

DATED 3 JULY 2017

(1) SECRETARY OF STATE FOR EDUCATION

and

(2) JACQUI SMITH

**CONTRACT FOR THE PROVISION OF
BOARD LEADERSHIP AND OTHER RELATED SERVICES**

THIS CONTRACT IS DATED 3 JULY 2017

PARTIES:

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Department for Education, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown (the "Department"); and
- (2) **JACQUI SMITH** of 52 Church Street, Malvern, Worcestershire, WR14 2AL (the "Chair").

RECITALS:

- (A) The Chair has experience in leading and managing change in the public sector; and developing and establishing new services to respond to emerging need; and, is highly experienced at board level.
- (B) The Department, in view of the Chair's skills, experience and knowledge wishes to engage the Chair to provide the Services, in particular to provide strategic leadership and other related services to the Company.
- (C) The Chair will be acting as a nominee of the Department and shall be accountable to the Department subject to the terms and conditions set out in this Contract.
- (D) Notwithstanding the duties the Chair will owe to the Department as its nominee, the Chair will be a board member of the Company and, as such, must always act in a way which the Chair considers (in good faith) is most likely to promote the success of the Company.
- (E) The appointment of the Chair is on condition that all due diligence checks have been completed satisfactorily prior to commencement of the Services. If these checks are not completed as such then the Department reserves its rights to terminate the contract accordingly.
- (F) The Department's reference number for this Contract is RD1000705

1. INTERPRETATION

1.1 In this Contract the following words shall mean:

"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Chair"	means the role of Chair of the board of the Company to be performed by Jacqui Smith.
"Company"	Means Jacqui Smith Advisory Ltd (Company Number 09454455)
"Confidential Information"	means all information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including but not limited to information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and commercially sensitive information which may be regarded as the confidential information of the disclosing party.
"Charges"	means the charges payable by the Department in consideration of the Services as set out in Schedule 2
"Contract Manager"	means Victoria Chapman of Department for Education, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT or such other person as the Department may notify to the Chair in writing from time to time
"Contracting Department"	any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department;
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"Crown"	means Queen Elizabeth II and any successor

"Department's Intellectual Property Rights"	means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Services
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
"Her Majesty's Government"	means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Intellectual Property Rights"	means any copyright, rights in designs, database rights, domain names, trade marks, service marks, patents or any applications for any of the foregoing, know-how or similar rights or obligations (whether registrable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Services"	any and all of the services to be provided by the Chair under this Contract including, but not limited to, the services described in Schedule 1;
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

- 1.2 References to "Contract" mean this contract (and include the Schedules). References to "Clauses" and "Schedules" mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.

1.3 References in this Contract to statutory provisions include all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.

1.4 Reference to the singular include the plural and vice versa and references to any gender include both genders. References to a person include any individual, firm, unincorporated association or body corporate.

2. COMMENCEMENT AND CONTINUATION

2.1 The Chair shall commence the Services on 4 July 2017 until 3 July 2019, with a contract review after the first year, which will be agreed in writing. If the Department is content with Services provided by the Chair in accordance with the requirements set out in the contract, the Department may wish to extend the Contract. Any extensions to the contract will then be reviewed annually thereafter for the extension period. Subject to the rights of earlier termination set out in this Contract, the Chair shall perform the Services for the period of appointment as set out in Schedule 1 of this contract.

2.2 The Chair shall provide the Services at such times and at such locations as the Department, the Company and the Chair shall agree from time to time or failing agreement as the Company shall reasonably specify.

3. PROVISION OF SERVICES

3.1 The Chair is appointed to undertake the Services. This Contract shall not prevent the Chair from undertaking other board leadership services provided that the undertaking of such services does not cause a breach of any provision of this Contract.

3.2 The Chair shall promptly and efficiently perform the Services as and when required with all due care and skill as may be expected of a person with the experience of the Chair and in accordance with this Contract.

3.3 The Chair shall keep detailed and accurate records of all activities undertaken in relation to the provision of the Services and shall, if required by the Contract Manager in accordance with Clause 6 of this Contract, provide the Department with annual reports (and reports at such other intervals and in such form as the Contract Manager (acting reasonably) may from time to time require).

3.4 The Chair acknowledges the importance attached by the Department to equal opportunities. The Chair shall ensure that in fulfilling their obligations under this Contract they will act fairly, avoid discrimination and promote equal opportunities.

