

Private and Confidential
FAO: Hazel Randall
Associate Director of Legal Services
NHS Digital
1 Trevelyan Square
Boar Lane
Leeds
LS1 6AE

Your Ref:
Our Ref: JP Buckley – NEPO
Please quote this when replying
Date: 18 November 2020
Please ask for: JP Buckley
Mobile:
Direct Dial:
E-mail:

Dear Hazel

Contract for the provision of Services relating to General Data Protection and Cyber Security instructions pursuant to Lot 1 NEPO513 – Regional Legal Services Framework (P-006231/C-011462) (the "Matter")

1. Introduction

- 1.1 We write to thank The Health and Social Care Information Centre (NHS Digital) ("you", "your") for instructing DWF Law LLP ("we", "us", "our"). This letter confirms the basis upon which we will be acting for you in the Matter.
- 1.2 Our ability to act for you is subject to us having satisfactorily completed the identification procedures which we are required by anti-money laundering regulations to undertake, if we have not already done so.
- 1.3 Our terms of business current at the date of this letter ("Our Terms"), together with this letter, apply to our relationship with you in relation to the Matter for the duration specified in Appendix A on the basis of the charges set out in this letter and in respect of any other matters upon which you subsequently instruct us, save as varied and/or supplemented pursuant to the provisions set out in the Work Package and any other documents referred to in the Work Package, which shall form part of this letter.

Our Terms can be found by clicking this link <https://dwf.law/thesmallprint> or you can copy and paste this link into the address bar of your web browser. Alternatively, if you require a pdf copy via email or a hard copy of Our Terms, please contact me. Our Terms are hereby incorporated and form part of our agreement with you and shall have effect as if set out in full in the body of this letter.

- 1.4 If any of the terms set out in this letter differ from those set out in Our Terms, then the terms set out in this letter will prevail.

2. **Order of Precedence**

- 2.1 Where there is any conflict or inconsistency between the terms set out in this letter, Our Terms, the Work Package, the NEPO Framework Call Off Terms (or any variations and/or supplements thereto), then the following order of precedence shall apply:
 - 2.1.1 the terms set out in the Work Package will prevail;
 - 2.1.2 the terms set out in NEPO Framework Agreement and NEPO Call-Off Terms and conditions shall apply (including the Special Terms and Conditions which vary the Call-Off Terms);
 - 2.1.3 the terms set out in the DWF Secondment Agreement (Stuart Crook and JP Buckley) shall apply;
 - 2.1.4 the terms of this letter shall then apply;
 - 2.1.5 Our Terms shall finally apply.
- 2.2 For the avoidance of doubt, any silence on a particular point does not constitute a conflict or inconsistency. This includes but is not limited to the liability provisions in relation to limitations of liability and liability exclusions.

3. **Client**

We are only acting for you in relation to the Matter. Unless you tell us otherwise in writing, you authorise us to take instructions from any member of your legal and/or information governance team, each of whom may authorise us to take instructions from a representative of your business. If there are certain decisions which you wish to reserve to someone else, then please let us know.

4. **Services**

As and when required, you can request us to undertake data protection and cyber security work such as but not limited to advice on strategy development; legal advice and representation; risk advice and assessments; controls advice and design; and operational support. These will be as specified in the format of the template instruction form in Appendix B (the "Instruction Form") and each Instruction shall be a Matter for the purposes of this letter, and this will be valid when agreed when both parties confirm this by email.

5. **Excluded matters**

We shall not be responsible for any matters other than the Matter or as subsequently agreed between us in writing. In particular, we are not responsible for any matters of taxation, regulation, environmental matters or the impact of the Matter on your commercial affairs and business or the business of subsidiaries and associated companies generally. We shall not be

fixed with knowledge of your affairs even where you have previously instructed us unless the individuals undertaking the Matter have acted on the previous matters or you bring those previous matters to the attention of the individuals undertaking the Matter.

6. **Timescales**

We will provide our services on a call off basis, as set out in the template instruction form in Appendix B. When you instruct us and if requested, we will provide an estimate of how long it will take to complete the Matter.

