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Slaughter and May  
One Bunhill Row  
London  
EC1Y 8YY

CCLL16A14

24 November 2016

Dear Sirs,

**Contract for the provision of legal services by Slaughter and May, One Bunhill Row, London, EC1Y 8YY as Solicitor to HM Treasury as Client pursuant to the Legal Services Framework Agreement (RM 919) dated 01/02/13 between the Minister for the Cabinet Office acting through Government Procurement Service as the Authority (1) and the Solicitor 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, save as varied and/or supplemented pursuant to the provisions set out in Appendix 3 in accordance with the Call-Off Terms.
3. Required information to be provided within Appendix 1: Organisational Departmental Cost Centre number **REDACTED** and Departmental Contract reference number (CCLL16A14). This is in order for us to complete monthly management information submitted to Crown Commercial Service and ease of reference to you if required at a later date.
4. The partner at the Solicitor with overall responsibility for the supply of the Contract Services is **REDACTED** and the fee earners assigned to the supply of the Contract Services are **REDACTED**, **REDACTED**, and **REDACTED**. The initial Key Personnel are **REDACTED**, **REDACTED**, **REDACTED**, **REDACTED**, **REDACTED**, **REDACTED**, and **REDACTED**.
5. The Client's Representative for the purpose of the Contract is **REDACTED** and any disputes in relation to the Contract shall be resolved as follows:
  - a. In the first instance, disputes are to be raised with **REDACTED** (for the client) and **REDACTED** (for the Solicitor).
  - b. Where they are not resolved, disputes are to be raised with **REDACTED (REDACTED)** (for the Client) and **REDACTED** (for the Solicitor).

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Payments to the Solicitor in respect of the Contract Services shall be made to the following bank account of the Solicitor: **REDACTED**.

6. For the purposes of the Contract, the address of each Party is:

- for the Client:

HM Treasury

1 Horse Guards Road, London SW1A 2HQ

For the attention of: **REDACTED**

Tel: **REDACTED**

Email: **REDACTED**

- for the Solicitor:

Slaughter and May, One Bunhill Row, London, EC1Y 8YY

For the attention of: **REDACTED**

Tel: **REDACTED**

Email: **REDACTED**

Facsimile:

**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 HM Treasury

I hereby confirm receipt of the above Letter of Appointment and the agreement of Slaughter and May to provide to HM Treasury the Services as specified in the Letter of Appointment in accordance with its terms.

Signed:

**REDACTED**

Name:

**REDACTED**

Date:

**REDACTED**

Status:

**REDACTED**

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**Appendix 1  
(Contract Services)**

**CCLL16A45**

**Cost centre: REDACTED**

This Appendix summarises the basis on which Slaughter and May have been engaged to provide commercial legal services to the Client in connection with the possible renegotiation of the RBS State aid agreement.

**Scope of engagement:** To provide commercial legal advice to the Client on legal issues connected to a review of options for RBS to deliver its State aid obligations (as set out in Commission Decision of 9 April 2014), including but not limited to:-

- **REDACTED.**

**Engagement with the Client:** You will act on the instructions of TLA. You may on occasion receive instructions from Treasury policy officials, with the agreement of TLA. You can assume that instructions from Treasury policy officials that have been copied to TLA have been agreed with TLA. Otherwise, please consult TLA before acting on instructions received directly from Treasury policy officials. All instructions will be given, or confirmed, in writing (which may include email communication). If you do not receive confirmation of an oral instruction within a reasonable time, please alert TLA who can confirm whether the instruction should be proceeded with.

**Meetings/face to face engagement with the Client:** Unless agreed otherwise, it is expected that you will work from your own offices (rather than at the Treasury's offices), although the Client shall make available a desk at 1 Horse Guards Road for occasions when required. Note that should a face to face meeting be required, the Client would expect only those members of your staff who are essential to the meeting to attend. The Client would not expect partners or other members of staff who are not directly engaged in the subject of the meeting to attend. Nor would the Client expect any particular level of staff to attend (e.g. the Client would not necessarily expect a partner to attend every meeting).

**Meetings with RBS and other external bodies:** the Client anticipates that you will, on occasions need to meet with RBS; these meetings may take place at RBS' offices. The Client also anticipates that there might be occasions when you will need to attend meetings with the Commission; whilst most of these meetings will be telephone conference call, there may be occasions when you will need to attend meetings in Brussels.

The contract will commence on 24 November 2016, and will expire on 30 April 2017.