4. CHARGES AND TERMS OF PAYMENT

In consideration of and subject to the satisfactory performance by the Chair of the Services, the Department shall pay the Chair the Charges in accordance with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Chair for work completed to the satisfaction of the Department.

5. CHANGES TO THE DEPARTMENT'S REQUIREMENTS

5.1 The Department shall notify the Chair of any material change to the Department's requirements under this Contract.

5.2 The Chair shall use their best endeavours to accommodate any changes to the needs and requirements of the Department provided that they shall be entitled to payment for any additional costs incurred as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.

5.3 If the parties are unable to agree such additional costs, the provisions of Clause 26 shall apply.

6. CONTRACT MANAGEMENT

6.1 The Chair shall comply with any reasonable guidance or guidelines issued by the Contract Manager from time to time in connection with the Services.

6.2 The Chair shall address any enquiries about procedural, contractual or other matters in connection with the provision of the Services in writing to the Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.

6.3 The Chair understands and acknowledges that [he/she] will be subject to a performance management review process conducted by the Company.

6.4 The Department will conduct annual contract review meetings. These shall be attended by the Chair, the Contract Manager and any other person the Department wishes to attend. For the purpose of these annual contract review meetings, the Chair shall provide the Contract Manager with all performance review documents produced by the Company.

6.5 Notwithstanding the provisions of this clause, the Department (acting reasonably) reserves the right to call contract review meetings at any time during the term of this Contract.

7. PREMISES AND EQUIPMENT

7.1 The Department shall be under no obligation to provide any premises or equipment to the Chair and expects the Chair to comply with all rules and regulations from time to time issued by the Company in relation to the Chair's use of Company land and/or equipment.

7.2 Unless otherwise agreed, any land or premises made available to the Chair by the Department in connection with the provision of the Services shall be made available to the Chair free of charge and without exclusive possession and shall be used by the Chair solely for the purpose of providing the Services. The Chair shall have the use of such land or premises as licensee and shall immediately vacate the same on the expiry or other termination of this Contract.

7.3 The Chair shall ensure that they comply with all rules and regulations from time to time issued by the Department relating to the use and/or security of their premises and/or use of Department equipment.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 It is acknowledged and agreed between the parties that all existing or future Department's Intellectual Property Rights shall vest in the Crown absolutely.

8.2 Any Intellectual Property Rights of the Chair which is in existence at the date of this Contract and which is comprised in or necessary for or arising from the performance of the Services owned by the Chair ("**Background Intellectual Property**") shall remain in the ownership of the Chair but in consideration of the fees payable pursuant to this

Contract, the Chair hereby grants to the Department in respect of such Background Intellectual Property an irrevocable, non-exclusive, royalty-free, perpetual licence with rights to grant sub-licences. For the avoidance of doubt, the Department shall only be permitted to use the Background Intellectual Property to the extent it is comprised in or necessary for or arises from the performance of the Services.

- 8.3 The Chair agrees that at the request and cost of the Department it will at all times do all such reasonable acts and execute all such documents as may be reasonably necessary or desirable to ensure that the Department receives the full benefit of all of its rights under this Contract in respect of the Department's Intellectual Property Rights or to assist in the resolution of any question concerning the Intellectual Property Rights.
- 8.4 The Chair hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.
- 8.5 The Chair warrants:
 - 8.5.1 that the use of or exercise by the Department of the Background Intellectual Property will not infringe the rights of any third party;
 - 8.5.2 that the Chair has not granted or assigned any rights of any nature in the Department's Intellectual Property Rights to any third party.
- 8.6 The Chair shall ensure that any copyright materials produced by or on behalf of the Chair shall be marked with the following copyright notice "© Crown Copyright 2017".

9. WARRANTY AND INDEMNITY

- 9.1 The Chair warrants and represents to the Department that the obligations of the Chair under this Contract will be performed to the standard or care and skill as set out in Clause 3.2. The Department and the Company will be relying upon the Chair's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Chair in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Chair as part of this Contract.
- 9.2 Without prejudice to any other remedy, if any part of the Services are not performed in accordance with this Contract then the Department shall be entitled where appropriate to:
 - 9.2.1 require the Chair promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or
 - 9.2.2 assess the cost of remedying the failure (the "**Assessed Cost**") and to deduct from any sums due to the Chair the Assessed Cost for the period that such failure continues; or
 - 9.2.3 engage another person to carry out the Services, in whole or in part, and all additional expenditure properly incurred by the Department in having such services carried out shall be recoverable by the Department from the Chair.
- 9.3 The Chair shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law arising out of any breach by the Chair of their obligations under this Contract or their negligence or otherwise resulting from any action or lack of action on the part of the Chair except to the extent that such expense, liability, loss, claim or proceedings result from the default, act or omission of the Department and/or the Company.

