the commencement of provision of services of the Trust arising out of both the corporate set-up and/or the operation of the services agreement.
- Work with Professional Services partner to develop a comprehensive lessons learnt review.

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5.7 The Department for Education reserves the right to subsequently vary the contract to include additional legal services relating to the establishment and activity of the new Trust that may be required but that we are unable to specify at present. Bidders should describe how they would agree the scope and costs of any additional legal services that may be required so that the Department continued to obtain value for money.

5.8 If the Supplier receives a request for legal support that the Supplier deems to be beyond the Scope of Requirements, the Supplier must not commence work until it has discussed and agreed the request with the DfE contract manager.

6. ADDITIONAL SCOPE OF REQUIREMENTS

6.1 We may also ask the appointed supplier to meet the following employment and pensions requirements once the new Trust is incorporated. The Contracting Authority cannot guarantee levels of work with regard to these requirements and therefore envisage this will sit within the call off element of this Tender. Suppliers should bare these requirements in mind when providing their Average Hourly Rates:

6.2 TUPE and Employment

- To advise on and undertake work to enable the transfer of staff to the Trust, including acting for the Trust as receiving organisation in any TUPE discussions.
- To consider and advise on which of the Council's terms and conditions of employment are contractual and must therefore transfer to the Trust.
- To advise on all new processes that may be necessary including and not limited to HR and employment policies for the Trust, where they are not transferring directly from the Council.

6.3 Pensions

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- To advise, if necessary, on the transfer of Local Government Pensions Scheme (LGPS) arrangements to the Trust and to conduct negotiations with the LGPS administrator if necessary.
- To advise, if necessary, on pensions liabilities and negotiate responsibility for allocation of liabilities if needed.

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7. SERVICE LEVELS AND PERFORMANCE

7.1. The Authority will measure the quality of the Supplier's delivery by:

7.1.1. The Plan as at the Effective Date is set out below:

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Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Customer Responsibilities (if applicable)
<i>Preliminary Advice</i>				
Corporate structure, governance, and ownership agreed.				
<i>Establishing the Trust</i>				
Company registration with appropriate documentation in place.				
Advice on duties and appropriate remuneration of Directors, including training for Directors once appointed, provided and agreed.				
Advice on tax issues, including on where the Trust will be liable for VAT, provided and agreed.				

Advice on corporate and constitutional matters, including future risks and risk minimisation, provided and agreed.				
<i>Drafting and advising on agreements</i>				
Draft contract produced.				
Contract between the Council and the Trust is in place.				
Appropriate buildings leases are in place.				
Advice on and work to enable the transfer of third party contracts to the Trust and or procurement of new ones, or the establishment of formal service agreements where appropriate, completed.				
<i>If the additional scope requirements are to be met, the following milestones will also apply:</i>				
Staff transferred to the Trust.				

<p>Advice on which of the Council's terms and conditions of employment are contractual and must therefore transfer to the Trust provided and agreed.</p>				
<p>Advice on all new processes that may be necessary including and not limited to HR and employment policies for the Trust, where they are not transferring directly from the Council provided and agreed.</p>				
<p>Advice on the transfer of Local Government Pensions Scheme arrangements to the Trust provided and agreed.</p>				
<p>Negotiations with the LGPS administrator completed (if necessary).</p>				

Advice on pensions liabilities agreed and responsibility for allocation of liabilities negotiated (if needed).				
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7.1.2. If so required by the Customer, the Supplier shall produce a further version of the Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.

7.1.3. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

7.1.4. The Supplier shall perform its obligations so as to achieve each Milestone by the Milestone Date.

7.1.5. Changes to the Milestones shall only be made in accordance with the variation procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the variation procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

- *Payment can only be made following satisfactory delivery of pre-agreed certified products and deliverables.*
- *Before payment can be considered, each invoice must include a detailed elemental breakdown of work completed and the associated costs.*

7.1.6. To ensure the project is launched in line with the delivery plan, timely and accurate reporting will be achieved through regular progress reporting on the milestones, communications issues arising and key deliverables within the project plan. The project governance structure is yet to be determined, but this is likely to involve attendance at or input into a fortnightly Implementation Board and a monthly Project Board, with members including the Council, the DfE, the professional services supplier, and the Trust.

7.1.7. The successful bidder will be expected to have short weekly telephone conference with the contract manager (and other key partners as appropriate) to update on progress and resolve any issues arising.

8. LOCATION

- 8.1 The Services will be carried out in the Council's Offices. Due to the nature of the work, it may also be necessary for work to take place in the Suppliers' premises, and at the Department for Education in London.

9. SECURITY STANDARDS

Data Security Standards

9.1. For contracts which require the holding or processing of either personal data and/or restricted data, the successful bidder will need to assure the Department that they can comply with the following security standards. Personal Data shall have the same meaning as set out in the Data Protection Act 1998 and Restricted Data is defined as:

9.2. 'The compromise of this information or material would be likely: to cause prolonged distress for an individual citizen, or short-term distress for many citizens; to cause loss of reputation for an individual citizen or organisation; to risk to any party's personal safety; to cause financial loss or loss of earning potential to or facilitate improper gain or advantage for individuals or companies; to prejudice the investigation or facilitate the commission of crime; to breach proper undertakings to maintain the confidence of information provided by third parties; to impede the effective development or operation of government policies; to breach statutory restrictions on disclosure of information; to disadvantage Government in commercial or policy negotiations with others; to undermine the proper management of the public sector and its operations.'

9.3. Departmental security standards are:

- that laptops have full disk encryption using either a CESG CAPS approved product or alternatively a product that complies to the FIPS 140-2 or equivalent Standard
- That personal email addresses are not use for contract work
- that DfE data is segregated from non-DfE data on their own IT equipment
- that USB devices used for transferring protectively marked DfE data are encrypted to the FIPS 140-2 Standard
- that all paper data is securely protected whilst in their care
- that all paper data is securely disposed off when no longer required.

The following link details the standard expected for suppliers to meet:

<https://www.gov.uk/government/collections/government-security>

Personnel Security Standard

9.4. The successful bidder will need to assure the Department that staff supplied under the contract including its own staff and those of sub-contractors who need unsupervised access to the Department's assets including but not limited to premises, IT equipment and classified information meet the Government's Personnel Security Standard. The Department carries out Personnel Security Standard verification checks on all new employees. Contractors and consultants with a similar level of access to Departmental assets as Departmental staff must undergo the same level of checks.

9.5. The verification process consists of 4 separate checks as follows:

- Identity.
- Employment history.
- Nationality and immigration status.
- Unspent criminal records.

Identity

9.6. You should ensure that the identity of any relevant staff and sub-contractor's staff has been verified and that the evidence can be provided to the Department on request.

9.7. The Departmental process for verifying an identify is to request the following information and to check the full name and signature, date of birth and full permanent address against qualifying documents:

- Name.
- Date of birth.
- Full permanent address.
- NINO or other unique personal identifying number.
- Employers' details for the past three years.
- Qualifications and licenses.

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- Educational details and references (where appropriate).
- Permission to work in the UK (if appropriate).

9.8. Alternative arrangements can be made including the use of commercial agencies provided that the minimum requirements listed above are met.

Employment History

9.9. You should ensure that an individual's employment history has been verified and that the evidence can be provided to the Department on request.

9.10. You should verify the last 3 years' employment or academic history checking with previous employers, following up references (where required) or using a commercial CV checking service.

9.11. Ask for further references if:

- An employer's reference is not available. Get a second personal one from a person of standing in the candidate's community (e.g. a JP, medical practitioner, officer of the armed forces, teacher, lecturer, lawyer, bank manager, civil servant etc.)
- The individual has been in education full time. Get a reference from their academic institution.
- The individual has served in the Armed Forces or Civil Service. Get a reference from their service or department.

Nationality and Immigration Status

9.12. You should verify an individual's nationality and immigration status and ensure that they have a right to remain and work in the UK. Evidence must be provided to the Department on request.

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9.13. The minimum requirement for the verification security certificate is as follows:

Individuals should be asked to produce one of the following:

- A UK passport describing the person as a British citizen or citizen of the UK and colonies with the right of abode in the UK.
- A passport with a certificate of entitlement issued by the UK with the right of abode in the UK.
- A passport or ID card issued by a European Economic Area (EEA) State, or State with an agreement forming part of the Communities Treaties (e.g. Switzerland) and which describes the holder as a citizen.
- An EEA registration certificate, permanent residence document or (permanent) residence card, or EEA residence permit. (Swiss nationals are treated as EEA nationals for these purposes.)
- A passport or travel document endorsed to show they are exempt from immigration controls, with indefinite leave to enter or stay in the UK, or no time limit on the stay.
- A passport or other travel document endorsed to show that the holder has current leave to enter or remain in the UK and is permitted to take the employment in question (provided that it does not require the issue of a work permit).
- An Application Registration Card (ARC) which indicates that the holder is entitled to take employment in the UK.

9.14. Alternatively you can ask the individual to produce a document issued by a previous employer, Inland Revenue, Department for Work and Pensions' Jobcentre Plus, the Employment Service, the Training and Employment Agency (Northern Ireland) or the Northern Ireland Social Security Agency, which contains the national insurance number of the person named in the document and one of the following.

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- A full UK birth certificate which specifies the names of the holder's parents.
- A birth certificate issued in the Channel Islands, the Isle of Man or Ireland.
- A certificate of registration or naturalisation as a British citizen.
- A letter issued by the Home Office, to the holder, which indicates that the person named in it has been granted indefinite leave to enter, or remain in, the UK.
- An Immigration Status Document issued by the Home Office, to the holder, endorsed with a UK Residence Permit, which indicates that the holder has been granted indefinite leave to enter, or remain in, the UK.
- A letter issued by the Home Office, to the holder, which indicates that the person named in it has subsisting leave to enter, or remain in, the UK and is entitled to take the employment in question in the UK.
- An Immigration Status Document issued by the Home Office, to the holder, endorsed with a UK Residence Permit, which indicates that the holder has been granted leave to enter, or remain in, the UK and is entitled to take the employment in question in the UK.

Unspent Criminal Record

- 9.15. Organisations other than sole traders that are awarded contracts by the Department should obtain a CRB check on behalf of their employee and should provide a copy for the Department as it may be required to obtain a security pass to enter Departmental premises.
- 9.16. Sole traders must make a self declaration of any unspent convictions. The Department aims to check all declarations through Disclosure Scotland.

You must not supply any individual if they are:

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- On probation (in a legal sense.)
- Under a suspended prison sentence.
- Released from prison on parole.
- Still under a conditional discharge.

10. PROJECT TIMETABLE

- 10.1. The Trust is expected to exist in shadow form by May 2017. This will include being incorporated and having a Chair appointed, to enable it to prepare to commence delivery of children's social care functions in accordance with the project timetable.
- 10.2. The Trust is expected to be operational by September 2017. This will include all agreed children's social care functions being delivered by the Trust.
- 10.3. The contract will be for a period of 9 weeks from 30 January 2017 to 2 April 2017, with an option to extend from April 2017 to September 2017', in the call off element, as set out in the service description (see Appendices 3 and 4).
- 10.4. If the option to extend is required, the second phase would run from 3 April to 29 September 2017.

**Appendix 2
(Charging Structures)**

11. GENERAL PROVISIONS

- 11.1 The Framework Prices set out in this Framework Schedule 2 are the maximum that the Supplier may charge pursuant to any Call-Off Agreement. For the avoidance of doubt, the provisions of this Schedule do not stop Contracting Bodies from agreeing Charges that are lower than the Framework Prices. The agreed prices of the fixed dates are shown below.
- 11.2 The Supplier acknowledges that the Fixed Prices will not reviewed for the period of the contract.
- 11.3 The Supplier acknowledges and agrees that the Fixed Prices cannot be increased during the first Contract Years.

12. FIXED PRICES

- 12.1 The Department shall pay the supplier at the fixed price of £36,750 (excluding VAT) from the period of 30 January 2017 to 2 April 2017, with an option to extend from 3 April to 29 September 2017 in the call off element, as set out in the service description (see Appendices 3 and 4).
- 12.2 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 12.3 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term.
- 12.4 The Charges are exclusive of Value Added Tax (“VAT”) and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 12.5 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.
- 12.6 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.