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**Appendix 2  
(Contract Charges)**

£275,000 on the basis of the scope of engagement set out in Appendix 1 to the draft Terms and Conditions at Appendix C of the tender documents, and subject to any further agreement on such scope at the commencement of the project. The figure excludes VAT but includes expenses. Time spent on the project will be charged for at the normal hourly rates applying to HMT work under Framework Agreement RM919. This is a capped price for the work under this contract on the assumption that the work that the Solicitor is asked to do is: (i) limited to the scope of engagement set out in Appendix 1 to the draft Terms and Conditions at Appendix C of the tender documents, and subject to any further agreement on such scope at the commencement of the project; and (ii) completed by the end of April 2017.

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**Appendix 3**  
**(Variations and/or supplements to the Call-Off Terms)**

We agree to the following variations and supplements to the Call-Off Terms:

**1. LIMITATIONS OF LIABILITY**

1.1 REDACTED.

1.2 REDACTED.

1.3 REDACTED.

1.4 REDACTED.

1.5 REDACTED.

1.6 REDACTED.

1.7 REDACTED.

1.8 REDACTED.

**2. WORKING WITH OTHERS REDACTED.**

2.2 REDACTED.

**Part 2 – Call-Off Terms**

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

<b>"Client"</b>	means the Contracting Body that issues the Letter of Appointment;
<b>"Client's Confidential Information"</b>	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;
<b>"Client's Personal Data"</b>	means the Personal Data supplied by the Client to the Solicitor and, for the purposes of or in connection with the Contract;
<b>"Client's Representative"</b>	means the representative of the Client appointed by the Client from time to time in relation to the Contract and notified to the Solicitor;
<b>"Confidential Information"</b>	means the Client's Confidential Information and/or the Solicitor's Confidential Information;
<b>"Contract"</b>	means the written agreement between the Client and the Solicitor 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;
<b>"Contract Charges"</b>	means the prices (exclusive of any applicable VAT), payable to the Solicitor by the Client under the Contract for the full and proper performance by the Solicitor of the Contract Services;
<b>"Contract Mediator"</b>	has the meaning set out in Clause 23.2.5.1;

<b>"Contract Services"</b>	means the Services to be supplied by the Solicitor to the Client as set out in the Letter of Appointment;
<b>"Data Subject"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Framework Agreement"</b>	means the framework agreement between the Authority and the Solicitor referred to in the Letter of Appointment;
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the requirements of the Solicitors 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;
<b>"Information"</b>	has the meaning given under section 84 of the FOIA;
<b>"Key Personnel"</b>	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;
<b>"Letter of Appointment"</b>	means the letter from the Client to the Solicitor dated 24/11/2016 (including its appendices) containing the Order to provide the Contract Services;
<b>"Material Breach"</b>	means a material breach of the Contract;
<b>"Party"</b>	means the Solicitor or the Client and <b>"Parties"</b> shall mean both of them;
<b>"Persistent Failure"</b>	means any two (2) or more failures by the Solicitor in any rolling period of twelve (12) Months to comply with obligations in respect of the Contract Services under with the Contract;
<b>"Service Levels"</b>	means the service levels set out in the Annex;
<b>"Solicitor"</b>	means the Supplier to whom the Letter of Appointment is addressed;

**"Solicitor'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 Solicitor, including all IPRs, together with information derived from the foregoing, and that in any case is clearly designated as being confidential;

**"Solicitor's Staff"**

means all persons employed by the Solicitor and/or any Sub-Contractor to perform the Solicitor's obligations under the Contract together with the Solicitor's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of the Solicitor's obligations under the Contract;

**"Sub-Contract"**

means the Solicitor's contract with a Sub-Contractor whereby the Sub-Contractor agrees to provide to the Solicitor 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 Solicitor to carry out any of the Solicitor's obligations under the Contract.

**1.2 Interpretation**

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 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;
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 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);

- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 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;
- 1.2.9 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;
- 1.2.10 a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.11 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:
  - 1.2.11.1 the Framework Agreement (excluding Framework Schedule 4 (Letter of Appointment and Call-Off Terms));
  - 1.2.11.2 the Letter of Appointment;
  - 1.2.11.3 these Call-Off Terms; and
  - 1.2.11.4 any other document referred to in the Contract.

**2. SUPPLY OF CONTRACT SERVICES**

**2.1 Contract Services**

- 2.1.1 The Solicitor shall supply the Contract Services to the Client in accordance with the provisions of the Contract.
- 2.1.2 The Solicitor shall:
  - 2.1.2.1 comply with all reasonable instructions given to the Solicitor 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;
  - 2.1.2.2 immediately report to the Client's Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 2.1.3.1;
  - 2.1.2.3 co-operate with the Client and the Client's other professional advisers in relation to the Contract Services as required by the Client;
  - 2.1.2.4 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

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sustainability) in each case as notified to the Solicitor in writing by the Client; and

2.1.2.5 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 Solicitor 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.