- 9.4 The Department acknowledges that the Company shall provide the Chair with adequate insurance cover with an insurer of good repute to cover claims under this Contract (including any claim under the indemnity at clause 9.3) or any other claims or demands which may be brought or made against the Chair by any person suffering any injury damage or loss in connection with this Contract. The Chair shall upon request produce to the Department, a copy of the Company's policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintainedTermination
- 9.5 This Contract may be terminated by either party giving to the other party at least 30 days' notice in writing.
- 9.6 This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:
- 9.6.1 a petition is presented for the Chair's bankruptcy or a criminal bankruptcy order is made against the Chair; or
 - 9.6.2 the Chair makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors; or
 - 9.6.3 if any event analogous to the events described in Clauses 9.6.1 or 9.6.2 shall occur in any jurisdiction in which the Chair is resident or carries on their business; or
 - 9.6.4 the Chair is convicted of a criminal offence related to their business or professional conduct; or
 - 9.6.5 the Chair commits an act of grave misconduct in the course of their business; or
 - 9.6.6 the Chair fails to fulfil their obligations relating to the payment of social security contributions; or
 - 9.6.7 the Chair fails to fulfil their obligations relating to payment of taxes.
- 9.7 Upon termination of this Contract (however caused) the Chair agrees to resign as Chair and director of the Company without delay, such notice to take effect within the timescale specified by the Department or otherwise as soon as reasonably practicable.
- 9.8 Nothing in this Clause 9.4 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.
- 9.9 The provisions of Clauses 8.2, 9, 13.2, 17 and 21 shall survive the termination or expiry of any part of this Contract.

10. **AMENDMENT AND VARIATION**

No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Chair shall comply with any formal procedures for amending or varying contracts which the Department may have in place and notify to the Chair from time to time.

11. EFFECT OF EXPIRY OR TERMINATION

- 11.1 On expiry or termination of this Contract however arising, the Chair shall deliver to the Department (or as the Department directs) any documents and data (whether hard copy or electronic) incorporating the Department's Intellectual Property Rights or necessary for the Department to receive the full benefit of the licence or the Background Intellectual Property pursuant to Clause 8.2 and any property belonging to the Department which may be in the Chair's possession or under their control.
- 11.2 On expiry or termination of this Contract however arising, the Chair shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or their equivalent). The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.
- 11.3 The assistance required by the Department under the provisions of Clause 11.2 may include (without limitation) the delivery of documents and data in the possession or control of the Chair which relate to this Contract, including the documents and data, if any, referred to in the Schedules.
- 11.4 The Chair shall do such other reasonable acts or things as may be necessary or desirable to enable the Department to accomplish an orderly and prompt transfer of responsibility for the provision of the Services (or their equivalent).
- 11.5 The Chair undertakes that they shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility for the provision of the Services (or their equivalent).
- 11.6 The Chair shall not at any time after the expiry or other termination of this Contract represent themselves as providing Services or as being in any way connected with the Department.

12. ACCESS AND INFORMATION

The Chair shall provide access at all reasonable times to the Department's internal auditors or other duly authorised staff or agents to inspect to such documents as the Department considers necessary in connection with this Contract.

13. CONFLICT OF INTEREST

- 13.1 The Chair acknowledges and agrees that (except as provided below) they will not act for any person where doing so is likely to give rise to a conflict of interest in relation to the Services provided under this Contract. For the avoidance of doubt, this Clause 13 shall not prevent the Chair from providing services to an existing client of the Chair to whom the Chair is currently providing services provided that
 - 13.1.1 the Chair shall not act for any such client in respect of any transactions between the Department and such client or its Affiliates; and;
 - 13.1.2 the Chair will ensure that any personnel acting for any such client that are not already acting for the Department do not have access to information held by the Chair relating to the Department.
- 13.2 This Clause shall survive the termination of the Chair's appointment howsoever arising for a period of one year and shall continue in full force and effect.