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12.7 Invoices shall be submitted to faye.skelton@education.gov.uk and sscl.poinvoicepayments@dwp.gsi.gov.uk , within 30 days of the end of the relevant invoicing date. This date is 31 March 2017. An invoice is a “Valid Invoice” if it is legible and includes:

12.7.1 the date of the invoice;

12.7.2 Contractor's full name and address;

12.7.3 Contract reference number;

12.7.4 the charging period;

12.7.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);

12.7.6 days and times worked (if applicable);

12.7.7 Service Credits (if applicable); and

12.7.8 VAT if applicable.

12.8 The DFE shall not pay an invoice which is not a Valid Invoice.

12.9 The DFE intends to pay Valid Invoices within 10 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 12.9 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

12.10 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.

12.11 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE. The final invoice shall be submitted not later than 30 days after the end of the Term.

12.12 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service.

12.13 The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.

12.14 If the DFE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Contractor of the reasons for disputing the invoice. The DFE may withhold the disputed amount pending resolution of the dispute.

12.15 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with Clause 36.

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13. ADJUSTMENT OF FRAMEWORK PRICES

13.1 The Framework Prices shall only be varied:

13.1.1 due to a Specific Change in Law in relation to which the Parties agrees that a change is required to all or part of the Framework Prices;

13.1.2 where the Parties agree a reduction in all or part of the Framework Prices in accordance with paragraph 5.2; or

13.1.3 where a review of the Framework Prices is requested and agreed by the Parties, in accordance with the provisions of paragraph 6 of this Framework Schedule 2.

13.2 Every six (6) Months during the Term commencing from the Commencement Date, the Supplier shall assess the level of the Framework Prices to consider whether it is able to reduce them. Such assessments shall be carried out as at 1 May and 1 December in each Contract Year (each an "Assessment Date"). The Supplier shall notify the Authority within five (5) Working Days of the Assessment Date whether or not it is able to decrease all or some of the Framework Prices and to the extent that the Supplier is able to decrease all or some of the Framework Prices it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 6.

14. TRAVEL AND RELATED CHARGES

14.1 All train, taxi fares and hotel expenditure shall be covered within the fixed fee agreed between the department and the supplier.

15. DISBURSEMENTS

15.1 Attorney General Panel Counsel

15.1.1 The Supplier shall not place or cause to be placed any orders with third parties (including barristers) or otherwise incur liabilities in the name of the Contracting Bodies without prior written approval of the relevant Contracting Body. The Supplier shall only instruct barristers from the Attorney General's panels of counsel once written approval (including in relation to specific barrister's nomination) has been provided by the relevant Contracting Body.

15.1.2 In the event written approval is granted by the Contracting Body in accordance with 9.1.1, the Attorney General panel counsel's fees shall apply to the instructed panel counsel members.

15.2 Administrative Costs

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- 15.2.2 For the avoidance of doubt, the Fixed Price shall be all-inclusive of administrative costs associated with the scope of work, including bulk photocopying and courier charges.
- 15.2.3 The Contracting Bodies shall pay Charges only for those fee earners whom it has accepted as assigned to the supply of the Services and as identified in the Letter of Appointment (or any amendments thereof). The Supplier shall ensure that Supplier Staff attendance at meetings is kept to a minimum and as required for the delivery of the Services and for the proper performance of the relevant Call-Off Agreement.

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Appendix 3
(Supplier negotiation)

SKELTON, Faye

From: CHAPMAN, Victoria1
Sent: 27 January 2017 15:15
To: Matthew Ramus
Cc: SKELTON, Faye
Subject: RE: DfE/Sandwell - Capability Statement & Pricing Proposals

Hi Matt,

Apologies for not calling yesterday.

We are content with a 'tweaked' option two in principle, a fixed fee sum, based on the revisions you have set out in your email below.

Subject to agreement of contract, Burges Salmon is now our preferred supplier for this work. My colleague Faye will send over some draft contract documentation shortly, which, if you are content to proceed, you should sign, date, and return to us, by Monday if possible.

As you know, we have some budgetary constraints, and our intention is that the first contract runs to the end of the financial year 2016/17, as set out in the specification. We anticipate much of the detailed work to happen during the second phase, if the contract were to be renewed. I have therefore suggested profiling of contract values below:

Fixed fee for first contract from end January 2017 to 2 April 2017: £36,750 (net including disbursements but excluding vat), up to £44,100 (including vat).

Contract to include a provision to extend from 3 April 2017 to 29 September 2017, which, if renewed, would be for further £208,250.00 (net including disbursements but excluding vat), up to £249,900.00 including VAT.

Overall anticipated needs for the whole project: £245,000 (net – including disbursements but excluding vat), up to £294,000 (including vat).

It would help if you could arrange for Appendix A of the document Faye sent to you to be completed (the table), to reflect the option we have agreed. This will form the basis for the KPIs we use to manage the contract, and the contract audit trail.

For your information, Sandwell council is holding 12pm and 1pm on 8 February as a potential slot for an 'on-boarding' meeting with new suppliers. It would be great to know if Burges Salmon could be available in Sandwell on this date (subject to contracts being signed).

I am free for a call on Monday if needed – and I look forward to working with you.

Victoria Chapman
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Department
for Education

From: Matthew Ramus [mailto:Matthew.Ramus@burges-salmon.com]
Sent: 25 January 2017 15:24
To: CHAPMAN, Victoria1 <Victoria1.CHAPMAN@education.gov.uk>
Cc: SKELTON, Faye <Faye.SKELTON@education.gov.uk>
Subject: RE: DfE/Sandwell - Capability Statement & Pricing Proposals

Many thanks Victoria. Tomorrow is good for me for a call. I'll be at my desk in the morning and then on my mobile after lunch as I'm travelling over to London.

Kind regards

Matt

Matthew Ramus
Partner
Borges Salmon LLP

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Salmon**



From: CHAPMAN, Victoria1 [mailto:Victoria1.CHAPMAN@education.gov.uk]
Sent: 25 January 2017 15:06
To: Matthew Ramus
Cc: SKELTON, Faye
Subject: RE: DfE/Sandwell - Capability Statement & Pricing Proposals

Thanks Matt – I'll have a read and come back to you. What's your availability like tomorrow for a quick call?

Victoria Chapman
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Department for Education

From: Matthew Ramus [<mailto:Matthew.Ramus@burges-salmon.com>]
Sent: 25 January 2017 15:05
To: CHAPMAN, Victoria1 <Victoria1.CHAPMAN@education.gov.uk>
Cc: SKELTON, Faye <Faye.SKELTON@education.gov.uk>
Subject: RE: DfE/Sandwell - Capability Statement & Pricing Proposals

Hi Victoria,

Following your email, I've responded to each of your points below. As you will see, based on your comments, I've managed to accommodate some additional items within the Option 2 Fixed Fee proposal (i.e. the £245k plus VAT), which I hope is helpful.

Please do feel free to give me a call if you have any further queries, or should you wish to go through this in more detail.

Kind regards

Matt

Manage any light HR/TUPE/Pensions legal advice within the price

Please note that we have already assumed that "Liaising/working with TSol on the employment, TUPE and pensions matters" to ensure they are captured within the service delivery arrangements, is included within the Option 2 Fixed Fee (please see Workstream 2 – Project Management – High Level Tasks).

In addition, to support TSol, we would also be prepared to offer within the Option 2 Fixed Fee, access to our TUPE, HR and/or pensions specialists for up to 10 hours (combined) of advice during the project. If any further specialist TUPE/HR/Pensions advice is required, we would be happy to agree an additional scope of work, and associated fee options, with you.

Agree a fixed fee that covered post-project lessons learned

We would be happy to include our time involved in post-project lessons learned activities within the Option 2 Fixed Fee.

Disbursements

We would propose that:

- all administrative costs associated with our scope of work are included within the Option 2 Fixed Fee i.e. those set out at paragraph 9.2 (Administrative Costs) of Appendix B, including bulk photocopying and courier charges; and
- all train and taxi fares and hotel charges are covered by the Option 2 Fixed Fee.

Please note that to the extent any Counsel advice is required, this would be an additional third party charge. At this stage we do not anticipate any – this wasn't required in Doncaster or Slough.

Expectation that negotiations in Sandwell will be less adversarial than in Doncaster and Slough

At this stage, the DfE will obviously have a much better feel than we do in respect of Sandwell's likely approach to negotiations. Therefore, if Sandwell is going to be a more straight forward negotiation (compared to Doncaster and Slough), the Option 2 Fixed Fee would be a better option than Option 3 for the DfE.

However, please note one of the key assumptions in Option 2 is the "Council to take a reasonable and efficient approach to negotiations and negotiations are not protracted". If DfE selects Option 2 and this assumption is incorrect, we would need to revisit the Fixed Fee amount with you.

Based on our experience in Doncaster and Slough, this is a key assumption that we need to keep for Option 2. As you know, Option 3 doesn't include this assumption.

We expect much of the documentation to be more standard in nature (drawing on the Sunderland model)

I agree that we can use the corporate and service delivery documents we've designed for Doncaster, Slough and Sunderland as a base for Sandwell, and deliver cost efficiencies to the DfE on the back of our experience. We have taken this in account in our proposed fee proposals for Sandwell (i.e. Options 1, 2 and 3) – our actual time costs for Doncaster and Slough came to £409,831 and £320,524 (ex VAT) respectively. We have therefore passed on these cost efficiencies to the DfE in each of our proposed Options for Sandwell.

Reducing costs by having a core team of two (partner and solicitor) for 2.5 eight-hour days a week rather than a core team of three, and drawing down additional support from other colleagues as needed

The pricing proposals are based on an anticipated volume of work to cover the scope of work set out in the DfE's Service Description (Appendix A). Assuming the same scope of work, reducing the number of lawyers on the project would simply mean that a smaller team would have to do more work and therefore there wouldn't be any cost savings.

Please note that if DfE opt for a Fixed Fee, this is a fixed amount (subject to the assumptions), and the number and/or seniority of lawyers used to undertake the work wouldn't adjust the amount.

Option 2's scope of work and assumptions

Finally, please note that other than where varied above, our scope of work and assumptions for Option 2 would remain the same.

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From: CHAPMAN, Victoria 1 [<mailto:Victoria.1.CHAPMAN@education.gov.uk>]
Sent: 24 January 2017 10:16
To: Matthew Ramus
Cc: SKELTON, Faye
Subject: RE: DfE/Sandwell - Capability Statement & Pricing Proposals

Thanks Matt,

That would be much appreciated.

Victoria Chapman
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From: Matthew Ramus [<mailto:Matthew.Ramus@burges-salmon.com>]
Sent: 23 January 2017 17:57
To: CHAPMAN, Victoria1 <Victoria1.CHAPMAN@education.gov.uk>
Cc: SKELTON, Faye <Faye.SKELTON@education.gov.uk>
Subject: RE: DfE/Sandwell - Capability Statement & Pricing Proposals

Hi Victoria,

Many thanks for your email and the useful feedback.

I'll have a think about how we might be able to accommodate the points you raise below. If I then get back to you with a revised proposal based around Option 2 asap, does that work for you?

Many thanks.

Kind regards

Matt

Matthew Ramus
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The logo for Borges Salmon, featuring a stylized red and white graphic above the text "Borges Salmon".



From: CHAPMAN, Victoria1 [<mailto:Victoria1.CHAPMAN@education.gov.uk>]
Sent: 23 January 2017 16:17

To: Matthew Ramus
Cc: SKELTON, Faye
Subject: RE: DfE/Sandwell - Capability Statement & Pricing Proposals

Hi Matt,

I've now had an opportunity to consider this in more detail, and, following our helpful conversation on Friday, I can now see how the fixed fee option could be of benefit to the DfE in terms of giving certainty about the budget. Nevertheless, we are under increasing pressure to manage costs, and to demonstrate continuous improvement and efficiencies from previous projects – particularly as we expect, at this stage, the negotiations in Sandwell to be less adversarial than in Doncaster and Slough, and we expect much of the documentation to be more standard in nature (drawing on the Sunderland model).