2.1.3 The Solicitor shall not:

2.1.3.1 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

2.1.3.2 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

2.1.3.3 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

2.1.3.4 pledge the credit of the Client in any way; or

2.1.3.5 engage in any conduct which in the reasonable opinion of the Client is prejudicial to the Client.

2.1.4 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.

2.1.5 The Solicitor accepts that the Client shall have the right after consultation with the Solicitor 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.

2.1.6 Where the Solicitor 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 Solicitor's obligations under the Contract.

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## **2.2 Variation of Contract Services**

- 2.2.1 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.
- 2.2.2 Any request by the Client for a variation to the Contract Services shall be by written notice to the Solicitor:
- 2.2.2.1 giving sufficient information for the Solicitor to assess the extent of the variation and any additional costs that may be incurred; and
  - 2.2.2.2 specifying the timeframe within which the Solicitor must respond to the request, which shall be reasonable,
- and the Solicitor shall respond to such request within such timeframe.
- 2.2.3 In the event that the Solicitor 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 Solicitor should continue to perform its obligations under the Contract without the variation or may terminate the Contract in accordance with Clause 8.4.1.

## **2.3 Key Personnel**

- 2.3.1 The Solicitor 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 from time to time.
- 2.3.2 The Key Personnel shall not be released by the Solicitor 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.
- 2.3.3 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.
- 2.3.4 The Client shall not unreasonably withhold its agreement under Clauses 2.3.2 or 2.3.3. Such agreement shall be conditional on appropriate arrangements being made by the Solicitor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
- 2.3.5 If requested by the Client, the Solicitor 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.

## **3. PAYMENT AND CHARGES**

### **3.1 Contract Charges and VAT**

- 3.1.1 In consideration of the Solicitor's performance of its obligations under the Contract, the Client shall pay the Contract Charges in accordance with Clause 3.2 (Payment).

- 3.1.2 The Client shall, in addition to the Contract Charges and following receipt of a valid VAT invoice, pay the Solicitor a sum equal to the VAT chargeable on the value of the Contract Services supplied.
- 3.1.3 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.
- 3.1.4 If at any time before the Contract Services have been delivered in full the Solicitor 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.
- 3.1.5 The Solicitor 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 Solicitor's failure to account for or to pay any VAT relating to payments made to the Solicitor under the Contract. Any amounts due under this Clause 3.1.5 shall be paid by the Solicitor 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.

## **3.2 Payment**

- 3.2.1 The Client shall pay all sums properly due and payable to the Solicitor 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.
- 3.2.2 The Solicitor 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.
- 3.2.3 The Solicitor 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 Solicitor 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.
- 3.2.4 The Solicitor shall make any payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Solicitor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Solicitor.
- 3.2.5 Subject always to the provisions of Clause 14, if the Solicitor enters into a Sub-Contract 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 Solicitor 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.
- 3.2.6 The Solicitor shall not suspend the supply of the Contract Services unless the Solicitor is entitled to terminate the Contract under Clause 8.2.2 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 Solicitor in respect of the Contract Services.

3.2.7 The Solicitor 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 Solicitor 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.

3.2.8 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.

### **3.3 Recovery of Sums Due**

3.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Solicitor (including any sum which the Solicitor 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 Solicitor under the Contract

3.3.2 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.

## **4. LIABILITY AND INSURANCE**

### **4.1 Liability**

4.1.1 Neither Party excludes or limits its liability for:

4.1.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors; or

4.1.1.2 fraud or fraudulent misrepresentation by it or its employees.

4.1.2 No individual nor any service company of the Solicitor employing that individual shall have any personal liability to the Client for the Contract Services supplied by that individual on behalf of the Solicitor 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 4.1.2 shall in any way limit the liability of the Solicitor in respect of the Contract Services, which such liability shall be uncapped unless otherwise specified in the Letter of Appointment.

4.1.3 The Solicitor 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 Solicitor 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 Solicitor, or any other loss which is caused by any act or omission of the Solicitor.

