

## Shared Legal Services

### Heads of Terms

for a  
Shared Legal Service  
between

Wokingham Borough Council  
Royal Borough of Windsor & Maidenhead  
Slough Borough Council

#### Document Details

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## **HEADS OF TERMS FOR SHARED LEGAL SERVICE**

### **Between Wokingham Borough Council (WBC) Royal Borough of Windsor and Maidenhead (RBWM)**

These heads of agreement set out the major terms of a proposed agreement between the parties. The parties intend to negotiate an agreement based on these major terms but these heads of agreement are not intended to be legally binding.

In this terms 'the Participants' shall mean WBC and RBWM jointly.

#### **Collaboration**

- 1.1 The Participants shall collaborate together on the development of a shared legal service (SLS). The structure, governance obligations and agreed working principles shall be set out in the Service Agreement (SA), and subsequent changes will be agreed by the Partnership Committee from time to time unanimously for strategic decisions (such as admission of further participants, staffing requirements, budgets, business plan , changes which affect cost to Service etc) but otherwise all decisions to be made by simple majority.
- 1.2 The SA shall govern the relationship between Participants and in particular that decision making by the Participants shall only include such parts of the services supplied to that Participant.

#### **Management**

- 1.3 Day to day operation of the SLS will be overseen by WBC working in accordance with WBC's procedures to deliver SLS detailed in the SA, the Service Levels and the SLS annual business plan.
- 1.4 The Partnership Committee of a representative of each Participant which will meet annually to formulate the business plan. The terms of reference of the Partnership Committee will be set out in more detail in the SA.
- 1.5 The Partnership Committee shall agree annually the service requirements, the staffing requirements, new business opportunities and what powers can be used for this, setting budgets, setting hourly rates and agreeing chargeable hours for each fee earner.
- 1.6 Disputes between the Participants shall be resolved by the named representatives for that Council in the SLS. Unresolved disputes shall be escalated to Partnership Committee; then Chief Executives; then expert appointment by Law Society.
- 1.7 The Partnership Committee shall schedule to meet on a quarterly basis to review the operation of the SLS (with each Participant having the option to call other meetings as required)

## **Changes to Services**

- 1.8 WBC and RBWM intend in the first business plan to focus and resource the service to enable sufficient capacity and capability can be deployed for trading of services with further public sector bodies. WBC and RBWM shall provide sufficient funding to enable a responsive service is provided to any further public sector bodies.
- 1.9 The Participants shall provide the resources as are necessary for the first business plan and shall continue to fund such implementation in each successive financial year.

## **Term**

- 1.8 The initial term of the SA will be 5 years from 1<sup>st</sup> June 2016.

## **Ending the Agreement**

- 1.9 A Participant shall only have the right to terminate the agreement in the event of a material breach of Agreement where the matter has been referred to the resolution procedure and the party has still failed to rectify the breach in accordance with the dispute resolution outcome.
- 1.10 RBWM or WBC terminate for convenience the involvement and receipt of the Services at any time by providing at least 12 months notice to the other such notice to take effect before 31<sup>st</sup> March 2018..
- 1.11 If RBWM or WBC exercises the right to terminate under clause 1.10 then the terminating party shall indemnify the other parties for all costs arising as a result of such termination.
- 1.12 If a Participant exercises the right to terminate under clause 1.10 then the Participant shall not share the residual surplus or shortfall of cost of the service up to the date the termination takes effect (such share calculated on the basis of the share of the chargeable hours utilised by that Participant during that year).

## **Employees**

- 1.13 All staff providing the SLS shall continue as employees of WBC.
- 1.14 WBC shall indemnify RBWM in respect of any claims, costs or expenses incurred in respect to staff where such claims are due to the fault of WBC.. RBWM and WBC shall be jointly responsible in respect of any staffing costs , claims, fees, or expenses including resultant pensions or redundancy costs.
- 1.15 Any subsequent restructure/addition to the staffing requirements leading to the payment of compensation shall only be implemented on agreement of RBWM and WBC including agreement as to the sharing of the costs.
- 1.16 RBWM and WBC shall use reasonable endeavours to redeploy any staff to their respective service on termination of the SA.

## **Accommodation**

- 1.17 The SLS shall primarily be based in Shute End Wokingham with a hub at Slough and Maidenhead.

## **Existing Contracts & Obligations**

- 1.18 All existing local agreements and contracts will be transferred to the SLS. This includes all income received from third parties including Schools, developers, tenants etc. SLS shall determine the level of costs that are charged to such third parties.
- 1.19 During the term of the SA, the Participants shall not, directly or indirectly undertake, participate, compete or initiate any legal services or solicit or otherwise encourage any legal services from any party other than the SLS unless the SLS has notified the participant that it is unable to undertake the work in accordance with the terms of the service levels or the SLS has notified the Participant does not have the expertise required or there is a conflict of interest in the reasonable opinion of any of the Participants or in the case of urgency where the SLS is unable to provide the service within time needed. For the avoidance of doubt this does not preclude retained legal staff of the Participants giving advice where the SLS cannot and does not have the specialist expertise or resources the Participant will be at liberty to instruct external legal advisors or Counsel directly.
- 1.20 Should participant initiate any legal services without such prior consent, where such consent may be given retrospectively, then SLS reserve the right to seek compensation which will equate to the greater of (i) the cost of the equivalent provision by SLS or (ii) one quarter of the total spend of the legal services obtained.
- 1.21 Disbursements for third party external advice will be paid by the Participant who commissions the advice.