I'm wondering how much scope you would have to further reduce the costs by, for example, having a core team of two (partner and solicitor) for 2.5 eight-hour days a week rather than a core team of three, and drawing down additional support from other colleagues as needed? I'd also be keen for us to manage any light HR/TUPE/Pensions legal advice within the price, unless it became clear to us that it was significant and required additional input beyond what had been delivered in previous projects.

Lastly, we'd be keen to agree a fixed fee that covered post-project lessons learned, as this tends to be a standard clause in most DfE contracts, and for it to include disbursements. I acknowledge that any un-predicted legal activity beyond the contract completion date would be out-of-scope. Any reimbursement for travel and related charges would need to be in line with the terms of the framework agreement (clause 8) and agreed in advance.

Would you be able to accommodate these asks within your option 2 (£245 net). Is there any scope to reduce any of the costs of option 2 with a smaller core team?

I can be available for a phone call tomorrow if helpful – ideally in the afternoon, but let me know what works for you.

Kind regards,

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Department
for Education

From: Matthew Ramus (<mailto:Matthew.Ramus@burges-salmon.com>)
Sent: 19 January 2017 18:46
To: CHAPMAN, Victoria1 <Victoria1.CHAPMAN@education.gov.uk>

Cc: SKELTON, Faye <Faye.SKELTON@education.gov.uk>
Subject: Re: DfE/Sandwell - Capability Statement & Pricing Proposals

Many thanks Victoria and very happy to talk through your points tomorrow morning and cover anything else you would like to discuss. I look forward to speaking then.

I hope you have a good evening.

Kind regards

Matt

Sent from my iPhone

On 19 Jan 2017, at 17:00, CHAPMAN, Victoria1 <Victoria1.CHAPMAN@education.gov.uk> wrote

Great, thanks. I'll call you tomorrow around 10am to talk this through.

The capability statement is very reassuring, and provides lots of written evidence of Burges Salmon's experience and quality. I have a few questions about assumptions around pricing, and at the moment I am erring towards a day rate model, as I believe this might be more flexible and cost-effective for us.

As you know, our intention is to break up the contract into two phases, with the initial contract running to end March, with a provision to extend to end August. Our service description sets out that:

The contract will be for a period of 10 weeks from 23 January 2017 to 31 March 2017, working for up to 2.5 days a week (up to 25 working days) with an option to extend from April 2017 to August 2017 in the call-off element

For the first phase, I did some calculations based on your fee schedule for two solicitors a day for up to 12 working days each from next week to 2 April (2.5 days a week shared between two individuals – to 2 April rather than 31 March to allow for contract continuity if we need to extend, although this includes the weekend). I've assumed rates for one senior solicitor and one solicitor. This has led me to a figure of £51,264 (gross) for phase one. Even adding a contingency of 10 per cent for additional days needed, this appears to be lower than the fixed fee options.

It would be good to discuss with you whether the assumptions I've made have omitted activity/costs that you think would be essential to the project. It would also be helpful to understand how and where VAT will be applied, and what efficiencies have been made having delivered Doncaster and Slough, given that some of the processes and documents for setting up a trust are now more developed. For example, unlike Doncaster and Slough, where project management was provided by Deloitte, we've agreed that Sandwell Council can run a project management function – therefore any activity for suppliers on project management should be minimal.

Kind regards,

Victoria

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From: Matthew Ramus [<mailto:Matthew.Ramus@burges-salmon.com>]
Sent: 19 January 2017 12:54
To: CHAPMAN, Victoria1 <Victoria1.CHAPMAN@education.gov.uk>
Subject: Re: DfE/Sandwell - Capability Statement & Pricing Proposals

Great thanks Victoria. I'm in Sunderland so will be on my mobile. 07812 568637.

I look forward to speaking then.

Kind regards

Matt

Sent from my iPhone

On 19 Jan 2017, at 11:08, CHAPMAN, Victoria1 <Victoria1.CHAPMAN@education.gov.uk> wrote:

Thanks Matt - I'll call you at 10am tomorrow. If we need a further call next week, then we can arrange it.

Kind regards,

Victoria Chapman
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From: Matthew Ramus [<mailto:Matthew.Ramus@burges-salmon.com>]
Sent: 18 January 2017 18:41
To: CHAPMAN, Victoria1 <Victoria1.CHAPMAN@education.gov.uk>; SKELTON, Faye <Faye.SKELTON@education.gov.uk>
Subject: RE: DfE/Sandwell - Capability Statement & Pricing Proposals

Thanks Victoria. I could do a call any time before 11am on Friday. I'm then in meetings for the rest of the day. If that works for you, how about 10am?

Kind regards

Matt

Matthew Ramus
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From: CHAPMAN, Victoria1 [mailto:Victoria1.CHAPMAN@education.gov.uk]
Sent: 18 January 2017 17:29
To: Matthew Ramus; SKELTON, Faye
Subject: Re: DfE/Sandwell - Capability Statement & Pricing Proposals

Thanks for this Matt. Would you be available for a call on Friday to talk through?

Victoria
Sent from my BlackBerry 10 smartphone.

From: Matthew Ramus
Sent: Tuesday, 17 January 2017 13:55
To: CHAPMAN, Victoria1; SKELTON, Faye
Subject: DfE/Sandwell - Capability Statement & Pricing Proposals

Dear Victoria, Faye,

Following my conversation with Victoria on Friday, I attach a Capability Statement and some pricing proposals for your consideration.

Once you have had a chance to go through the document, please do let me know if it would be useful to have a call (or meeting if you'd prefer) to run through the proposals. In the meantime, please feel free to give me a call should you have any questions.

Kind regards

Matt

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Appendix 4
(Capability Statement & Pricing Proposals)

We are delighted to have been asked to put forward a proposal for the provision of legal support to the Department for Education (“DfE”) in respect of the Sandwell Children’s Services intervention project (the “Project”).

Following our conversation on Friday, we set out below:

- **SECTION A** - a Capability Statement;
- **SECTION B** - three Pricing Proposals for your consideration; and
- **SECTION C** - our response to your requirements under Appendix B (Framework Schedule 2: Charging Structure) to complete the hourly rate and daily rate tables at paragraphs 2.1 and 2.3.

SECTION A - Capability Statement

We have more experience than any other law firm in the UK advising on Children's Services government intervention projects. To date, Doncaster Children's Services Trust and Slough Children's Services Trust are the only companies currently operating under this government intervention model and we advised the DfE (and the Trusts) on both. This "**Enforced**" model, involving the issuing of a Statutory Direction under the Education Act 1996, directs the local authority to delegate the delivery of its children's social care functions to the new company. Sandwell will be the third "Enforced" project of this kind.

We are also currently advising Sunderland City Council on their Children's Services Transition Project which is due to complete by 1st April 2017. Although this project is subject to intervention, a final Statutory Direction "enforcing" the transfer of children's social care services is not going to be issued. As such, this is being referred to as a "Voluntary" transition. Once complete, this will be the first of its kind in the UK, with Birmingham City Council (also under this "voluntary" intervention model) likely to complete in 2018.

We therefore have significant experience advising on Children's Services government intervention projects and with this knowledge and expertise believe we are very well placed to support the DfE on this Project. We also believe that having drafted all contractual project documentation for Doncaster, Slough and Sunderland and having advised on all relevant project issues and risks (finding solutions and proposing mitigation options, wherever appropriate) we can provide a cost effective, value for money, specialist service to the DfE.

We set out in the table below our experience advising on these Children's Services transition projects, in addition to some of our other relevant Children's Services projects experience.

Project Description

Relevance to you

Doncaster Metropolitan Borough Council - "Enforced" Children's Services Transition Project – 2014

We were appointed by the DfE to advise on the establishment of a corporate vehicle to deliver children's services on behalf of Doncaster Metropolitan Borough Council following the exercise by the Secretary of State for Education and the Secretary of State for Communities and Local Government of their powers of intervention pursuant to the Education Act 1996 and Local Government Act 1999, respectively. This was the first intervention project of its kind and we were appointed to advise both the DfE and the newly established Doncaster Children's Services Trust ("DCST") on all aspects of this project from its inception to its completion.

Corporate Structuring and Governance

Based upon the requirements of the DfE to have an appropriate level of oversight and influence in the corporate governance of DCST, we developed a bespoke corporate governance solution that best met the sometimes conflicting needs of all relevant key stakeholders. We advised the DfE and DCST on all aspects of the corporate structuring of DCST (including advice on directors' duties, conflicts of interest and conduct) and drafted and negotiated all constitutional documents with appropriate engagement with all key stakeholders.

Service Delivery Contract and Associated Documents

We drafted and negotiated the Services Delivery Contract and all associated documents (e.g. support services agreements, novation agreements in respect of third party contracts, admission agreement and pensions guarantee and real estate documents) on behalf of DCST and provided advice on all contractual/outsourcing issues; procurement issues; TUPE; pensions; tax/VAT; real estate; IPR; data transfer; insurance; and other associated project issues.

This project was completed within a very tight (9 month) timescale in September 2014.

Date of our appointment: January 2014

Date of completion of the Project: September 2014, however our services have been retained by DCST following the completion of the project to advise on ad-hoc operational matters.

Slough Borough Council Children's Services Transition Project – 2015

We were appointed to advise both the DfE and the new entity, Slough Children's Services Trust ("SCST"), on all aspects of this "Enforced" Children's Services intervention project, from its inception to completion. This was only the second time that the Secretary of State for Education used its statutory powers of intervention in this manner in this sector.

Corporate Structuring and Governance

Directly relevant for this Project. Doncaster was the first "Enforced" intervention project of this kind.

Directly relevant for this Project. Slough was the second "Enforced" intervention project of this kind.

The corporate governance solution employed in Slough was broadly similar to that used in Doncaster, in order to achieve the DfE's oversight and influence requirements. However, the solution was tailored to meet the specific needs and requirements of the SCST team and to fit with the local context.

We advised the DfE and SCST on all aspects of the corporate structuring of SCST (including advice on directors' duties, conflicts of interest and conduct) and drafted and negotiated all constitutional documents with appropriate engagement with all key stakeholders. We also held a session with the Leader of the SBC and a number of its members (including the Lead Member for Children's Services) where we obtained SBC's "buy in" on the corporate structuring.

Service Delivery Contract and Associated Documents

We drafted and negotiated the Services Delivery Contract and all associated documents (e.g. support services agreements, novation agreements in respect of third party contracts, admission agreement and pensions guarantee and real estate documents) on behalf of SCST and provided advice on all contractual/outourcing issues; procurement issues; pensions; tax/VAT; real estate; IPR; data transfer; insurance; and other associated project issues. Please note that TSol provided employment/TUPE advice and we worked closely with them on this project.

This project was completed within a very tight (9 month) timescale in September 2015.

Date of our appointment: January 2015

Date of completion of the Project: September 2015, however our services have been retained by SCST following the completion of the project to advise on ad-hoc operational matters.

Sunderland City Council Children's Services Transition Project – 2016 to date (i.e. ongoing)

We have been appointed by Sunderland City Council ("SCC") to advise on all aspects of this transition project. Although this project is subject to intervention, a final Statutory Direction "enforcing" the transfer of children's social care services is not going to be issued. As such, this is being referred to as a "voluntary" delegation. This is the first "voluntary" delegation" (as approved by the Secretary of State) of this nature in the UK – please note that Birmingham City Council is in a similar position, but this project is still in its early stages with completion likely in 2018.

From our experience in the Doncaster and Slough projects, and the good working relationship (and trust) we have developed with the DfE on those projects, we have played an integral role in effectively managing the DfE's involvement in the Sunderland project to enable SCC to carry out the necessary work required for meaningful engagement to take place.

Corporate Structuring and Governance

SCC are proposing to use a Teckal company as the vehicle through which the voluntary performance of specified children's social care and education functions will be performed. We have therefore worked with SCC to develop a corporate structure that both

Many project issues are directly relevant to this Project, particularly, for example, the need for Teckal compliance and the competing interests given the Secretary of State's requirements to retain certain rights of influence and control.