4.1.4 Subject to Clauses 4.1.1 and 4.1.5, in no event shall either Party be liable to the other for any:

4.1.4.1 loss of profits;

4.1.4.2 loss of business;

4.1.4.3 loss of revenue;

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- 4.1.4.4 loss of or damage to goodwill;
  - 4.1.4.5 loss of savings (whether anticipated or otherwise); and/or
  - 4.1.4.6 any indirect, special or consequential loss or damage.
- 4.1.5 The Solicitor 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:
- 4.1.5.1 the additional operational and/or administrative costs and expenses arising from any Material Breach;
  - 4.1.5.2 the cost of procuring, implementing and operating any alternative or replacement services to the Contract Services; and
  - 4.1.5.3 any regulatory losses, fines, expenses or other losses arising from a breach by the Solicitor of any Laws.
- 4.1.6 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 Solicitor 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 Solicitor to exercise all the obligations of a professional Solicitor employed in a client/solicitor relationship.
- 4.1.7 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 Solicitor.

**4.2 Insurance**

- 4.2.1 The Solicitor 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 Solicitor, arising out of the Solicitor'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 Solicitor under the Contract or otherwise in connection with the provision of the Contract Services. Such insurance shall be maintained for so long as the Solicitor may have any liability to the Client.
- 4.2.2 It shall be the responsibility of the Solicitor to determine the amount of insurance cover that will be adequate to enable the Solicitor to satisfy any liability arising in respect of the risks referred to in Clause 4.2.1.
- 4.2.3 If, for whatever reason, the Solicitor fails to give effect to and maintain the insurances required by Clause 4.2.1, the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Solicitor.
- 4.2.4 The provisions of any insurance or the amount of cover shall not relieve the Solicitor of any liabilities under the Contract.

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## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 All Intellectual Property Rights in the output from the Contract Services shall vest in the Solicitor who shall grant to the Client a non-exclusive, unlimited, irrevocable licence to use and exploit the same.
- 5.2 Subject to Clause 5.1 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 Solicitor or its licensors and the Solicitor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Client or its licensors.
- 5.3 The Solicitor 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 Solicitor of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "**Claim**").
- 5.4 If a Claim arises, the Client shall notify the Solicitor 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 Solicitor shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Solicitor:
- 5.4.1 shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 5.4.2 shall take due and proper account of the interests of the Client;
  - 5.4.3 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
  - 5.4.4 shall not settle or compromise the Claim without the prior written approval of the Client (not to be unreasonably withheld or delayed).
- 5.5 The Solicitor shall have no rights to use any of the Client's names, logos or trademarks without the prior written approval of the Client.

## **6. PROTECTION OF INFORMATION**

### **6.1 Protection of Personal Data**

- 6.1.1 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Client is the Data Controller and that the Solicitor is the Data Processor in relation to the Client's Personal Data.
- 6.1.2 The Solicitor shall:
- 6.1.2.1 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 Solicitor during the term of the Contract);
  - 6.1.2.2 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;
  - 6.1.2.3 implement appropriate technical and organisational measures to protect the Client's Personal Data against unauthorised or unlawful

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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 Personal Data and having regard to the nature of the Client's Personal Data which is to be protected;

- 6.1.2.4 take reasonable steps to ensure the reliability of all members of the Solicitor's Staff who have access to the Client's Personal Data;
- 6.1.2.5 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;
- 6.1.2.6 ensure that all members of the Solicitor'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 6.1;
- 6.1.2.7 ensure that none of the Solicitor'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;
- 6.1.2.8 notify the Client within five (5) Working Days if the Solicitor 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;
- 6.1.2.9 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;
- 6.1.2.10 permit or procure permission for the Client or the Client's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Solicitor'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 Solicitor is in full compliance with its obligations under the Contract;
- 6.1.2.11 provide a written description of the technical and organisational methods employed by the Solicitor for Processing the Client's Personal Data (within the timescales required by the Client); and

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- 6.1.2.12 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.
- 6.1.3 The Solicitor 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.
- 6.1.4 The Solicitor 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).
- 6.1.5 In the event that through any failure by the Solicitor 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 Solicitor 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 Solicitor.

## **6.2 Confidentiality**

- 6.2.1 Except to the extent set out in this Clause 6.2 or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
  - 6.2.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 6.2.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 6.2.2 Clause 6.2.1 shall not apply to the extent that:
  - 6.2.2.1 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 6.4 (Freedom of Information); or
  - 6.2.2.2 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
  - 6.2.2.3 such information was obtained from a third party without obligation of confidentiality; or
  - 6.2.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 6.2.2.5 it is independently developed without access to the other Party's Confidential Information.
- 6.2.3 The Solicitor may only disclose the Client's Confidential Information to those members of the Solicitor'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.