7. **Personnel**

- 7.1 The Responsible Partner is JP Buckley. Please refer to paragraphs 2(b) and 2(c) of Our Terms for further information about the responsibilities of the Responsible Partner.
- 7.2 The Matter will be handled by me, and I will be assisted by Nicole van Leenen and Stuart Crook, together with other members of our Data Protection team.

8. **Third party professionals**

- 8.1 The Matter may require us to seek independent professional advice or services from third parties (for example, a barrister or an advocate) and/or to engage experts. We will not engage such third parties without conferring with you first and obtaining your consent. You will be responsible for the fees of any such third parties and we will involve you in agreeing such fees. We may ask you to enter into a direct engagement with such third parties in certain circumstances where that is permitted.
- 8.2 We are required to inform you of any financial or other interest we have in referring you to another person or firm and, where applicable, we will do this before we make the referral.

9. **Our rates and calculation of our charges**

- 9.1 Our charges will be determined primarily by reference to the time we properly spend on the Matter. That time will be charged at the hourly rates of each fee earner involved in the Matter. Our current hourly rates are as follows and, in default of any other charges being agreed in writing with you in relation to this Matter, they will apply in relation to this Matter:

NHS Digital rates – other rates on request

Specialist/ Expert:

Senior Partner:

Partner/ Director:

Senior Associate:

Associate:

Solicitor:

Junior Solicitor (NQ):

Trainee:

Paralegal:

9.2 These charges apply to the services as described in this letter. In the event of additional or alternative services being provided then additional or alternative charges may be incurred.

9.3 We are entitled to review our charging rates at any time. We usually do this annually on or after 1 May. We may also have to increase the charges if any work needs to be carried out outside normal working hours, becomes more complex than it first appeared to be or requires an unusual degree of urgency. We will not increase rates or charges during the term of an agreed instruction without your prior consent. For any proposed increase in relation to subsequent instructions agreed in line with the Instruction Form, we will notify you of the proposed update not less than 7 days prior to the proposed increase date.

9.4 There may also be certain disbursements and expenses which you will have to pay, such as travel and associated costs. Please refer to paragraph 3(c) of Our Terms for more details. Where the disbursement or expense involves us engaging the services of a third party, we will first discuss that with you and provide an estimate of their charges. In addition, we may charge for photocopying documents, including taking copies of documents to facilitate us working on them, and postage. For details of our latest print, photocopying and postage charges, please click this link or you can copy and paste this link into the address bar of your web browser. Alternatively, please speak to me.

9.5 We may ask you to make one or more payments on account of the work we are to undertake or expenses and disbursements we are to incur and, if we do, we shall not be obliged to undertake the work or incur those expenses and disbursements until the funds we have requested have been paid to us. Where funds are paid to us on account for these purposes, the payment of them shall constitute authority for us to use those funds for these purposes without recourse to you once the relevant charges, expenses, disbursements and/or VAT have been incurred and invoiced to you. Please note that it is our practice to require payment on account of the expected or agreed fees of any barrister or advocate engaged for a trial or substantial hearing before we engage their services on your behalf.

- 9.6 VAT is payable on our charges and, unless we inform you in writing to the contrary, also on expenses and disbursements.
- 9.7 Please refer to paragraph 3(l) of Our Terms for further information about the charges that will be made should the Matter not be carried through to completion.

10. **Estimate of our charges**

- 10.1 We will provide our services on a call off basis, which means that when you instruct us on the Matter, we will provide an estimate of our charges.
- 10.2 Any estimate of our charges which we provide now or in the future is approximate only. It does not take into account any factors not known to us when we provided the estimate and/or unusual requirements. It is given on the assumption that the Matter is not unusually urgent, complicated or time consuming and that any such factors there may be have been adequately explained to us.
- 10.3 We may increase the estimate of our charges if any work needs to be carried out outside normal working hours, requires our urgent attention or is more complex than it appeared to be when we provided the estimate. If this occurs we will notify you. Where no estimate is provided we will charge you at our hourly rates detailed above.
- 10.4 Where it is deemed appropriate for particular Matters, we may work with you on the basis of a capped or fixed fee arrangement. Such capped or fixed charges will be set out in the Instruction Form, to be agreed by both parties in good faith, and shall be subject to certain assumptions, which shall also be set out in the agreed Instruction Form. Any increase in such agreed capped or fixed charges will be subject to your prior written consent (not to be unreasonably withheld).