Our combined knowledge and expertise having advised on the

meets the Teckal requirements and also accommodates the DfE's oversight and influence requirements, which require a balancing of potentially competing interests.

We are advising on all aspects of the corporate structuring of the company and have drafted all constitutional documents with appropriate engagement with all key stakeholders. One of the factors in respect of the corporate governance arrangements that distinguishes the Sunderland project from that of Doncaster and Slough is that we have assisted SCC with an assessment of the risks associated with the Chief Executive of the new company also holding the statutory office of DCS, to enable SCC to assess its options in this regard.

Service Delivery Contract and Associated Documents

We have put together initial drafts of the Services Delivery Contract and all associated documents (e.g. support services agreements, novation agreements in respect of third party contracts etc.) and these are currently with all relevant key stakeholders for review and comment. We have also advised on all contractual/outsourcing issues; procurement issues; TUPE; pensions; tax/VAT; real estate; IPR; data transfer; insurance; and other associated project issues.

This project presented us with particular issues that were different to those in Doncaster and Slough and which have been driven by the local context and requirements, and the work that SCC have been doing with the Commissioner in this respect. Of particular note, we have been assisting SCC with a piece of work to assess the need for relevant Ofsted registrations pursuant to the Care Standards Act 2000 (and associated legislation) and potential ways in which this can be mitigated, within the legal framework. This requires assessment of statutory powers (and *vires*) pursuant to relevant legislation, including the Children and Young Person's Act 2008 and the assessment of legal workarounds and practical options to mitigate the requirement for additional registration and associated costs and administration. We are currently working with all key stakeholders, including the DfE and Ofsted on these matters, to develop a legal and practical solution that meets the necessary requirements of all key stakeholders.

Date of our appointment: May 2016.

Date of completion of the Project: Ongoing – project due to complete March 2017.

Devon Youth Services Public Service Mutual Project – 2016 to date (i.e. ongoing)

In June 2016, we were appointed by the Youth Services Division ("YSD") in Devon County Council ("DCC") who wanted to 'spin out' a public service mutual and submit a bid to DCC to perform its youth services on its behalf. We advised the YSD on its successful bid to DCC, and have assisted and supported them in the creation of DYS Space Limited ("Space"), a public service mutual, and are continuing to support them in the transition to 'go live' in early February.

Corporate Structuring and Governance

only two "Enforced" models in the UK and now this "Voluntary" model, means that we can provide a cost effective, value for money, specialist service to the DfE.

This project is of relevance as it demonstrates our experience of acting on other Children's Services projects and shows our current expertise and track

Space is to be a charitable company and we have advised Space on all aspects of its corporate structuring in order to achieve this and have drafted all constitutional documents with appropriate engagement with all key stakeholders. We are also assisting Space with its application to the Charity Commission for registered charity status.

Service Delivery Contract and Associated Documents

record of advising on specialist projects in this area.

We have reviewed the relevant documentation and advised Space on all contractual/outourcing issues; procurement issues; TUPE; pensions; tax; real estate; IPR; data transfer; insurance; and other associated project issues, as well as the key commercial issues associated with the project.

Date of our appointment: June 2016.

Date of completion of the Project: Expected late January 2017.

Achieving for Children – 2016 to date (i.e. ongoing)

Achieving for Children (“AFC”) is a joint Teckal company between Kingston and Richmond Councils, which delivers children’s social care and education support services back to the Councils. We have been working with Nick Whitfield (CEO of AFC) and other senior officers with their options appraisal of certain restructuring proposals.

This project demonstrates our unique expertise in children’s services restructuring and transition projects, particularly in respect of corporate governance structuring which will be relevant to this Project.

AFC is a children’s services company that was set up independently i.e. not pursuant to Secretary of State intervention. It is therefore not on “all fours” with this Project (or Sunderland, Slough or Doncaster). However, our work with AFC demonstrates our unique expertise in children’s services restructuring and transition projects, particularly in respect of corporate governance structuring and dealing with associated procurement and other issues, which will be relevant to the corporate set up and structuring of the new Trust in this Project.

SECTION B – Pricing Proposals

- In addition to our Daily Rates proposal (*please see SECTION C*) we have provided three pricing options for DfE to consider. The pricing options are based on three key work streams. These work streams are: (1) Service Delivery Contract (including third party contracts and property leases); (2) Project Management; and (3) Corporate Governance (including associated issues).
- We have based the scope of work on our experience of the Doncaster and Slough projects and have sought to identify all the tasks that we will need to undertake to support the successful completion of the project. However, as you will appreciate, there are also likely to be some tasks that we are not able to anticipate at this stage.
- The pricing proposals have also been based on our costs for the Doncaster and Slough projects, which in summary can be broken down as follows:-

Doncaster – Costs Summary					
Total Fees Billed	Actual Time Costs	Total Write Off	Total Disbursements Billed	Total Billed	
£353,880 (plus VAT)	£409,631 (plus VAT)	Please note that on the back of our agreed fixed fee arrangements with the DfE we wrote off £55,751	£7,912.78 (plus VAT)	£361,792.78 (plus VAT)	
Slough – Costs Summary					
Total Fees Billed	Actual Time Costs	Total Write Off	Total Disbursements Billed	Total Billed	
£293,125 (plus VAT)	£320,524 (plus VAT)	Please note that on the back of our agreed fixed fee arrangements with the DfE we wrote off £27,399	£2,109.36 (plus VAT)	295,234.36 (plus VAT)	

- We have taken into account lessons learnt from both Doncaster and Slough. We have also accounted for the fact that we are not providing employment/TUPE and pensions advice¹ - if DfE wishes us to support with any employment/TUPE and or pensions issues, we would be happy to provide separate pricing options for your consideration, or, alternatively, use the Hourly or Daily Rates set out in **SECTION C** on a call-off basis.
- In broad terms, the three pricing options (which would cover the period from our appointment to 1st October 2017) are:-
 - **Option 1:** Fee estimate based on our Discounted Hourly Rates (*please see SECTION C for our Discounted Hourly Rates*) and the scope of work and assumptions set out below.
 - **Option 2:** Fixed price proposal based on the same scope of work and assumptions set out below.
 - **Option 3:** Fixed price proposal which is intended to cover the scope of work set out below, but also includes: (i) disbursements; (ii) post completion "tidy-up" work; and (iii) limited assumptions.
- This **SECTION B** is divided into two parts. Part 1 – (for each work stream) Proposed Scope of Work and Associated Assumptions. Part 2 – Pricing Proposals.

¹ Our fees for employment/TUPE advice on Doncaster amounted to c.£20k (plus VAT) and our fees for pensions advice on both Doncaster and Slough amounted to c.£25k (plus VAT) for each project. Please note that TSoI provided employment/TUPE advice in Slough.

PART 1- Proposed Scope of Work and Associated Assumptions

• **WORK STREAM 1 - SERVICE DELIVERY CONTRACT (INCLUDING THIRD PARTY CONTRACTS & PROPERTY LEASES)**

SCOPE OF WORK	
High Level Tasks	Assumptions
Draft and agree "Contract Summary – Key Principles Document".	• SDC to be based on Doncaster/Slough Service Delivery Contract.
Produce first draft of Service Delivery Contract ("SDC") for negotiation with the Council.	• SDC services specification to be drafted by Council/Company, with Burges Salmon support. Burges Salmon to review, comment, revise and incorporate into SDC.
Attend negotiation meetings with the Council and Bevan Brittan and produce further iterations of SDC, as required.	• SDC performance measures/KPIs to be determined and drafted by Council/Company, with Burges Salmon support. Burges Salmon to review, comment, revise and incorporate into SDC.
Attend internal meetings with DfE and the Company to advise and to take instructions on the SDC.	• SDC financial mechanism key principles to be determined and drafted by Council/Company, with Burges Salmon support. Burges Salmon to review, comment, revise and incorporate into SDC.
Advise on all SDC associated ad-hoc issues and queries raised by DfE and the Company – e.g. responding to emails, calls etc.	• TSol to provide employment/TUPE and pensions advice (including drafting and agreeing associated SDC provisions).
Advise on third party contract/supply issues, including: (i) attending meetings; (ii) drafting template letters for in-scope suppliers and form of Novation Agreement; and (iii) advising on applicable supply arrangements with the Council.	• Council to take a reasonable and efficient approach to negotiations and negotiations are not protracted.
Advise on buildings leases: (i) agree form of lease for applicable buildings; (ii) replicate form of lease for each site; and (iii) completion of building leases.	• [Appointed third party consultant] [Burges Salmon note: we assume this will either be <i>Mutual Ventures and/or Deloitte – we have worked with both Deloitte and Mutual Ventures on Doncaster and Slough</i>] to lead the third party contract due diligence exercise. Limited negotiations with third party suppliers required.
Finalise SDC for signature.	

<ul style="list-style-type: none"> • Tax/VAT advice to be provided by third party consultant (e.g. Deloitte, PSTax). • Property lease Heads of Terms to be agreed between Council/Company; no more than two standard form "master" leases required to be replicated; due diligence title check only; all land is registered at HM Land Registry and there are no more than two registered titles per site. • SDC signature on or before 30th September 2017. 	<ul style="list-style-type: none"> • Fee estimate:- We would estimate our fees to be between: £130,000 - £150,000 (plus VAT and disbursements). However, this could be more if any of the assumptions set out above are incorrect. In particular, note the following two key assumptions: (i) the Council will take a reasonable and efficient approach to negotiations and negotiations are not protracted; and (ii) there will be limited negotiations with third party suppliers.
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• **WORK STREAM 2 - Project Management**

SCOPE OF WORK	
<u>High Level Tasks</u>	<u>Assumptions</u>
Weekly checkpoint calls and status reports, including prep and follow-up work.	<ul style="list-style-type: none"> • Attending x8 Steering Group meetings.
Attending Project and Steering Group meetings in Sandwell, including prep and follow-up work.	<ul style="list-style-type: none"> • Attending x16 Project meetings.
Supporting appointed third party consultant (e.g. Deloitte, Mutual Ventures) with various project queries, timetabling etc.	<ul style="list-style-type: none"> • Attending x5 ad-hoc meetings with DfE.
Supporting DfE with stakeholder governance.	
Supporting DfE with the Direction and its interplay with the SDC.	
Liaising/working with TSol on the employment, TUPE and pensions matters.	
Attending ad-hoc meetings with DfE (in London) to discuss project issues, status and progress.	
Day-to-day project management of the legal work-streams, including working closely with appointed third party consultant (e.g. Deloitte, Mutual Ventures).	
Advising on ad-hoc queries associated with the project, e.g. the requirement for Ofsted registration in respect of the delivery of adoption and fostering agency functions, the DCS/CEO interplay.	
<ul style="list-style-type: none"> • Fee estimate:- 	
We would estimate our fees to be between: £40,000 - £50,000 (c£6,000 per month, over 8 months) (plus VAT & disbursements).	

• **WORK STREAM 3 - Corporate Governance (including associated Issues)**

SCOPE OF WORK	
<u>High Level Tasks</u>	<u>Assumptions</u>
Advising on corporate law issues related to proposed governance structure.	<ul style="list-style-type: none"> • Limited negotiation with the Council or its advisers on the corporate governance documents. • Director training session to be circa 2 hours (Sandwell).
Drafting incorporation documents to implement agreed corporate governance structure.	
Drafting board minutes, members' resolutions and attend initial board meeting in Sandwell.	
Advice paper setting out directors' duties, conduct matters and guidance on governance model. Training session for directors once appointed.	
Advice regarding any procurement risks and mitigation strategies based on governance structures.	
Support with implementation of procurement strategy and ongoing ad-hoc procurement law advice.	
<ul style="list-style-type: none"> • Fee estimate:- 	
We would estimate our fees to be between: £25,000 - £35,000 (plus VAT & disbursements).	