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- 6.2.4 The Solicitor shall not, and shall procure that the Solicitor's Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of the Contract.
- 6.2.5 At the written request of the Client, the Solicitor shall procure that those members of the Solicitor's Staff identified in the Client's notice sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- 6.2.6 Nothing in the Contract shall prevent the Client from disclosing the Solicitor's Confidential Information (including the Management Information obtained pursuant to clause 13 of the Framework Agreement):
- 6.2.6.1 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;
  - 6.2.6.2 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;
  - 6.2.6.3 for the purpose of the examination and certification of the Client's accounts; or
  - 6.2.6.4 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.
- 6.2.7 The Client shall use all reasonable endeavours to ensure that any government department, Client, employee, third party or Sub-Contractor to whom the Solicitor's Confidential Information is disclosed pursuant to Clause 6.2.6 is made aware of the Client's obligations of confidentiality.
- 6.2.8 Nothing in this Clause 6.2 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 IPR.
- 6.2.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Solicitor undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 6.2.10 The Solicitor 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 Solicitor's obligations under this Clause 6.2 except and to the extent that such liabilities have resulted directly from the Client's instructions.

**6.3 Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989**

- 6.3.1 The Solicitor shall comply with and shall ensure that its Staff comply with, the provisions of:
- 6.3.1.1 the Official Secrets Acts 1911 to 1989; and

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6.3.1.2 section 182 of the Finance Act 1989.

#### **6.4 Freedom of Information**

- 6.4.1 The Solicitor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.
- 6.4.2 The Solicitor shall and shall procure that its Sub-Contractors shall:
- 6.4.2.1 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;
  - 6.4.2.2 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
  - 6.4.2.3 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.
- 6.4.3 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 Solicitor's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 6.4.4 In no event shall the Solicitor respond directly to a Request for Information unless authorised in writing to do so by the Client.
- 6.4.5 The Solicitor acknowledges that (notwithstanding the provisions of Clause 6.2) 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 Solicitor or the Contract Services:
- 6.4.5.1 in certain circumstances without consulting the Solicitor; or
  - 6.4.5.2 following consultation with the Solicitor and having taken the Solicitor's views into account,
- provided always that where Clause 6.4.6 applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Solicitor advanced notice, or failing that, to draw the disclosure to the Solicitor's attention after any such disclosure.
- 6.4.6 The Solicitor 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.
- 6.4.7 The Solicitor 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 6.4.5.

## **6.5 Transparency**

- 6.5.1 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.
- 6.5.2 Notwithstanding any other term of the Contract, the Solicitor 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.
- 6.5.3 The Client may consult with the Solicitor to inform its decision regarding any redactions but the Client shall have the final decision in its absolute discretion.
- 6.5.4 The Solicitor shall assist and cooperate with the Client to enable the Client to publish the Contract.

## **7. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

- 7.1 The Solicitor warrants, represents and undertakes to the Client that:
- 7.1.1 it 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;
- 7.1.2 the Contract is executed by a duly authorised representative of the Solicitor;
- 7.1.3 in entering the Contract it has not committed any Fraud;
- 7.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 7.1.5 all information, statements and representations contained in the Solicitor'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;
- 7.1.6 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;
- 7.1.7 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;
- 7.1.8 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;
- 7.1.9 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 Solicitor 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 Solicitor's assets or revenue;

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- 7.1.10 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 (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
  - 7.1.11 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.
- 7.2 The Solicitor warrants, represents and undertakes to the Client that:
- 7.2.1 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;
  - 7.2.2 the Solicitor and each of its Sub-Contractors has all Staff, equipment and experience necessary for the proper performance of the Contract Services; and
  - 7.2.3 it will at all times:
    - 7.2.3.1 perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
    - 7.2.3.2 comply with all the KPIs and meet or exceed the Service Levels;
    - 7.2.3.3 carry out the Contract Services within the timeframe agreed with the Client; and
    - 7.2.3.4 without prejudice to its obligations under Clause 2.3 (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 solicitors and/or other Staff as shall be necessary for the proper performance of the Contract Services.
- 7.3 The Solicitor shall promptly notify the Client in writing:
- 7.3.1 of any material detrimental change in the financial standing and/or credit rating of the Solicitor;
  - 7.3.2 if the Solicitor undergoes a Change of Control; and
  - 7.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 7.4 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 Solicitor if that provision had not been so expressed.
- 7.5 The Solicitor acknowledges and agrees that:
- 7.5.1 the warranties, representations and undertakings contained in the Contract are material and are designed to induce the Client into entering into the Contract; and

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7.5.2 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.