14. STATUS OF CHAIR

- 14.1 In carrying out their obligations under this Contract the Chair agrees that they will be acting as principal and not as the agent of the Department.
- 14.2 The parties agree that the Chair will provide services to the Department under the terms of this Contract as a self-employed contractor and that nothing in this Contract shall be construed or have the effect of giving rise to a relationship of employer and employee between the Department or the Crown on the one hand and the Chair on the other, whether for the duration of the Contract, for the duration of each period for which the Chair is providing services to the Department pursuant to this Contract or otherwise.
- 14.3 Nothing in this Contract shall place the Department under any obligation to offer any work to the Chair, nor shall anything in this Contract place any obligation on the Chair to accept any work offered to her by the Department. The parties further agree that no such obligations should be inferred should in fact the Department offer, and the Chair accept, work on a regular basis following the date of this Contract.

15. TAX INDEMNITY

- 15.1 Where the Chair is liable to be taxed in the UK in respect of consideration received under this Contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 15.2 Where the Chair is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 15.3 The Department may, at any time during the term of this contract, ask the Chair to provide information which demonstrates how the Chair complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.
- 15.4 A request under Clause 16.3 above may specify the information which the Chair must provide and the period within which that information must be provided.
- 15.5 The Department may terminate this contract if:
- 15.5.1 in the case of a request mentioned in Clause 16.3 above if the Chair:
- (a) fails to provide information in response to the request within a reasonable time, or
 - (b) provides information which is inadequate to demonstrate either how the Chair complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;
- 15.5.2 in the case of a request mentioned in Clause 16.4 above, the Chair fails to provide the specified information within the specified period, or
- 15.5.3 it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Chair is not complying with those Clauses.

- 15.6 The Department may supply any information which it receives under Clause 16.3 to the Commissioners of HM Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 15.7 The Chair warrants and represents to the Department that they are an independent contractor and, as such, bear sole responsibility for the payment of tax and national insurance contributions which may be found due from them in relation to any payments or arrangements made under this Contract. The Chair shall promptly and regularly pay all National Insurance Contributions due from them as a self-employed person and shall account to the HM Revenue and Customs for all taxes due from her in respect of the payments made to her under this Contract.
- 15.8 If, notwithstanding Clause 14.2, HM Revenue and Customs and/or any other appropriate agency consider that the Chair is an employee of the Department for the purposes of tax and/or national insurance contributions; then the Department shall be entitled to terminate this Contract immediately and deduct from the payments payable to the Chair under the terms of this Contract, such sums as the HM Revenue and Customs and/or other agencies require in respect of income tax and employee national insurance contributions. The deduction of such tax and national insurance contributions will not affect the status of the Chair as self-employed for all other purposes.
- 15.9 Without prejudice to the provisions of Clause 16.8 above, the Chair shall indemnify the Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by the Department in connection with any such assessment or claim.
- 15.10 The Chair authorises the Department to provide HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not the Department is obliged as a matter of law to comply with such request.
- 15.11 The Chair shall register for value added tax if and when required by law and shall promptly notify the Department for Work and Pensions of their liability for Class 2 and, where appropriate, Class 4 national insurance contributions.

16. CONFIDENTIALITY

- 16.1 The Chair acknowledges that any Confidential Information obtained from or relating to the Department, its servants or agents is the property of the Department.
- 16.2 Each party hereby warrants that:
- 16.2.1 any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall treat all Confidential Information belonging to the other party as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Contract; and
- 16.2.2 any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of the other party, except where disclosure is otherwise expressly permitted by the provisions of this Contract.

- 16.3 The Chair shall take all necessary precautions to ensure that all Confidential Information obtained from the Department is treated as confidential and not disclosed (without prior approval) or used other than for the purposes of this Contract by any of its employees, servants or agents.
- 16.4 Without prejudice to the generality of the foregoing neither the Chair or any person engaged by it whether as a servant or consultant or otherwise, shall use the Confidential Information for the solicitation of business from the Department whether directly or by its servants or consultants or any third party.
- 16.5 The Chair shall ensure that their employees, servants or such professional advisors or consultants are aware of the Chair's obligations under this Contract.
- 16.6 The provisions of clauses 17.1 to 17.5 inclusive shall not apply to any information received by one party from the other:
- 16.6.1 which is or becomes public knowledge (other than by breach of this Clause 17.6);
 - 16.6.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
 - 16.6.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 16.6.4 which is independently developed without access to the Confidential Information;
 - 16.6.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.
- 16.7 Nothing in this Contract shall prevent the Department from disclosing the Chair's Confidential Information:
- 16.7.1 On a confidential basis to any Central Government Body for any proper purpose of the Department or of the relevant Central Government Body;
 - 16.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 16.7.3 to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 16.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any Central Government Body for any purpose relating to or connected with this Contract;
 - 16.7.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or
 - 16.7.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
- 16.8 Nothing in this Clause 17 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal

business, to the extent that it does not result in a disclosure of Confidential Information or an infringement by either party of any Intellectual Property Rights.