PART 2 – Pricing Proposals

Option 1 – Discounted Hourly Rates	
Fee estimate	
£195,000 - £235,000 (plus VAT and disbursements)	
Key points to note:	
<p>With this option we simply charge for our time based on the Discounted Hourly Rates (<i>please see SECTION C</i>).</p> <p>The fee estimate is based on the scope of work and assumptions set out above.</p> <p>If any of the assumptions prove to be invalid e.g. negotiations with Sandwell are protracted (as was the case in both Doncaster and Slough) our time cost efficiencies could be eroded by time costs spent working to the negotiation timetable demanded by Sandwell and its advisers. Therefore, from our experience on Doncaster and Slough (please see summary of fees above) and taking into account as part of the estimate that we would not be providing employment/TUPE or pensions advice, our fees could be more and in the region of £290,000 (plus VAT and disbursements).</p>	
Advantages	<p>With this option DfE only pays for time on the clock. For example, if our actual time on the clock came to £200,000 that is what would be charged.</p> <p>We would report monthly on tasks undertaken against the agreed scope of work and fees incurred.</p>
Disadvantages	<p>However, this is just a fee estimate and you do not get any price certainty. If our time exceeded the estimate then DfE would pay for actual time incurred e.g. if time incurred amounted to £290,000 that is what would be charged.</p> <p>Therefore, you take the price risk.</p>

Option 2 - Fixed price based on scope of work and assumptions set out above	
Fixed fee	
	£245,000 (plus VAT and disbursements)
Key points to note:-	
	<p>With this option we charge the same fees irrespective of whether our time on the clock is more or less than the fixed price of £245,000 (plus VAT and disbursements) for the above scope of work.</p> <p>As a result, and in contrast to Option 1, the price risk under Option 2 for the agreed scope of work sits firmly with us, albeit with a potential benefit if our time on the clock comes in for less than £245,000 (plus VAT and disbursements).</p> <p>This fixed fee of £245,000 (plus VAT and disbursements) would not cover any additional work beyond the scope of work and the assumptions made above.</p>
Advantages	With this option, DfE gets price certainty for this scope of work. We take pricing risk if our fees exceed the fixed fee.
Disadvantages	<p>As we are taking the price risk should our fees exceed this amount for the agreed scope of work, we benefit from the upside if our costs come in below this amount.</p> <p>Also, if you require us to undertake further tasks (i.e. in addition to those set out above) then this would incur additional charges. The scope of the additional work would be agreed before being undertaken with fees being on either our Discounted Hourly or Daily Rates (<i>please see SECTION C</i>) or via a separately agreed fixed fee arrangement.</p> <p>The fixed fee is subject to the assumptions set out above and if any of the assumptions are incorrect we reserve the right to discuss this with you and revisit this fixed fee option.</p> <p>This will not include any post completion "tidy-up" work.</p>
Proposed Billing Arrangements	As discussed, we understand that to fit within DfE's financial year it would be useful to agree fees up to 31 st March 2017, and then from 1 st April to 30 th September. To keep it simple, if DfE wished to go ahead with this Option 2, we would suggest dividing the fixed fee into 8 equal instalments, payable monthly in arrears i.e. £30,625 (plus VAT and disbursements) per month. That way, DfE could budget for £61,250 (plus VAT and disbursements) for the period up to 31 st March, and then £183,750 (plus VAT and disbursements) for the period 1 st April to 30 th September.

<p>Option 3 - Fixed price, including: (i) disbursements; (ii) the scope of work set out above; (iv) limited assumptions; and (v) post completion "tidy-up" work.</p>
<p>Fixed fee</p>
<p>£275,000 (plus VAT)</p>
<p>Key points to note:-</p>
<p>Disbursements</p> <p>With Option 3 we would include disbursements for this period. On Doncaster, for example, disbursements incurred amounted to c£8,000 (plus VAT).</p> <p>Limited assumptions</p> <p>With Option 3 for the fixed fee of £275,000 (plus VAT) we would include within the scope of work all negotiation with the Council and any third party suppliers regardless of whether they are reasonable or become protracted. We would also remove the limits on project management meetings detailed in the assumptions for Work Stream 2.</p> <p>This means that there would be no additional fees should the key assumptions in respect of the negotiations prove to be incorrect or if further project management meetings are required. Therefore, for the Option 3 fixed fee of £275,000 (plus VAT) we would remove the following key assumptions:</p> <ul style="list-style-type: none"> (i) the Council will take a reasonable and efficient approach to negotiations and negotiations are not protracted (as detailed in Work Stream 1); (ii) there will be limited negotiations with third party suppliers (as detailed in Work Stream 1); and (iii) all project management assumptions (as detailed in Work Stream 2). <p>All other work stream assumptions would remain.</p> <p>Post completion "tidy-up" work</p> <p>We will undertake any post completion "tidy-up" work required and connected with the set-up of the Company (e.g. it wouldn't cover work connected with the operational running of the Company) for a period of 1 month post "go-live". In respect of Doncaster, for example, the time on the clock for "tidy-up" work amounted to c£6,000 (plus VAT).</p>

Advantages	<p>The key advantages with Option 3 over Option 2 are that:</p> <ul style="list-style-type: none"> (i) we take the risk on the two key assumptions in respect of protracted negotiations, as referred to above; (ii) we take the risk of further project management meetings being required; (iii) disbursements are included; (iv) post completion "tidy-up" work is included; and (v) DfE gets further price certainty. <p>We therefore take considerably more of the pricing risk.</p>
Disadvantages	<p>However, as above, with this Option if our time on the clock comes in below this amount, we will still charge the agreed fixed fee.</p> <p>Please also note that this fixed fee is still subject to the other assumptions set out above and if any of the assumptions are incorrect we reserve the right to discuss this with you and revisit this fixed fee option.</p>
Proposed Billing Arrangements	<p>As with Option 2, we understand that to fit within DfE's financial year it would be useful to agree fees up to 31st March 2017, and then from 1st April onwards. If DfE wished to go ahead with this Option 3, we would suggest dividing the fixed fee into 9 instalments (this takes into account the 1 month period for post completion tidy-up work), payable monthly in arrears. We would propose £30,000 (plus VAT) per month for eight months, and £35,000 (plus VAT) for the final month. That way, DfE could budget for £60,000 (plus VAT) for the period up to 31st March, and then £215,000 (plus VAT) for the period 1st April to 1st November (again, taking into account the 1 month period for post completion tidy-up work).</p>

SECTION C - Our response to your requirements under Appendix B (Framework Schedule 2: Charging Structure) to complete the Hourly Rate and Daily Rate tables at paragraphs 2.1 and 2.3

Hourly Rates Table (i.e. our response to 2.1)

Please note that our hourly rates do not differentiate between specialist areas. We have one hourly rate per grade of lawyer, irrespective of the type of work we are undertaking.

GRADE	CCS Lot 8 (Major or Complex Projects) Hourly Rates (ex. VAT)	Discounted Lot 8 Hourly Rates for Sandwell Children's Services Project (ex. VAT)
Partner	£295	£275
Senior Solicitor (5+ PQE)	£265	£245
Solicitor (2 – 5 PQE)	£220	£200
Junior Solicitor (0-2 PQE)	£170	£150
Trainee	£60	£60
Paralegal	£45	£45

Daily Rates Table (i.e. our response to 2.3)

GRADE	Daily Rates for Sandwell Children's Services Project (ex. VAT) - based on an 8 hour working day
	<p>Key Assumption – If the DfE wishes to use Daily Rates, our proposal is that these Daily Rates will apply for work undertaken between 7 and 9 hours in a day. Our CCS Lot 8 Hourly Rates (please see above) would apply for work below 7 hours and, in addition to the Daily Rate, above 9 hours. For example:</p> <ul style="list-style-type: none"> • If a Solicitor works for 6 hours in a day, we would charge £220 x 6 = £1,320 (plus VAT). • If a Solicitor works for between 7 and 9 hours in a day, we would charge £1,760 (plus VAT) i.e. the Daily Rate below.

• If a Solicitor works for 10 hours in a day, we would charge £1,760 (i.e. the Daily Rate for the first 9 hours) + £220 (i.e. the CCS Lot 8 Hourly Rate for the tenth hour) = £1,980 (plus VAT).

Partner	£2,360
Senior Solicitor (5+ PQE)	£2,120
Solicitor (2 – 5 PQE)	£1,760
Junior Solicitor (0-2 PQE)	£1,360
Trainee	£480
Paralegal	£360

15.2.4

DEFINITIONS AND INTERPRETATION**Definitions**

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

"Client"	means the Contracting Body that issues the Letter of Appointment;
"Client's Confidential Information"	means all Client's Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Client, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Client's Personal Data"	means the Personal Data supplied by the Client to the Contractor and, for the purposes of or in connection with the Contract;
"Client's Representative"	means the representative of the Client appointed by the Client from time to time in relation to the Contract and notified to the Contractor;
"Confidential Information"	means the Client's Confidential Information and/or the Contractor's Confidential Information;
"Contract"	means the written agreement between the Client and the Contractor consisting of the Letter of Appointment, these Call-Off Terms (save to the extent varied by the Letter of Appointment) and any other documents referred to in either of them;
"Contract Charges"	means the prices (exclusive of any applicable VAT), payable to the Contractor by the Client under the Contract for the full and proper performance by the Contractor of the Contract Services;
"Contract Mediator"	has the meaning set out in Clause 23.2.5.1;

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"Contract Services"	means the Services to be supplied by the Contractor to the Client as set out in the Letter of Appointment;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998;
"Framework Agreement"	means the framework agreement between the Authority and the Contractor referred to in the Letter of Appointment;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the requirements of the Contractors Regulation Authority and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in providing Services similar to the Contract Services;
"Information"	has the meaning given under section 84 of the FOIA;
"Key Personnel"	means any individuals identified as such in the Letter of Appointment and any replacements for such individuals that may be agreed between the Parties from time to time in accordance with Clause 2.3;
"Letter of Appointment"	means the letter from the Client to the Contractor dated [DD/MM/YYYY] (including its appendices) containing the Order to provide the Contract Services;
"Material Breach"	means a material breach of the Contract;
"Party"	means the Contractor or the Client and "Parties" shall mean both of them;
"Persistent Failure"	means any two (2) or more failures by the Contractor in any rolling period of twelve (12) Months to comply with obligations in respect of the Contract Services under with the Contract;
"Service Levels"	means the service levels set out in the Annex;
"Contractor"	means the Supplier to whom the Letter of Appointment is addressed;

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"Contractor's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Contractor, including all IPRs, together with information derived from the foregoing, and that in any case is clearly designated as being confidential;
"Contractor's Staff"	means all persons employed by the Contractor and/or any Sub-Contractor to perform the Contractor's obligations under the Contract together with the Contractor's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of the Contractor's obligations under the Contract;
"Sub-Contract"	means the Contractor's contract with a Sub-Contractor whereby the Sub-Contractor agrees to provide to the Contractor the Contract Services or any part thereof or facilities, services necessary for the provision of the Contract Services or any part thereof necessary for the management, direction or control of the Contract Services or any part thereof; and
"Sub-Contractor"	means any person appointed by the Contractor to carry out any of the Contractor's obligations under the Contract.

Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:

words importing the singular meaning include where the context so admits the plural meaning and vice versa;

words importing the masculine include the feminine and the neuter;

the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;

references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

the Annex forms part of these Call-Off Terms and shall have effect as if set out in full in the body of these Call-Off Terms and any reference to these Call-Off Terms includes the Annex;

references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute,

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enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of the Contract);

headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;

references to "Clauses" and the "Annex" are, unless otherwise provided, references to the clauses of and the Annex to these Call-Off Terms and references to "paragraphs" are, unless otherwise provided, references to paragraphs of the Annex in which the references are made;

terms or expressions contained in the Contract which are capitalised but which do not have an interpretation in Clause 1.1 shall be interpreted in accordance with the Framework Agreement;

a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and

in the event of and only to the extent of any conflict between the Letter of Appointment, these Call-Off Terms, any other document referred to in the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

the Framework Agreement (excluding Framework Schedule 4 (Letter of Appointment and Call-Off Terms));

the Letter of Appointment;

these Call-Off Terms; and any other document referred to in the Contract

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16. SUPPLY OF CONTRACT SERVICES

16.1 Contract Services

16.1.1 The Contractor shall supply the Contract Services to the Client in accordance with the provisions of the Contract.