## **8. TERMINATION**

### **8.1 Termination on Insolvency**

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

8.1.1.1 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 Solicitor's creditors; or

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

8.1.1.3 a petition is presented for the winding-up of the Solicitor (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 Solicitor pursuant to section 98 of the Insolvency Act 1986; or

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

8.1.1.5 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 Solicitor's assets and such attachment or process is not discharged within ten (10) Working Days;

8.1.1.6 an application is made in respect of the Solicitor either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or

8.1.1.7 if the Solicitor is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

8.1.1.8 the Solicitor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

8.1.1.9 in the reasonable opinion of the Client, there is a material detrimental change in the financial standing and/or the credit rating of the Solicitor which:

(a) adversely impacts on the Solicitor'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 Solicitor's ability to supply the Contract Services in accordance with the Contract; or

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- 8.1.1.10 the Solicitor 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 Solicitor; or
- 8.1.1.11 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Solicitor comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 8.1.1.12 the Solicitor 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
- 8.1.1.13 the Solicitor being an individual or any partner or partners in the Solicitor who together are able to exercise control of the Solicitor where the Solicitor 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 estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or
- 8.1.1.14 any event similar to those listed in Clauses 8.1.1.1 to 8.1.1.13 occurs under the law of any other jurisdiction.

**8.2 Termination on Material Breach, Persistent Failure or Grave Misconduct etc**

- 8.2.1 The Client may terminate the Contract with immediate effect by giving written notice to the Solicitor if:
  - 8.2.1.1 the Solicitor commits a Material Breach and if:
    - (a) the Solicitor 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 Solicitor 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
- 8.2.1.2 if a Persistent Failure has occurred; or
- 8.2.1.3 if Grave Misconduct has occurred; or

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8.2.1.4 the Solicitor breaches any of Clause 6.1 (Protection of Personal Data), Clause 6.2 (Confidentiality), Clause 6.3 (Official Secrets Acts 1911 to 1989), Clause 7 (Warranties, Representations and Undertakings), Clause 11 (Prevention of Bribery and Corruption), Clause 12 (Non-Discrimination), Clause 13 (Prevention of Fraud) and Clause 14 (Transfer and Sub-Contracting); or

8.2.1.5 in the event of a Law Society intervention in the Solicitor's practice; or

8.2.1.6 in the event of conviction for dishonesty of the Solicitor (if an individual) or any one or more of the Solicitor's directors, partners or members (if the Solicitor is a firm or firms), which conviction might reasonably be expected to lead to the striking off from the Roll maintained by the Solicitors Regulation Authority of the individual(s) concerned.

8.2.2 If the Client fails to pay the Solicitor undisputed sums of money when due, the Solicitor 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 Solicitor may terminate the Contract by ten (10) Working Days' written notice to the Client.

### **8.3 Termination on Change of Control**

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

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

8.3.1.2 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.

### **8.4 Termination on Notice**

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

### **8.5 Termination of Framework Agreement**

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

### **8.6 Partial Termination**

8.6.1 Where the Client is entitled to terminate the Contract pursuant to this Clause 8, 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.

## **9. CONSEQUENCES OF EXPIRY OR TERMINATION**

9.1 Subject to Clause 9.2, where the Client terminates the Contract pursuant to Clause 8 (Termination) and then makes other arrangements for the supply of the Contract Services:

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- 9.1.1 the Client may recover from the Solicitor 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;
  - 9.1.2 the Client shall take all reasonable steps to mitigate such additional expenditure; and
  - 9.1.3 no further payments shall be payable by the Client to the Solicitor 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 Solicitor.
- 9.2 Clause 9.1 shall not apply where the Client terminates the Contract:
- 9.2.1 solely pursuant to Clause 8.3 or Clause 8.4; or
  - 9.2.2 solely pursuant to Clause 8.5 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, 24.11, 24.12 or 24.13 thereof.
- 9.3 On the termination of the Contract for any reason, the Solicitor shall, at the request of the Client and at the Solicitor's cost:
- 9.3.1 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;
  - 9.3.2 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.
  - 9.3.3 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 available to the Solicitor by the Client in connection with the Contract provided to the Solicitor;
  - 9.3.4 vacate, and procure that the Solicitor's Staff vacate, any premises of the Client occupied for the purposes of providing the Contract Services;
  - 9.3.5 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
  - 9.3.6 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.
- 9.4 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 Solicitor 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:
- 9.4.1 at the Client's option, give the Solicitor the opportunity (at the Solicitor'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

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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;

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

9.4.3 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/or

9.4.4 charge the Solicitor for, whereupon the Solicitor 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 a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Solicitor 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.