- 16.9 Nothing in this Clause 17 shall prevent the Department from exercising licenses granted to it under this Contract or enjoying Intellectual Property Rights vesting in or transferring to it under this Contract.
- 16.10 The Chair undertakes to make no reference in any advertising or other promotional material to this Contract without the prior written consent of the Department.
- 16.11 Any findings and/or contents of reports produced under this Contract shall not be disclosed without the permission of the Department which shall not be unreasonably withheld.
- 16.12 In the event that the Chair fails to comply with this Clause 17, the Department reserves the right to terminate the Contract by notice in writing with immediate effect.
- 16.13 The provisions under this Clause 17 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.
- 16.14 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Chair undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 16.15 The Chair will immediately notify the Department of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Chair will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Chair's obligations under clauses 17.1, 17.2 and 17.3. The Chair will co-operate with the Department in any investigation that the Department considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 16.16 The Chair shall, at its own expense, alter any security systems at any time during the Contract Period at the Department's request if the Department reasonably believes the Chair has failed to comply with clause 17.14.
- 16.17 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department 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.
- 16.18 Subject to Clause 17.17, the Chair hereby gives his consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Chair, to the general public.

17. DATA PROTECTION ACT

- 17.1 With respect to the parties' rights and obligations under this Contract, the parties agree that the Department is the Data Controller and that the Chair is the Data Processor. For the purposes of this Clause 18, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.

17.2 The Chair shall:

- 17.2.1 process the Personal Data only in accordance with instructions from the Department (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Department to the Chair during the period of the Contract);
- 17.2.2 process the 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;
- 17.2.3 implement appropriate technical and organisational measures to protect the 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 Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 17.2.4 obtain prior written consent from the Department in order to transfer the Personal Data to any Affiliates for the provision of the Services;
- 17.2.5 notify the Department within five Working Days if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the Department's obligations under the Data Protection Legislation;
- 17.2.6 provide the Department with full cooperation and assistance in relation to any complaint or request made.
- 17.2.7 permit the Department to inspect and audit the Chair's data Processing activities and comply with all reasonable requests or directions by the Department to enable the Department to verify and/or procure that the Chair is in full compliance with its obligations under this Contract;
- 17.2.8 comply with such other instructions and shall carry out such other actions as the Department may notify in writing.

- 17.3 The Chair shall comply at all times with relevant data protection legislation and shall not perform its obligations under this Contract in such a way as to cause the Department to breach any of its applicable obligations under the same data protection legislation.

18. FREEDOM OF INFORMATION

- 18.1 The Chair acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its Information disclosure obligations.

18.2 The Chair shall:

- 18.2.1 transfer to the Department all requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a request for Information;

- 18.2.2 provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and
- 18.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department 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.
- 18.3 The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 18.4 In no event shall the Chair respond directly to a request for Information unless expressly authorised to do so by the Department.
- 18.5 The Chair acknowledges that (notwithstanding the provisions of Clause 19) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Chair:
- 18.5.1 in certain circumstances without consulting the Chair; or
- 18.5.2 following consultation with the Chair and having taken their views into account;
- provided always that where 19.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Chair advanced notice, or failing that, to draw the disclosure to the Chair's attention after any such disclosure.

- 18.6 The Chair shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

19. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 19.1 The Chair shall not make any press announcements without the Department's prior written approval. Any such press announcements shall remain subject to the rights relating to Confidential Information.
- 19.2 The Chair shall not publicise the Contract in any way unless required to do so by law.
- 19.3 The Chair shall not do anything or permit to cause anything to be done, which may damage the reputation of the Department or bring the Department into disrepute.

20. ASSIGNMENT AND SUB-CONTRACTING

Neither the benefit nor the burden of this Contract may be assigned or sub-contracted in whole or in part by the Chair.