16.1.2 The Contractor shall:

16.1.2.1 comply with all reasonable instructions given to the Contractor and its Staff by the Client in relation to the Contract Services from time to time, including reasonable instructions to reschedule or alter the Contract Services;

16.1.2.2 immediately report to the Client's Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 16.1.4.1 ;

16.1.2.3 co-operate with the Client and the Client's other professional advisers in relation to the Contract Services as required by the Client;

16.1.2.4 comply with the Client's internal policies and procedures and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each case as notified to the Contractor in writing by the Client; and

16.1.2.5 save to the extent expressly set out in the Letter of Appointment, obtain prior written approval from the Client's Representative before advising the Client on:

- (a) European Community law (including State aid and public procurement); or
- (b) public law (including national security); or
- (c) the Transfer of Undertakings (Protection of Employment) Regulations 1981 (or any subsequent enactment thereof); or
- (d) any other issue as may be notified to the Contractor from time to time by the Client's Representative,

and where approval is given, copy or, if the advice is given orally, confirm in writing, to the Client's Representative, any advice given to the Client.

16.1.3 The Contractor shall not:

16.1.1.4 knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Client shall thereby exist in relation to the Contract Services; or

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- 16.1.1.5 incur any expenditure which would result in any estimated figure for any element of the Contract Services being exceeded without the Client's written agreement; or
- 16.1.1.6 without the prior written consent of the Client, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Contract Services; or
- 16.1.1.7 pledge the credit of the Client in any way; or
- 16.1.1.8 engage in any conduct which in the reasonable opinion of the Client is prejudicial to the Client.
- 16.1.1.9 Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises
- 16.1.1.10 The Contractor accepts that the Client shall have the right after consultation with the Contractor to require the removal from involvement in the Contract Services of any person engaged in the performance of the Contract Services if in the Client's reasonable opinion the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the Contract Services.
- 16.1.1.11 Where the Contractor is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the Contractor's obligations under the Contract.
- 16.2 Variation of Contract Services
 - 16.2.1 The Client may request a variation to the Contract Services at any time provided that such variation does not amount to a material change to the Order.
 - 16.2.2 Any request by the Client for a variation to the Contract Services shall be by written notice to the Contractor:
 - 16.2.3 giving sufficient information for the Contractor to assess the extent of the variation and any additional costs that may be incurred; and

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- 16.2.4 specifying the timeframe within which the Contractor must respond to the request, which shall be reasonable, and the Contractor shall respond to such request within such timeframe.
- 16.2.5 In the event that the Contractor and the Client are unable to agree any change to the Contract Charges in connection with any requested variation to the Contract Services, the Client may agree that the Contractor should continue to perform its obligations under the Contract without the variation or may terminate the Contract.
- 16.3 Key Personnel
- 16.3.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Contract Services to the Client. The Key Personnel shall be responsible for performing such roles as are ascribed to them in the Letter of Appointment and such other roles as may be necessary or desirable for the purposes of the Contract or as may be agreed between the Parties.
- 16.3.2 The Key Personnel shall not be released by the Contractor from supplying the Contract Services without the agreement of the Client, except by reason of long term sickness, maternity leave, paternity leave, termination of employment/partnership or other extenuating circumstances.
- 16.3.3 Any replacements to the Key Personnel shall be subject to the agreement of the Client. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Contract.
- 16.3.4 The Client shall not unreasonably withhold its agreement under Clauses 16.3.2 or 18.3.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
- 16.3.5 If requested by the Client, the Contractor shall procure that Key Personnel attend transaction review meetings at no cost to the Client during the term of the Contract and upon its conclusion.

17. PAYMENT AND CHARGES

17.1 Contract Charges and VAT

17.1.1. In consideration of the Contractor's performance of its obligations under the Contract, the Client shall pay the Contract Charges in accordance with Clause 17.2 (Payment).

17.1.2. The Client shall, in addition to the Contract Charges and following receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Contract Services supplied.

17.1.3. The provisions of paragraphs 8 and 9 of Framework Schedule 2 (Charging Structure) of the Framework Agreement shall apply in relation to the Contract Services.

17.1.4. If at any time before the Contract Services have been delivered in full the Contractor reduces its Framework Prices for any Services which are provided under the Framework Agreement in accordance with the terms of the Framework Agreement with the result that the Framework Prices are lower than the Contract Charges, the Contract Charges for the Contract Services shall automatically be reduced so as to be equal to the Framework Prices.

17.1.5. The Contractor shall indemnify the Client on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause 17.1.5 shall be paid by the Contractor to the Client not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Client.

17.2. Payment

17.2.1. The Client shall pay all sums properly due and payable to the Contractor in respect of the Contract Services in cleared funds by no later than thirty (30) calendar days after the date of a validly issued invoice for such sums.

17.2.2. The Contractor shall ensure that each invoice (whether submitted electronically or in a paper form) contains all appropriate references and a detailed breakdown of the Contract Services provided and any disbursements and that it is supported by such other documentation as may reasonably be required by the Client to substantiate the invoice.

17.2.3. The Contractor shall ensure that all invoices submitted to the Client for Contract Services are exclusive of the Management Charge payable to the Authority in respect of the Contract Services. The Contractor shall not be entitled to increase the Contract Charges by an amount equal to such Management Charge or to recover such Management Charge as a surcharge or disbursement.

17.2.4. The Contractor shall make any payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.

- 17.2.5. Subject always to the provisions of Clause 28, if the Contractor enters into a SubContract in respect of the Contract Services, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.
- 17.2.6. The Contractor shall not suspend the supply of the Contract Services unless the Contractor is entitled to terminate the Contract under Clause 22.1.1.3 on the grounds of the Client's failure to pay undisputed sums of money. Interest shall be payable by the Client in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Contractor in respect of the Contract Services.
- 17.2.7. The Contractor shall accept the Government Procurement Card as a means of payment for the Contract Services where such card is agreed with the Client to be a suitable means of payment. The Contractor shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Client.
- 17.2.8. All payments due shall be made in cleared funds to such bank or building society account as the recipient Party may from time to time direct in writing.
- 17.3. Recovery of Sums Due
- 17.3.1. Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of the Contract), the Client may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract
- 17.3.2. Any overpayment by either Party, whether of the Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

18. LIABILITY AND INSURANCE

18.1 Liability

18.1.1 Neither Party excludes or limits its liability for:

18.1.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors; or fraud or fraudulent misrepresentation by it or its employees.

18.1.1.2 No individual nor any service company of the Contractor employing that individual shall have any personal liability to the Client for the Contract Services supplied by that individual on behalf of the Contractor and the Client shall not bring any claim under the Contract against that individual or such service company in respect of the Contract Services save in the case of Fraud or any liability for death or personal injury. Nothing in this Clause 18.1.1.2 shall in any way limit the liability of the Contractor in respect of the Contract Services, which such liability shall be uncapped unless otherwise specified in the Letter of Appointment.

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- 18.1.1.3 The Contractor shall fully indemnify and keep indemnified the Client 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.
- 18.1.2 Subject to Clauses 18.1.1.1 and 18.1.3, in no event shall either Party be liable to the other for any:
- 18.1.2.1 loss of profits;
 - 18.1.2.2 loss of business;
 - 18.1.2.3 loss of revenue;
 - 18.1.2.4 loss of or damage to goodwill;
 - 18.1.2.5 loss of savings (whether anticipated or otherwise); and/or
 - 18.1.2.6 any indirect, special or consequential loss or damage.
- 18.1.3 The Contractor shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Authority) be recoverable by the Authority:
- 18.1.3.1 the additional operational and/or administrative costs and expenses arising from any Material Breach;
 - 18.1.3.2 the cost of procuring, implementing and operating any alternative or replacement services to the Contract Services; and
 - 18.1.3.3 any regulatory losses, fines, expenses or other losses arising from a breach by the Contractor of any Laws.
- 18.1.4 No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Client to any document or information provided by the Contractor in its provision of the Contract Services, and no failure of the Client to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Contractor to exercise all the obligations of a professional Contractor employed in a client/Contractor relationship.
- 18.1.5 Save as otherwise expressly provided, the obligations of the Client under the Contract are obligations of the Client in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Client in any other capacity, nor shall the exercise by the Client of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Client to the Contractor

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18.2 Insurance

- 18.2.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policy or policies shall include professional indemnity cover in respect of any financial loss to the Client arising from any advice given or omitted to be given by the Contractor under the Contract or otherwise in connection with the provision of the Contract Services. Such insurance shall be maintained for so long as the Contractor may have any liability to the Client.
- 18.2.2 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability arising in respect of the risks referred to in Clause 18.2.1.
- 18.2.3 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by Clause 18.2.1, the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 18.2.4 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 All Intellectual Property Rights in the output from the Contract Services shall vest in the Contractor who shall grant to the Client a non-exclusive, unlimited, irrevocable licence to use and exploit the same.
- 19.2 Subject to Clause 19.1 and save as expressly granted elsewhere under the Contract, the Client shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors and the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Client or its licensors.
- 19.3 The Contractor shall on demand fully indemnify and keep fully indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client and or the Crown may suffer or incur as a result of any claim that the performance by the Contractor of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "Claim").
- 19.4 If a Claim arises, the Client shall notify the Contractor in writing of the Claim and the Client shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Contractor:
- 19.4.1 shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;
- 19.4.2 shall take due and proper account of the interests of the Client;
- 19.4.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Client into disrepute; and
- 19.4.4 shall not settle or compromise the Claim without the prior written approval of the Client (not to be unreasonably withheld or delayed).
- 19.5 The Contractor shall have no rights to use any of the Client's names, logos or trademarks without the prior written approval of the Client.

20. PROTECTION OF INFORMATION

- 20.1 Protection of Personal Data
- 20.1.1 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Client is the Data Controller and that the Contractor is the Data Processor in relation to the Client's Personal Data.
- 20.1.2 The Contractor shall:
- 20.1.3 Process the Client's Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Client to the Contractor during the term of the Contract);

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- 20.1.4 Process the Client's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 20.1.5 implement appropriate technical and organisational measures to protect the Client's Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Client's
- 20.1.6 Personal Data and having regard to the nature of the Client's Personal Data which is to be protected;
- 20.1.7 take reasonable steps to ensure the reliability of all members of the Contractor's Staff who have access to the Client's Personal Data;
- 20.1.8 obtain the Client's prior written approval in order to transfer all or any of the Client's Personal Data to any Sub-Contractors for the provision of the Contract Services;
- 20.1.9 ensure that all members of the Contractor's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 20.1 ;
- 20.1.10 ensure that none of the Contractor's Staff publish, disclose or divulge any of the Client's Personal Data to any third party unless directed in writing to do so by the Client
- 20.1.11 notify the Client within five (5) Working Days if the Contractor receives:
- (a) a request from a Data Subject to have access to the Client's Personal Data relating to that person; or
 - (b) a complaint or request relating to the Client's obligations under the Data Protection Legislation;
- 20.1.12 provide the Client with full cooperation and assistance in relation to any complaint or request made relating to the Client's Personal Data, including by:
- (a) providing the Client with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Client's instructions;
 - (c) providing the Client with any Client's Personal Data it holds in relation to a Data Subject (within the timescales required by the Client); and
 - (d) providing the Client with any information requested by the Client;

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- 20.1.13 permit or procure permission for the Client or the Client's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Contractor's data Processing activities (and/or those of its agents and Sub-Contractors) and comply with all reasonable requests or directions by the Client to enable the Client to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- 20.1.14 provide a written description of the technical and organisational methods employed by the Contractor for Processing the Client's Personal Data (within the timescales required by the Client); and
- 20.1.15 not Process or otherwise transfer any Client's Personal Data outside the European Economic Area without the prior written consent of the Client which may be given on such terms as the Client in its discretion thinks fit.
- 20.1.16 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Client to breach any of its applicable obligations under the Data Protection Legislation.
- 20.1.17 The Contractor acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Client's Personal Data that the Client may be irreparably harmed (including harm to its reputation). In such circumstances, the Client may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 20.1.18 In the event that through any failure by the Contractor to comply with its obligations under the Contract, Client's Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Client in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Contractor.
- 20.2 Confidentiality
- 20.2.1 Except to the extent set out in this Clause 20.2 or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:

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- 20.2.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 20.2.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 20.2.2 Clause 20.2.1 shall not apply to the extent that:
- 20.2.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 20.4 (Freedom of Information); or
- 20.2.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
- 20.2.2.3 such information was obtained from a third party without obligation of confidentiality; or
- 20.2.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- 20.2.2.5 it is independently developed without access to the other Party's Confidential Information.
- 20.2.3 The Contractor may only disclose the Client's Confidential Information to those members of the Contractor's Staff who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality.
- 20.2.4 The Contractor shall not, and shall procure that the Contractor's Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of the Contract.
- 20.2.5 At the written request of the Client, the Contractor shall procure that those members of the Contractor's Staff identified in the Client's notice sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- 20.2.6 Nothing in the Contract shall prevent the Client from disclosing the Contractor's Confidential Information (including the Management Information obtained pursuant to clause 13 of the Framework Agreement):

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- 20.2.6.1 to any Crown body or any other Contracting Body on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Client save as required by Law;
- 20.2.6.2 to any consultant, contractor or other person engaged by the Client for any purpose relating to or connected with the Contract or the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;
- 20.2.6.3 for the purpose of the examination and certification of the Client's accounts; or
- 20.2.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.
- 20.2.7 The Client shall use all reasonable endeavours to ensure that any government department, Client, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause 20.2.6 is made aware of the Client's obligations of confidentiality
- 20.2.8 Nothing in this Clause 20.2 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of PR.
- 20.2.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 20.2.10 The Contractor shall, at all times during and after the performance of the Contract, indemnify the Client and keep the Client fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Client arising from any breach of the Contractor's obligations under this Clause 20.2 except and to the extent that such liabilities have resulted directly from the Client's instructions.
- 20.3 Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989
- 20.3.1 The Contractor shall comply with and shall ensure that its Staff comply with, the provisions of:
- 20.3.1.1 the Official Secrets Acts 1911 to 1989; and
- 20.3.1.2 section 182 of the Finance Act 1989
- 20.4 Freedom of Information
- 20.4.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and

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cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

20.4.2 The Contractor shall and shall procure that its Sub-Contractors shall:

20.4.2.1 transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

20.4.2.2 provide the Client with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Client requires within five (5) Working Days (or such other period as the Client may specify) of the Client's request; and

20.4.2.3 provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

20.4.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other contract whether the Commercially Sensitive Information and/or any other Information including Contractor's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

20.4.4 In no event shall the Contractor respond directly to a Request for Information unless authorised in writing to do so by the Client.

20.4.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 20.2) the Client may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor or the Contract Services

20.4.5.1 In certain circumstances without consulting the Contractor; or

20.4.5.2 following consultation with the Contractor and having taken the Contractor's views into account,

20.4.5.3 provided always that where Clause 20.4.5.4 applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

20.4.5.4 The Contractor shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Client on reasonable notice to inspect such records as requested from time to time.

20.4.5.5 The Contractor acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Client may be obliged to disclose it in accordance with Clause 20.4.54.

20.5 Transparency

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- 20.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Client shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 20.5.2 Notwithstanding any other term of the Contract, the Contractor hereby gives consent to the Client to publish the Contract to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA), including any changes to the Contract agreed from time to time.
- 20.5.3 The Client may consult with the Contractor to inform its decision regarding any redactions but the Client shall have the final decision in its absolute discretion.
- 20.5.4 The Contractor shall assist and cooperate with the Client to enable the Client to publish the Contract.

21. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- 21.1 The Contractor warrants, represents and undertakes to the Client that

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- 21.1.1 has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Contract;
- 21.1.2 the Contract is executed by a duly authorised representative of the Contractor;
- 21.1.3 in entering the Contract it has not committed any Fraud;
- 21.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 21.1.5 all information, statements and representations contained in the Contractor's tender or other submission to the Client for the award of the Contract Services are true, accurate and not misleading save as specifically disclosed in writing to the Client prior to execution of the Contract and it will advise the Client of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 21.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- 21.1.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- 21.1.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 21.1.9 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 21.1.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment

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(including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Client; and

- 21.1.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Contract Services.
- 21.1.12 The Contractor warrants, represents and undertakes to the Client that:
- 21.1.12.1 it has read and fully understood the Letter of Appointment and these Call-Off Terms and is capable of performing the Contract Services in all respects in accordance with the Contract;
- 21.1.12.2 the Contractor and each of its Sub-Contractors has all Staff, equipment and experience necessary for the proper performance of the Contract Services; and
- 21.1.12.3 it will at all times:
- 21.1.12.3.1 perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
- 21.1.12.3.2 comply with all the KPIs and meet or exceed the Service Levels;
- 21.1.12.3.3 carry out the Contract Services within the timeframe agreed with the Client; and
- 21.1.12.3.4 without prejudice to its obligations under Clause 16.3 (Key Personnel), ensure to the satisfaction of the Client that the Contract Services are provided and carried out by such appropriately qualified, skilled and experienced Contractors and/or other Staff as shall be necessary for the proper performance of the Contract Services.
- 21.1.13 The Contractor shall promptly notify the Client in writing:
- 21.1.13.1 of any material detrimental change in the financial standing and/or credit rating of the Contractor;
- 21.1.13.2 if the Contractor undergoes a Change of Control; and

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21.1.13.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.

21.1.14 For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Client would have in respect of breach of that provision by the Contractor if that provision had not been so expressed.

21.1.15 The Contractor acknowledges and agrees that:

21.1.16 the warranties, representations and undertakings contained in the Contract are material and are designed to induce the Client into entering into the Contract; and

21.1.16.1 the Client has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.

22 TERMINATION

22.1 Termination on Insolvency

22.1.1 The Client may terminate the Contract with immediate effect by giving notice in writing to the Contractor if:

22.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or

22.1.1.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Contractor be wound up or a resolution for the winding-up of the Contractor is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

22.1.1.3 a petition is presented for the winding-up of the Contractor (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Contractor pursuant to section 98 of the Insolvency Act 1986; or

22.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets; or

22.1.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within ten (10) Working Days;

22.1.1.6 an application is made in respect of the Contractor either for the appointment of an administrator or for an administration order and an

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administrator is appointed, or notice of intention to appoint an administrator is given; or

- 22.1.1.7 if the Contractor is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 22.1.1.8 the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 22.1.1.9 in the reasonable opinion of the Client, there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which:
- (a) adversely impacts on the Contractor's ability to supply the Contract Services in accordance with the Contract; or
 - (b) could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Contract Services in accordance with the Contract; or
- 22.1.1.10 the Contractor demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Contractor; or
- 22.1.1.10.1 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Contractor comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 22.1.1.10.2 the Contractor being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 22.1.1.10.3 the Contractor being an individual or any partner or partners in the Contractor who together are able to exercise control of the Contractor where the Contractor is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their

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estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or

22.1.1.10.4 any event similar to those listed in Clauses 22.1 .1.1 to 22.1.1.13 occurs under the law of any other jurisdiction.

22.2 Termination on Material Breach, Persistent Failure or Grave Misconduct

22.2.1 The Client may terminate the Contract with immediate effect by giving written notice to the Contractor if:

22.2.1.1 the Contractor commits a Material Breach and if:

(a) the Contractor has not within ten (10) Working Days or such other longer period as may be specified by the Client, after issue of a written notice to the Contractor specifying the Material Breach and requesting it to be remedied:

(i) remedied the Material Breach; and

(ii) put in place measures to ensure that such Material Breach does not recur, in each case to the satisfaction of the Client;

or

(b) the Material Breach is not, in the opinion of the Client, capable of remedy; or

(c) if a Persistent Failure has occurred; or if Grave Misconduct has occurred; or

(d) the Contractor breaches any of Clause 20.1 (Protection of Personal Data), Clause 20.2 (Confidentiality), Clause 20.3 (Official Secrets Acts 1911 to 1989), Clause 21 (Warranties, Representations and Undertakings), Clause 16.1 (Prevention of Bribery and Corruption), Clause 18 (), Clause 19 (Prevention of Fraud) and Clause 28 (Transfer and Sub-Contracting); or

(e) in the event of a Law Society intervention in the Contractor's practice; or

(f) in the event of conviction for dishonesty of the Contractor (if an individual) or any one or more of the Contractor's directors, partners or members (if the

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Contractor is a firm or firms), which conviction might reasonably be expected to lead to the striking off from the Roll maintained by the Contractors Regulation Authority of the individual(s) concerned.

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22.1.1.3 If the Client fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within five (5) calendar days from the receipt of a such notice, the Contractor may clause terminate the Contract by ten (10) Working Days' written notice to the Client.

22.1 Termination on Change of Control

22.1.1 The Client may terminate the Contract by notice in writing with immediate effect within six (6) Months of

22.1.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

22.1.1.2 where no notification has been made, the date that the Client becomes aware of the Change of Control, but shall not be permitted to terminate where the Client's written consent to the continuation of the Contract was granted prior to the Change of Control.

22.2 Termination on Notice

22.2.1 The Client shall have the right to suspend the Contract with immediate effect at any time by giving written notice to the Contractor and to terminate the Contract with immediate effect by giving written notice to the Contractor at any time.

22.3 Termination of Framework Agreement

22.3.1 The Client may terminate the Contract with immediate effect by giving written notice to the Contractor if the Framework Agreement is terminated for any reason whatsoever.

22.4 Partial Termination

22.4.1 Where the Client is entitled to terminate the Contract pursuant to this Clause 23, the Client shall be entitled to terminate all or part of the Contract provided always that the parts of the Contract not terminated can operate effectively to deliver the intended purpose of the Contract or a part thereof.

23 CONSEQUENCES OF EXPIRY OR TERMINATION

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- 23.1 Subject to Clause 22.2, where the Client terminates the Contract pursuant to Clause 23 (Termination) and then makes other arrangements for the supply of the Contract Services:
- 23.1.1 the Client may recover from the Contractor the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Client in securing the Contract Services in accordance with the requirements of the Contract;
 - 23.1.2 the Client shall take all reasonable steps to mitigate such additional expenditure; and
 - 23.1.3 no further payments shall be payable by the Client to the Contractor until the Client has established the final cost of making those other arrangements, whereupon the Client shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Contractor.
- 23.2 Clause 23.1 shall not apply where the Client terminates the Contract solely pursuant to Clause 22.3 or Clause 22.4; or
- 23.3 solely pursuant to Clause 22.5 if termination pursuant to Clause 8.5 occurs as a result of termination of the Framework Agreement pursuant to the provisions of clauses 24.6, 24.1 1, 24.12 or 24.13 thereof.
- 23.4 On the termination of the Contract for any reason, the Contractor shall, at the request of the Client and at the Contractor's cost|:
- 23.4.1 immediately return to the Client all Confidential Information and the Client's Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Contract Services;
 - 23.4.2 except where the retention of Client's Personal Data is required by Law, promptly destroy all copies of the Client Data and provide written confirmation to the Client that the data has been destroyed
- 23.5 immediately deliver to the Client in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made

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available to the Contractor by the Client in connection with the Contract provided to the Contractor;

23.6 vacate, and procure that the Contractor's Staff vacate, any premises of the Client occupied for the purposes of providing the Contract Services;

23.7 return to the Client any sums prepaid in respect of the Contract Services not provided by the date of expiry or termination (howsoever arising); and

23.8 promptly provide all information concerning the provision of the Contract Services which may reasonably be requested by the Client for the purposes of adequately understanding the manner in which the Contract Services have been provided or for the purpose of allowing the Client or any replacement Supplier to conduct due diligence.