9.5 Save as otherwise expressly provided in the Contract:

9.5.1 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

9.5.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Client or the Solicitor under the following Clauses: Clause 3 (Payment and Charges); Clause 4 (Liability and Insurance); Clause 5 (Intellectual Property Rights); Clause 6.1 (Protection of Personal Data); Clause 6.2 (Confidentiality); Clause 6.3 (Official Secrets Act); Clause 6.4 (Freedom of Information); Clause 11 (Prevention of Bribery and Corruption); Clause 13 (Prevention of Fraud); Clause 21 (Contracts (Rights of Third Parties) Act); Clause 23.1 (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.

## **10. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

10.1 The Solicitor 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 Solicitor's Staff and professional advisors comply with this Clause 10. Any such press announcements or publicity proposed under this Clause 10 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.

10.2 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.

10.3 The Solicitor 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.

**11. PREVENTION OF BRIBERY AND CORRUPTION**

11.1 The Solicitor shall not:

11.1.1 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

11.1.2 engage in, and shall procure that all the Solicitor's Staff or any person acting on the Solicitor'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.

11.2 The Solicitor warrants, represents and undertakes that it has not:

11.2.1 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

11.2.2 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.

11.3 The Solicitor shall:

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

11.3.2 immediately notify the Client if it suspects or becomes aware of any breach of this Clause 11;

11.3.3 respond promptly to any of the Client's enquiries regarding any breach, potential breach or suspected breach of this Clause 11 and the Solicitor shall co-operate with any investigation and allow the Client to audit Solicitor's books, records and any other relevant documentation in connection with the breach;

11.3.4 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 11 by the Solicitor and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with the Contract. The Solicitor shall provide such supporting evidence of compliance as the Client may reasonably request; and

11.3.5 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Client on request) to prevent the Solicitor and any of the Solicitor's Staff or any person acting on the Solicitor's behalf from committing a Prohibited Act and shall enforce it where appropriate.

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

11.4.1 this Clause 11; or

11.4.2 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.

11.5 Without prejudice to its other rights and remedies under this Clause 11, the Client shall be entitled to recover in full from the Solicitor and the Solicitor shall on demand indemnify the Client in full from and against:

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

11.5.2 any other loss sustained by the Client in consequence of any breach of this Clause 11.

## **12. NON-DISCRIMINATION**

12.1 The Solicitor 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).

12.2 The Solicitor shall take all reasonable steps to secure the observance of Clause 12.1 by all the Solicitor's Staff employed in the execution of the Contract.

## **13. PREVENTION OF FRAUD**

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

13.2 The Solicitor 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 Solicitor or any member of the Solicitor's Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

13.3 If:

13.3.1 the Solicitor breaches any of its obligations under Clause 13.1 and Clause 13.2; or

13.3.2 the Solicitor or any member of the Solicitor'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 Solicitor and the Solicitor 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.

## **14. TRANSFER AND SUB-CONTRACTING**

14.1 The Solicitor 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.

14.2 The Solicitor 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.

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

14.3.1 any other Contracting Body; or

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14.3.2 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

14.3.3 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 Solicitor's obligations under the Contract.

14.4 Any change in the legal status of the Client such that it ceases to be a Contracting Body shall not, subject to Clause 14.5, 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.

14.5 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 14.3 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**"):

14.5.1 the rights of termination of the Client in Clause 8 shall be available to the Solicitor in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

14.5.2 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 Solicitor.

14.6 The Client may disclose to any Transferee any Confidential Information of the Solicitor which relates to the performance of the Solicitor'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 Solicitor'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.

14.7 For the purposes of Clause 14.5 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.

## 15. **WAIVER**

15.1 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.

15.2 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.

15.3 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.

## 16. **CUMULATIVE REMEDIES**

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.

**17. FURTHER ASSURANCES**

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.

**18. SEVERABILITY**

18.1 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.

18.2 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 Solicitor shall immediately commence good faith negotiations to remedy such invalidity.

**19. SOLICITOR'S STATUS**

At all times during the term of the Contract the Solicitor 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.

**20. ENTIRE AGREEMENT**

20.1 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.

20.2 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.

20.3 The Solicitor acknowledges that it has:

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

20.3.2 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.

20.4 Nothing in Clauses 20.1 and 20.2 shall operate:

20.4.1 to exclude Fraud or fraudulent misrepresentation; or

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

20.5 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.