11. **Billing**

We will usually bill on a monthly basis of the Matter or such other frequency as we may notify you from time to time. We will provide you with information about how our charges have been calculated. The billing cycle for each Matter will be set out in the relevant Instruction Form, to be agreed between the parties in good faith.

12. **Methods of Payment and Payments on Account**

The following methods of payment are available to you when paying our invoices or complying with a request for payment on account. Your Relationship Manager will inform you if there is a preferred method for any particular payment or transaction. Please ensure that your client reference is included in all payments in order to avoid any delays in our processing of the payment and therefore any delays to you or the Matter.

12.1 By bank transfer

Payment should be made to DWF Law LLP Client Account at HSBC, Sort Code:, Account Number IBAN Swift Code: Please ensure that your Client Reference and any invoice number(s) are provided as a reference to the bank transfer and that confirmation of payment is emailed to .

12.2 By credit or debit card

To make a payment by credit or debit card, please contact our Credit & Collections Team within Finance. Please ensure that you have your credit or debit card details available along with your Customer Reference and any invoice number(s) you wish to pay.

13. Limitation on liability

We draw your attention to paragraphs 1 and 11 of Our Terms which, amongst other things, limit:

- 13.1 our total aggregate liability in connection with our services and/or our engagement to £5,000,000 per claim or series of connected claims (including interest and costs);
- 13.2 the party against whom such a claim may be brought; and
- 13.3 the time for bringing any such claims.

14. Complaints procedure

If at any time you are dissatisfied with the service provided to you by us please contact me or, if you would prefer to speak to someone else, please contact the Relationship Manager or Responsible Partner. We will aim to resolve any complaint quickly. For further information please refer to our Complaints Procedure which can be found by clicking this link or you can copy and paste this link into the address bar of your web browser. Alternatively, if you require a pdf copy via email or a hard copy of our Complaints Procedure, please contact me.

15. Next steps

Our Terms and this letter will apply to our relationship and to all matters we work on for you. Please confirm your acceptance of this letter and Our Terms within seven days of the date of this letter by either:

- 15.1 returning to me, either in the post or via email, a signed copy of this letter; or

15.2 forwarding to me a copy of this letter via email with the following confirmation wording "I/We accept and agree the terms of the attached letter".

In the event of you instructing us but having not accepted this letter and Our Terms as set out above, you will be deemed by instructing us to have accepted this letter and Our Terms and will be bound by them.

If you have any queries regarding the contents of this letter, or you would like to discuss anything, please do not hesitate to contact me.

Yours sincerely

JP Buckley
Partner
For and on behalf of DWF Law LLP

To: DWF Law LLP

I/We accept and agree the terms of this letter.

Catherine O'Keeffe
Service Director
Privacy, Transparency & Ethics Directorate

Authorised signatory for and on behalf of: NHS Digital

Dated 19th November 2020

APPENDIX A

WORK PACKAGE
SUPPORT OF INFORMATION GOVERNANCE

LEGAL SUPPLY CONTRACT - WORK PACKAGE

		Portfolio : P0701-02 Reference number: []
Team/Directorate: Information Governance		Cost Centre Number: 480994
Has this work been started? <input checked="" type="checkbox"/>		
Overview:		
Work Package Name	IG secondment of Stuart Crook and J P Buckley	
Reference	NEPO513 Legal Services Framework P-006231/C-011462 Lot 1	
Bravo Contract Number	con_4477	
Work Package Manager (Primary)	Cathy O'Keeffe	
Work Package Manager (Secondary)	Hazel Randall	
Date From (work-package start)	9 th November 2020	
Date To (work-package end)	31 March 2021	
Portfolio Code	P0701-02	
Supplier Name	DWF Law LLP	
Route to Market	Call-off of a work package from NEPO framework as above	
Purchase Order number:	TBC	
Names:	Stuart Brian Crook – Associate	
	JP Buckley – Partner	
<p>NHS Digital has need for the secondment of staff to work seamlessly with the IG legal internal resources.</p> <p>NHS Digital has been front and centre of a huge amount of Technology, Digital and Data work to support the NHS response to COVID-19. Information Governance has been central to all of that work, which shows little sign of slowing down. Solutions NHS Digital has delivered to support COVID-19 over this time include NHS 111 online COVID-19 services, COVID19 advice though the NHS.UK website and NHS App, online COVID-19</p>		

Testing service, Shielded Patient List and most recently the collection of GP data to support COVID-19 Planning and Research. For more details of our work see our to our COVID-19 Webpage and most recent COVID-19 Programme Update.