23.9 Without prejudice to any other right or remedy which the Client may have, if any Contract Services are not supplied in accordance with, or the Contractor fails to comply with any of the terms of the Contract then the Client may (whether or not any part of the Contract Services have been delivered) do any one or more of the following:

23.9.1 I at the Client's option, give the Contractor the opportunity (at the Contractor's expense) to remedy any failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Client's instructions;

23.9.2 without terminating the Contract, itself supply or procure the supply of all or part of the Contract Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Contract Services in accordance with the Contract

23.9.3 without terminating the whole of the Contract, terminate the Contract in respect of part of the Contracting Services only and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/o

23.9.4 charge the Contractor for, whereupon the Contractor shall on demand pay, any costs reasonably incurred by the Client (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the Client or

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a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Contract Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.

23.10 Save as otherwise expressly provided in the Contract:

23.10.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

23.10.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under the following Clauses: Clause 17 (Payment and Charges); Clause 18 (liability insurance) Clause 19 (Intellectual Property Rights); Clause 20.1 (Protection of Personal Data); Clause 20.2 (Confidentiality); Clause 20.3 (Official Secrets Act); Clause 20.4 (Freedom of Information); Clause 2 (Prevention of Bribery and Corruption); Clause 2 (Prevention of Fraud); Clause 2 (Contracts (Rights of Third Parties) Act); Clause 3.1 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of the Contract.

24 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

24.1 The Contractor shall not, and shall procure that its Sub-Contractors shall not, make any press announcements or publicise the Contract in any way without the Client's prior written approval and shall take reasonable steps to ensure that the Contractor's Staff and professional advisors comply with this Clause 24. Any such press announcements or publicity proposed under this Clause 24 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.

24.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Client shall be entitled to publicise the Contract in accordance with any legal obligation upon the Client including any examination of the Contract by the Auditors

24.3 The Contractor shall not do anything or permit to cause anything to be done, which may damage the reputation of the Client or bring the Client into disrepute.

25 PREVENTION OF BRIBERY AND CORRUPTION

25.1 The Contractor shall not:

25.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Client, any Contracting Body or any other public body or any person employed by or on behalf of the Client any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to the Contract; or

25.1.2 engage in, and shall procure that all the Contractor's Staff or any person acting on the Contractor's behalf shall not commit, in connection with the Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption.

25.2 The Contractor warrants, represents and undertakes that it has not:

25.2.1 paid commission or agreed to pay commission to the Client, any Contracting Body or any other public body or any person employed by or on behalf of the Client in connection with the Contract; and

25.2.2 entered into the Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Client or any other public body or any person employed by or on behalf of the Client in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Client and the Authority before execution of the Contract.

25.3 The Contractor shall:

25.3.1 in relation to the Contract, act in accordance with the Ministry of Justice Guidance;

25.3.2 immediately notify the Client if it suspects or becomes aware of any breach of this Clause 25;

25.3.3 respond promptly to any of the Client's enquiries regarding any breach, potential breach or suspected breach of this Clause 25 and the Contractor shall co-operate

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with any investigation and allow the Client to audit Contractor's books, records and any other relevant documentation in connection with the breach; if so required by the Client, within twenty (20) Working Days of the commencement date of the Contract, and annually thereafter, certify to the Client in writing of the compliance with this Clause 25 by the Contractor and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with the Contract. The Contractor shall provide such supporting evidence of compliance as the Client may reasonably request; and have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Client on request) to prevent the Contractor and any of the Contractor's Staff or any person acting on the Contractor's behalf from committing a Prohibited Act and shall enforce it where appropriate.

25.4 If the Contractor, any member of the Contractor's Staff or any person acting on the Contractor's behalf, in all cases whether or not acting with the Contractor's knowledge breaches:

25.4.1 this Clause 25; Or

25.4.2 the Bribery Act 2010 in relation to the Contract or any other contract with the Client or any other public body or any person employed by or on behalf of the Client or a public body in connection with the Contract, the Client shall be entitled to terminate the Contract by written notice with immediate effect.

25.5 Without prejudice to its other rights and remedies under this Clause 25, the Client shall be entitled to recover in full from the Contractor and the Contractor shall on demand indemnify the Client in full from and against:

25.5.1 the amount of value of any such gift, consideration or commission; and

25.5.2 any other loss sustained by the Client in consequence of any breach of the Clause 25.

26 NON-DISCRIMINATION

26.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

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26.2 The Contractor shall take all reasonable steps to secure the observance of Clause 26.1 by all the Contractor's Staff employed in the execution of the Contract.

27 PREVENTION OF FRAUD

27.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Contractor and any member of the Contractor's Staff.

27.2 The Contractor shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Contractor or any member of the Contractor's Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

27.3 If:

27.3.1 the Contractor breaches any of its obligations under Clause 27.1 and Clause 2.2; or the Contractor or any member of the Contractor's Staff commits any Fraud in relation to the Contract or any other contract with the Client or any other person, the Client may recover in full from the Contractor and the Contractor shall on demand indemnify the Client in full against any and all losses sustained by the Client in consequence of the relevant breach or commission of Fraud, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Contract Services and any additional expenditure incurred by the Client in relation thereto.

28 TRANSFER AND SUB-CONTRACTING

28.1 The Contractor shall not assign, novate, enter into a Sub-Contract in respect of, or in any other way dispose of, the Contract or any part of it without the Client's prior written consent. The Client has consented to the engagement of any Sub-Contractors specifically identified in the Letter of Appointment.

28.2 The Contractor shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.

28.3 The Client may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

28.4 any other Contracting Body; or

28.5 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or,

28.6 any private sector body which substantially performs the functions of the Client, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

28.7 Any change in the legal status of the Client such that it ceases to be a Contracting Body shall not, subject to Clause 28.5, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.

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28.8 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 28.3 to a body which is not a Contracting Body or if there is a change in the legal status of the Client such that it ceases to be a Contracting Body (in the remainder of this Clause any such body being referred to as a "Transferee"):

28.9 the rights of termination of the Client in Clause 22 shall be available to the Contractor in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

28.10 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Contractor.

28.11 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

28.12 For the purposes of Clause 28.5 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

29 WAIVER

29.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

29.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 22.

29.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

30 CUMULATIVE REMEDIES

32.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

31 FURTHER ASSURANCES

33.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

32 SEVERABILITY

32.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof

shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

- 32.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Client and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

33 CONTRACTOR'S STATUS

- 33.1 At all times during the term of the Contract the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

34 ENTIRE AGREEMENT

- 34.1 The Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.

- 34.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.

- 34.3 The Contractor acknowledges that it has:

34.3.1 entered into the Contract in reliance on its own due diligence alone; and

34.3.2 received sufficient information required by it in order to determine whether it is able to provide the Contract Services in accordance with the terms of the Contract.

- 34.4 Nothing in Clauses 34.1 and 34.2 shall operate:

34.4.1 to exclude Fraud or fraudulent misrepresentation; or

to limit the rights of the Client pursuant to clause 31 of the Framework Agreement (Rights of Third Parties).

- 34.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

35 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

- 37.1 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 35.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

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37.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of the Contract or any one or more Clauses of it.

37.3 Without prejudice to the Client's rights as a Contracting Body under clause 31 of the Framework Agreement, the Contractor agrees that the Client may enforce any of the provisions of the Framework Agreement referred to in clause 31.2 (with the exception of clauses 33 and 34 of the Framework Agreement) as if they were terms of the Contract (reading references in those provisions to Contracting Bodies and the Supplier as references to the Client and the Contractor respectively).

36 NOTICES

36.1 Except as otherwise expressly provided in the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless given or made in writing by or on behalf of the Party sending the communication.

36.2 Any notice or other communication given or made by either Party to the other shall:

- be given by letter (sent by hand, post or a recorded signed for delivery service), facsimile or electronic mail confirmed by letter; and

unless the other Party acknowledges receipt of such communication at an earlier time, be deemed to have been given:

- if delivered personally, at the time of delivery;

- if sent by pre-paid post or a recorded signed for service two (2) Working Days after the day on which the letter was posted provided the relevant communication is not returned as undelivered;

- if sent by electronic mail, two (2) Working Days after posting of a confirmation letter; and

- if sent by facsimile, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 9:00 hours on the next Working Day and provided that at time of transmission of the facsimile an error-free transmission report is received by the Party sending the communication.

36.3 For the purposes of Clause 26.2, the address, email address and fax number of each Party shall be the address, email address and fax number specified in the Letter of Appointment.

36.4 Either Party may change its address for service by serving a notice in accordance with this Clause 26.

- 36.5 For the avoidance of doubt, any notice given under the Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

37 DISPUTES AND LAW

37.1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

37.2 Dispute Resolution

37.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Letter of Appointment.

37.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

37.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 37.2.1, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 37.2.5 unless:

37.2.3.1 the Client considers that the dispute is not suitable for resolution by mediation; or

37.2.3.2 the Contractor does not agree to mediation.

37.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor and the Contractor's Staff shall comply fully with the requirements of the Contract at all times.

37.2.5 The procedure for mediation is as follows:

37.2.5.1 a neutral adviser or mediator (the "Contract Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;

37.2.5.2 the Parties shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;

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- 37.2.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 37.2.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 37.2.5.5 failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- 37.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

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**ANNEX
SERVICE LEVELS**

1.SCOPE

This Annex sets out the Service Levels which the Contractor is required to achieve when delivering the Contract Services.

2. SERVICE LEVELS

2.1 The objectives of the Service Levels are to ensure that the Contract Services are of a consistently high quality and meet the requirements of the Client.

2.2 The Service Levels are as follows:

Performance Criteria	Service Level	Performance Guidance
1. Requirement	1.1 Contractor did have the necessary understanding and expertise to meet Client expectations.	The Contractor has a good knowledge of the subject and the environment in which the Client operates - Client expectations of Contractor expertise are met
	1.2 Contractor is open and proactive in optimising costs	Efforts made to minimise expenses - prices are in line with market expectations - Contractor is open in explaining price breakdown and working with the Client to identify opportunities to reduce cost — accurate and timely billing of Client and invoices provided in line with Client requirements
	1.3 Contractor is proactive in identifying and managing risks	Contractor is proactive in identifying and allocating risk ownership - Contractor supports Client in assigning and managing risks - Contractor is proactive in assessing impact of risks in the course of performing the Contract and raising issues as appropriate
2. Quality of advice	2.1 Contractor provides good advice provided within timescale and covers all issues requested appropriately.	Advice is technically sound and clearly expressed — Contractor adheres to timelines and shows right focus— Contractor strikes appropriate balance between covering issues thoroughly and providing unnecessary detail

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3. Engagement & Relationship	3.1 Contractor engagement with the Client is appropriate and focused on Contract Services delivery	Contractor uses the right channels within the department - Client is able to distinguish between business development activity/roles and delivery activity/role - Contractor does not exploit its position/relationship with the Client
	3.2 Contractor establishes effective working relationships with the Client	Contractor integrates well with Client staff and other advisers- Contractor is flexible in its approach to the Client - demonstrates a knowledge of Client culture - manages engagement issues well and does not let them impact on delivery Contractor builds good relationships with internal staff with the Client - Contractor does not take advantage of its position / relationship with the Client
		Client
4. project Management	4.1 Contractor resources are deployed in the right way to deliver value.	Staff are consistent throughout the duration of the Services - the Contractor explains how project team has been put together to deliver the Services - resource requirement remains in line with that included in the proposal - focus on Contract Services delivery is maintained -
	4.2 Roles and responsibilities of the legal team are clear	Contractor provides clarity as to the roles and responsibilities of each member of the legal team engaged
	4.3 Contractor governance and project management is effective in ensuring the assignment is successful	Issues were raised as soon as possible and solutions offered - delivery plan was developed and agreed with the Client at the outset progress against milestones was reported regularly and in line with Client requirements Client satisfaction with delivery was monitored by the Contractor
	4.4 Original scoping was robust	The scope and resource requirement remained in line with initial proposal - initial proposal was accurate and did not need to be amended
5. Value for Money	5.1 Delivery on time	As per Contractor proposal
	5.2 Delivery on budget	As per Contractor proposal
	5.3 Value for Money	Extent to which the benefits - as outlined in the assignment proposal — were delivered