21. CORRUPT GIFTS AND PAYMENT OF COMMISSION

The Chair shall not pay any commission, fees or grant any rebates to any employee, officer or agent of the Department nor favour any employee, officer or agent of the

Department with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Department other than as a representative of the Department, without the Department's written approval. The Department shall have the right to audit any and all such records necessary to confirm compliance with this Clause 22 at any time during performance of this Contract and during the three year period following completion of performance. Breach of this Clause 22 shall entitle the Department to terminate this Contract and any other contracts between the Chair and the Department forthwith.

22. WAIVER

No delay by or omission by either party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

23. SEVERABILITY

If any provision or part of a provision of this Contract shall be or shall become unenforceable, void or invalid (as the case may be) such provision or part thereof shall not affect and shall be deemed to be severed from the remainder of this Contract to the intent that the remainder of the affected provision and this Contract shall be or shall continue to be fully enforceable and valid.

24. DISCRIMINATION

The Chair 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 or otherwise) in employment.

25. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise then pursuant to that Act.

26. DISPUTE RESOLUTION

26.1 The parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.

26.2 Any dispute not capable of resolution by the parties in accordance with the terms of Clause 27.1 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) model Mediation Procedure.

26.3 No party may commence any court proceedings in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation in accordance with the provisions of Clause 26.2.

27. NOTICES

27.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, or e-mail, addressed to the

recipient at its registered office or its address (or such other address, or e-mail address as may be notified in writing from time to time).

27.2 The notice, demand or communication shall be deemed to have been duly served:

27.2.1 if delivered by hand, when left at the proper address for service;

27.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted; and

27.2.3 if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

28. **LAW AND JURISDICTION**

This Contract shall be governed by and interpreted in accordance with English law and the parties submit to the jurisdiction of the English courts.

Authorised to sign for and on
behalf of the Secretary of
State for Education

Signature

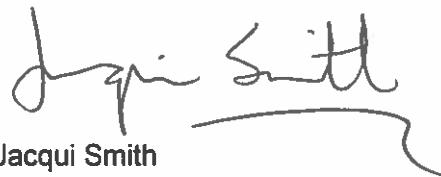
A handwritten signature in black ink, appearing to be 'S Lunn', with a large loop at the start and a wavy line at the end.

Suzanne Lunn,
Deputy Director

Department for Education
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Authorised to sign for and on
behalf of Jacqui Smith

Signature

A handwritten signature in black ink, appearing to be 'Jacqui Smith', with a long horizontal line at the end.

Jacqui Smith

52 Church Street
Malvern
Worcestershire
WR14 2AL

SCHEDULE 1

SERVICES TO BE DELIVERED

1. Background

You have been appointed as the independent Chair of the Company by the Department.

2. Key Personnel

The following named individual, Jacqui Smith, shall be considered key personnel for the purpose of delivering the Services detailed in this Schedule 1.

3. Purpose of Appointment

As Chair, you will provide strong, independent leadership to the Company, and ensure that its board of directors ("the Board") is effective in implementing the Company's strategic plan for improving the delivery of children's social care services in Sandwell.

4. Period of Appointment

The Department appoints you to be the Chair from 4 July 2017 until 3 July 2019. The Department reserves the right to extend the end date of this Contract by up to 24 months, and will give one month's prior notice of our intention to do so. The 24 month extension may be in full or in multiples of one month up to the full 24 month potential. This may include a negotiated reduction or increase in the number of call off days per month. Any negotiated extension offered by the Department would be without prejudice.

Throughout the period of your appointment, you will:

4.1. Provide strategic leadership to the Company. This will include:

- 4.1.1. setting an ambitious vision for improvement and innovation in the exercise of children's social care functions and the delivery of children's social care services in Sandwell;**
- 4.1.2. setting out a strategic approach for the Board leadership that assists the Board to perform effectively its core functions;**
- 4.1.3. developing the Board's priorities and agreeing meeting agendas in order to facilitate discussions that reflect the Company's identified strategic priorities;**
- 4.1.4. facilitating effective communication between the Board's non-executive directors and the executive directors, and with other senior managers; and**
- 4.1.5. overseeing the Board's functions and deliberations between formal meetings.**