## **WBC and RBWM - Costs of Service and Payments**

- 1.22 WBC & RBWM shall pay the Service Costs in proportions estimated on previous years usage as well as the anticipated future use of the SLS as set out in the business plan.
- 1.23 **Service Costs:** The net Service Costs shall consist of the Delivery Costs and the Disbursements less Third Party Client Payments less Third Party Income.
- 1.24 Delivery Costs: This is the direct and indirect cost of running the SLS and includes items such as IT, accommodation, salaries, office overheads,

- admin, financial advice, HR advice, staffing costs (including costs of changes to staffing requirements), training etc.
- 1.25 WBC shall estimate the next years annual Delivery Cost of the SLS at least 6 months prior to the start of the financial year and shall estimate the number of Hours Service required.
  - 1.26 WBC & RBWM shall pay Delivery Costs based upon their projected chargeable hours as a proportion of the total chargeable hours for all Participants.
  - 1.27 WBC & RBWM shall pay the agreed proportion of the Delivery Costs in 4 equal payments on the agreed quarter days. The agreed proportion shall be based on the projected chargeable hours required by WBC & RBWM (based on forecast set out in the annual business plan) as a proportion of the total chargeable hours required by all Participants.
  - 1.28 WBC & RBWM Delivery Costs shall be adjusted (based on the number of Hours service) on a quarterly basis to reflect the actual usage of the SLS.
  - 1.29 WBC & RBWM may elect to purchase additional services at a Standard or Expedited Hourly Rate. Balance of payments for additional services levels will be made to SLS through separate direct invoices.
  - 1.30 Monthly reports and quarterly meetings will track actual against predicted usage by individual Participants.
  - 1.31 **Disbursements:** This shall consist of:
    - 1.31.1 payments by WBC & RBWM in respect to additional costs and disbursements incurred on a specific matter (i.e. Land Registry/court fees) and
    - 1.31.2 payments by WBC & RBWM on account in respect of external legal advice/representation.
  - 1.32 **Third Party Client Payments:** These are payments received from third parties client's (i.e. S106, Court Costs) for legal services supplied to the SLS. This income will be credited against the WBC & RBWM matter and the WBC & RBWM Delivery Cost on a quarterly basis.
  - 1.33 **Third Party Income:** means monies received from parish councils, charities, schools or other authorities shall be added to final account.
  - 1.34 **Final Account:** There will be final account at the end of each financial year of the total WBC & RBWM's actual Delivery Costs against the estimated Delivery Costs paid by all the WBC & RBWM as well as all Third Party Income. If the SLS shows an operating surplus then such surplus shall be shared proportionately between the Participants on a pro rata basis determined on the additional use of the SLS by the Participants buying services over the original budget. An element of any surplus shall be retained by SLS for business development purposes in line with the business plan and/or annual report.
  - 1.35 Any further surplus shall be either (at the direction of the Partnership Committee acting unanimously) (i) paid to the Participant by the SLS within 30 days of the Final Account or (ii) credited to the Participant's account with the SLS.
  - 1.36 Where there is an under utilisation of the SLS by a Participant (where the actual use is less than that estimated in the business plan) in the Final Account there shall be no right of recovery or rebate of Delivery Costs from the SLS.
  - 1.37 **Changes of the Delivery Costs:** Any changes to the cost of SLS will be factored into the Delivery Cost and be agreed unanimously between the Participants in the annual business plan and budget. This shall include

such items as inflation, changes to salaries and terms and conditions. The revised Delivery Cost shall be agreed between the Participants at least 6 months prior to start of the financial year.

### **Service Level Agreements**

- 2.1 There shall be Service Levels agreed between the SLS and each Participant which shall be in the same form for each Participant and the SLS and any third party clients.
- 2.2 The Service Levels deliverables shall be agreed between the SLS and each Participant. (i.e. Cabinet/Panel Reports - 5 working days and Formal Advice - 5 working days).
- 2.3 The Service Levels shall also contain Participant's obligations: (ie. provision of deeds, storage of files and provision of authority/delegations).

### **Change Control**

- 2.4 Each Participant may change the Service Levels or the scope or range of services provided by the SLS by submitting a Change Request. The Change Request shall stipulate the nature of changes and date (which shall not be any shorter than 3 months).
- 2.5 SLS shall estimate the impact of the Change Request and the costs of implementation, method of delivery and requirements for payments to deliver the change.
- 2.6 The Participant shall either (i) agree to the terms of the Change Request or (ii) notify the SLS of a dispute.

### **Change Control Request 2017/2018**

- 2.7 A Change Request has been received to reduce RBWM legal spend in year 2017/18 and this has been reflected in the Business Plan. RBWM shall pay all costs and indemnify WBC in respect to all costs, fees, liabilities and losses incurred by the implementation whether immediate or contingent (including staffing, redundancy and pension costs).
- 2.8 WBC will use reasonable endeavours to implement the Change Control and to mitigate such losses in clause 2.7.

## **Hourly Rates**

- 3.1 The Hourly Rate for Participants will be charged as the Discounted Hourly Rate and shall be based on the Service Costs / total number of Hours used to deliver the SA.
- 3.2 Hourly Rates will be reviewed on an annual basis and can increase in accordance with RPI where agreed by the Partnership Committee.
- 3.3 Hourly rates chargeable under Service Levels shall be agreed in the SA and will include provision for work outside the SA such as:
  - a. expedited work outside the agreed service levels (charged at an Expedited Hourly Rate
  - b. Additional work not listed within the Service Agreement will be chargeable at the Standard Hourly Rate
  - c. Travelling time shall be charged at the appropriate Hourly Rate for the matter being addressed. Travel expenses will be charged at their actual costs.

## **Further Participants**

- 4.1 The Partnership Committee shall decide whether any further parties shall be permitted to participate in the SLS in accordance with the annual business plan. Participation means the sharing of costs of the service and benefits of any third party income. The Partnership Committee shall agree the timescale and terms of participation with the prospective participant in line with the annual business plan.

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