The roles will be home based and remote, using video conferencing and digital technologies to collaborate and work as part of the 40+ Information Governance Team. The persons will be required to support a range of data protection compliance work, supporting the drafting and production of data protection policies and guidance and working with NHS Digital Cyber Team, Live Services Team, Programme Teams, Product Teams and Data, Insights and Statistics Teams advising on the cyber, privacy, data protection and public law implications of a range of national technology, digital and data projects for health and social care, including our COVID-19 programme work.

Persons experience should include advising on and completing data protection impact assessments; drafting privacy notices; advising on complex data controller, joint data controller, data processor arrangements and data flows; drafting data sharing agreements, data processing agreements and MOUs; advising on records management and retention and overseas transfers; and advising on legal basis for processing including under public law, common law duty of confidence and GDPR. Experience of working with public sector clients, ideally within the health and social care sector, including health research, is preferable but not essential.

These are practical hands on roles working as part of a large specialist information governance team on high profile, innovative national health and social care digital and data projects, where the essential skills required include: the ability to advise on and implement pragmatic and practical solutions to complex data protection issues; to advise on privacy and security risks and mitigations; and to work at pace with limited supervision. Persons may be required to supervise paralegals and will report directly into the Data Protection Officer and the Executive Director of Information Governance, both of whom are senior specialist privacy solicitors. They will also work closely with the Head of Legal and the Legal and Commercial Teams advising on the data protection aspects of commercial contracts.

1. The Objective

Support of IG team during the COVID-19 period

2. Schedule for the work package with output based deliverables

Term	<p>This project shall commence on 9 November 2020 and expire 31 March 2021.</p> <p>These Services shall commence on the commencement date specified above and shall expire on Work Package End Date specified above, unless terminated earlier by either Party in accordance with the terms of the Contract.</p> <p>The term may be extended by the written agreement of the Parties provided that the duration shall be no longer than the Contract.</p> <p>Either party may terminate this work package by providing written notice.</p>
Services Description	<p>Activity:</p> <ul style="list-style-type: none"><input type="checkbox"/> Provision of IG support as set out below which will be prioritised by the DPO and IG Exec Director.

	<ul style="list-style-type: none"> Activity: Remote staff to work on IG legal work: Advice re DPA on urgent contracts and associated DPA documentation Provision and support of the COVID-19 support Drafting and provision of policy documentation to meet Data Protection Legislation <input type="checkbox"/> Provision of advice to IG teams associated with urgent programmes. Provision if support of advice notes as required by DPO and IG Exec Director <input type="checkbox"/> Strategic support and development of strategic documentation. advising on and completing data protection impact assessments; drafting privacy notices; advising on complex data controller, joint data controller, data processor arrangements and data flows; drafting data sharing agreements, data processing agreements and MOUs; advising on records management and retention and overseas transfers; advising on legal basis for processing including under public law, common law duty of confidence and GDPR. Advising on data related litigation issues etc <input type="checkbox"/> Supervision and review of others work. <p>The lawyers would also be used within the Covid-19 Information Governance response team to undertake management of requests for support to programmes and services set out in the NHS Digital Covid-19 Book of work.</p> <p>Supervision and review of others work.</p> <p>NHS Digital managed data (e.g. patient data or employee data sets) shall be managed strictly as advised by NHS Digital and shall not be saved on DWF systems.</p>
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3. Charges and Payment

The following charges shall apply to this work package:

A capped fee model. Fees shall not exceed the following amounts.

The Supplier shall provide time recording records to cover each hour of the day claimed with evidence of supporting work being completed.

A day is 8 hours a day.

- This will be a capped day rate for Stuart Crook of: / day exc VAT. The expectation is 6 months, 5 days a week.
- JP Buckley will be at a hourly rate of: / hour exc VAT. The expectation is the equivalent of 2 days flexibly not to exceed 14 hours through each week in November 2020 and ad hoc as agreed in advance by NHS Digital. A capped day rate of: shall apply. This may be varied by written change referencing this contract in writing authorised by Jackie Gray.