**21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

21.1 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 21.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

- 21.2 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.
- 21.3 Without prejudice to the Client's rights as a Contracting Body under clause 31 of the Framework Agreement, the Solicitor 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 Solicitor respectively).

## **22. NOTICES**

- 22.1 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.
- 22.2 Any notice or other communication given or made by either Party to the other shall:
- 22.2.1 be given by letter (sent by hand, post or a recorded signed for delivery service), facsimile or electronic mail confirmed by letter; and
  - 22.2.2 unless the other Party acknowledges receipt of such communication at an earlier time, be deemed to have been given:
    - 22.2.2.1 if delivered personally, at the time of delivery;
    - 22.2.2.2 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;
    - 22.2.2.3 if sent by electronic mail, two (2) Working Days after posting of a confirmation letter; and
    - 22.2.2.4 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.
- 22.3 For the purposes of Clause 22.2, 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.
- 22.4 Either Party may change its address for service by serving a notice in accordance with this Clause 22.
- 22.5 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.

## 23. DISPUTES AND LAW

### 23.1 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.

### 23.2 Dispute Resolution

23.2.1 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.

23.2.2 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.

23.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 23.2.1, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 23.2.5 unless:

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

23.2.3.2 the Solicitor does not agree to mediation.

23.2.4 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 Solicitor and the Solicitor's Staff shall comply fully with the requirements of the Contract at all times.

23.2.5 The procedure for mediation is as follows:

23.2.5.1 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;

23.2.5.2 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;

23.2.5.3 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;

23.2.5.4 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;

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- 23.2.5.5 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
- 23.2.5.6 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.

## ANNEX SERVICE LEVELS

### 1. SCOPE

This Annex sets out the Service Levels which the Solicitor 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
<b>1. Requirement</b>	1.1 Solicitor did have the necessary <b>understanding and expertise</b> to meet Client expectations.	The Solicitor has a good knowledge of the subject and the environment in which the Client operates - Client expectations of Solicitor expertise are met
	1.2 Solicitor is open and proactive in <b>optimising costs</b>	Efforts made to minimise expenses - prices are in line with market expectations - Solicitor 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 Solicitor is proactive in identifying and <b>managing risks</b>	Solicitor is proactive in identifying and allocating risk ownership - Solicitor supports Client in assigning and managing risks - Solicitor is proactive in assessing impact of risks in the course of performing the Contract and raising issues as appropriate
<b>2. Quality of advice</b>	2.1 Solicitor provides <b>good advice</b> provided <b>within timescale</b> and <b>covers all issues</b> requested appropriately.	Advice is technically sound and clearly expressed – Solicitor adheres to timelines and shows right focus– Solicitor strikes appropriate balance between covering issues thoroughly and providing unnecessary detail
<b>3. Engagement &amp; Relationship</b>	3.1 Solicitor <b>engagement</b> with the Client is appropriate and focused on Contract Services delivery	Solicitor uses the right channels within the department - Client is able to distinguish between business development activity/roles and delivery activity/role - Solicitor does not exploit its position/ relationship with the Client
	3.2 Solicitor establishes effective working <b>relationships</b> with the Client	Solicitor integrates well with Client staff and other advisers- Solicitor 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 - Solicitor builds good relationships with internal staff with the Client - Solicitor does not take

		advantage of its position / relationship with the Client
<b>4. Project Management</b>	4.1 Solicitor <b>resources</b> are deployed in the right way to deliver value.	Staff are consistent throughout the duration of the Services - the Solicitor 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 <b>Roles and responsibilities</b> of the legal team are clear	Solicitor provides clarity as to the roles and responsibilities of each member of the legal team engaged
	4.3 Solicitor <b>governance and project management</b> 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 Solicitor
	4.4 Original <b>scoping</b> was robust	The scope and resource requirement remained in line with initial proposal - initial proposal was accurate and did not need to be amended
<b>5. Value for Money</b>	5.1 <b>Delivery on time</b>	As per Solicitor proposal
	5.2 <b>Delivery on budget</b>	As per Solicitor proposal
	5.3 <b>Value for Money</b>	Extent to which the benefits - as outlined in the assignment proposal – were delivered
<b>6. Skills Transfer</b>	6.1 Skills transfer	Solicitor identified opportunities for skills and knowledge transfer - Solicitor delivered transfer within original time and budget
<b>7. Exit Strategy</b>	7.1 Project closure	Solicitor reflected any exit strategy requirements in their proposal - the project was closed off with no outstanding dependencies