4.2. Develop effective corporate governance arrangements for the Company. This will include:

- 4.2.1. supporting and guiding the Board to ensure the transparent selection, appointment, assessment and (should it prove necessary) the removal of directors, or any other direct appointee;
- 4.2.2. recommending to the Board the selection and appointment of the chairs and vice-chairs of the Board's committees;
- 4.2.3. should a non-executive director vacancy arise, collaborating with the Board and stakeholders to identify, attract and recommend for Board approval, qualified candidates to serve as non-executive directors;
- 4.3. Oversee institutional performance. This will include:
 - 4.3.1. supporting and guiding the Board in the routine performance assessment of the Company's governing, advisory and administrative bodies;
 - 4.3.2. managing the annual performance assessment of the executive directors, and providing support to the annual performance assessments of other direct reports to the Board;
 - 4.3.3. guiding the Board's termly strategic reviews on how to achieve and assess the impact of improvement in services for children and financial management; and
 - 4.3.4. reporting on performance, and such other matters as the Department may request, including a written report sent to the Department (if requested).
- 4.4. Coordinate risk management. This will include:
 - 4.4.1. through the Company's audit committee – regular review of the Company's risk management strategy, including risk classification, tolerance and mitigation; and
 - 4.4.2. ensuring the effectiveness of risk management activity through the committees of the Board, principally the audit committee.
- 4.5. Advocate on behalf of the Company. This will include:
 - 4.5.1. acting as the principal spokesperson and representative for the Board, advocating, and promoting the work of the Company in social work, social care and corporate settings; and
 - 4.5.2. maintaining effective communication and engagement with stakeholders such as the Council, partner agencies, government departments and national agencies, schools and colleges and employees and the media, to ensure the Board understands and addresses the issues and concerns of a diverse range of stakeholders.
- 4.6. Fulfil a procedural role in the operation of the the Company. This will include:
 - 4.6.1. chairing and leading all Board meetings, strategy reviews, and other such meetings;

- 4.6.2. ensuring adequate time for informed discussion and consideration of agenda items and clear, effective decision making by the Board, and overseeing a vote amongst Board members if consensus cannot be reached; and
- 4.6.3. in accordance with the Company's governance procedures, acting on behalf of the Board between Board meetings to make immediate decisions. The Chair, in consultation with the executive and non-executive directors, can determine the nature and urgency of a required decision which cannot be accommodated by emergency Board meetings or teleconferences, and reporting to the Board on any such decisions as soon as possible thereafter.
- 4.7. Throughout the period of your appointment you are acting as a nominee of the Secretary of State and you are accountable to the Department, which shall be through the Contract Manager. However, you must also comply with your duties to the Company and demonstrate that your work in Sandwell is in the public interest of Sandwell's children, young people, and their families.
- 4.8. You will need to ensure that services are properly and effectively coordinated, working with the Chief Executive of the Council, other Council employees, including the Director of Children's Services, and other relevant bodies and partnerships – including, but not limited to, the Safeguarding Children Board and the police.

5. Chair's Services

From the date of your appointment, you will be responsible, together with the Council for overseeing the service delivery of the Company, including:

- 5.1. ensuring that the Company remains an autonomous organisation, able to drive improvement and innovation in delivering children's social care services on behalf of the Council;
- 5.2. negotiating a clear role and remit for the Company, including its relationship with the Council; and,
- 5.3. playing a leading role in the promotion of effective, constructive partnership working with the Council and other key partner agencies.

SCHEDULE 2

CHARGES

- 1.1** The Department shall pay the Chair at the fixed daily rate of £750 exclusive of VAT, for the Services with the number of days payable between the start of this contract and 3 July 2019 limited to a maximum of 192 days. The amount of days payable for any further 12 month period which will be agreed in advance of commencement of any additional work will be limited to a maximum of 96 days. Agreement for any extension of the Contract is set out in Clause 2.1.
- 1.2** As Chair of the Company, you will be remunerated at the rate of £750 per day, for 6-8 days per month payable monthly into a bank, giro bank or building society account of your choice. This will be on or about the last working day of the month, the exception being December (usually the last working day before Christmas Eve). You must always maintain a suitable bank account or building society account into which payment can be made. Any change should be notified to HR immediately. This amount is not pensionable.
- 1.3** For the sake of clarity it is understood that overhead costs such as travel and accommodation expenses, telephone calls, stationery, postage, secretarial assistance for Services under this Contract are included in the fee rates detailed in the Clauses above.
- 1.4** If this Contract is terminated for any reason at any time before completion of the Services, the Department shall only be liable to reimburse eligible payments made by, or due to, the Chair before the date of termination.