The maximum spend under this contract is as follows:

For the avoidance of doubt, Stuart whilst seconded will not be authorised to engage additional DWF legal services of anyone.

Name	Hourly Rate	Discount	8 hour working day	Capped Day Rate
Stuart Crook				
JP Buckley				

DWF shall not be entitled to charge any miscellaneous expenses or disbursements. If required, any such charges would need to be agreed by a written change to this agreement agreed with Jackie Gray.

The rates of the framework agreement are acknowledged, but the above-stated rates apply for this work as a discounted approach.

Changes and Approach to Additional Resources

Any changes shall only be made by agreement of the parties in writing.

NHS Digital may reduce the hours / days at any time.

If additional DWF staff are required to deliver the services as set out in this work package, these will be requested by NHS Digital. DWF will review the criteria and where resources are available, will offer such resources to NHS Digital.

The Hourly Rate for such staff shall not exceed the rates set out below. The Daily Rate for such staff shall not exceed the Hourly Rate x 8 for such staff. The rates however may be further discounted.

Rate table for NEPO513 Legal Services Framework P-006231/C-011462 Lot 1:

DWF Law LLP;	
Grade	Hourly Rate
10 years PQE	
5 Years PQE	
0-4 years PQE	
Trainee	
Paralegal/Other	

Payment of all invoices will be dependent on there being a valid Purchase Order in place.

All invoices must: contain the purchase order number, be addressed to NHS Digital, T56 Payables A125, Phoenix House, Topcliffe Lane, Wakefield, WF3 1WE and be sent as a PDF attachment by email to the following email address; sbs.invoicing@nhs.net (one invoice per PDF) and emails must not exceed 10Mb and quote, 'T56 Invoice Scanning' in subject line or alternatively invoices can be sent via post to the above address.

To raise a PO or in the event of any billing queries, please contact nhslegalbilling@nhs.net

Your contract manager is: Hazel Randall Associate Director of Legal Services

DWF's payment terms are 30 days from date of invoice.

4. Special Terms

DWF here warrants and confirms that the persons named above to provide the services has completed a full identity check by DWF that meets current government guidelines.

Due to COVID-19 this shall be a remote secondment.

- DWF shall remain responsible for the named person's home working environment and working from home, and Clause 14.4 and 14.6 of Doc 3 shall not apply to any incident occurring within the person's home.
- The rates above shall apply, and Clause 9.1, 9.2 and 9.4 of Doc 4 attached shall not apply.
- Clause 3(d) of Doc 5 shall not apply.

DWF shall perform the Services in accordance with the following contract terms (as varied by this work package):

- Doc 1: the requirements of the NEPO Framework Agreement and the Call-Off Terms and Conditions under Schedule 1 of the NEPO Framework Agreement
- Doc 2: the Special Terms and Conditions to the Call-Off Contract
- Doc 3: DWF Secondment Agreement (Stuart Crook and JP Buckley)
- Doc 4: DWF Letter of Engagement
- Doc 5: DWF Law LLP - Terms of Business

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5. Signatures

Agreed on behalf of NHS Digital	Signature: Print Name: Catherine O'Keeffe Date: 19 th November 2020
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Agreed on behalf of DWF Law LLP:	Signature: Print Name: JP BUCKLEY Date: 18 November 2020
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APPENDIX B

TEMPLATE INSTRUCTION FORM – TO BE SENT OVER BY EMAIL AND AGREED

Item	Requirement	Notes
Services required	NHS Digital:	
Excluded matters	DWF:	
Timescales	NHS Digital: DWF:	
Personnel	DWF:	
Advice relating to which countries?	NHS Digital: DWF:	
Fee estimate	DWF: (Drafting note - please clearly state the applicable type of fee arrangement, such as: hourly rates with an estimate, day rates with an estimate, capped fee or fixed fee.)	
Assumptions	DWF:	
Billing cycle	DWF:	
Other matters to note	NHS Digital:	

	DWF:	
Agreed by at NHS Digital:	NHS Digital:	
Agreed by at DWF Law LLP:	DWF:	