**Adoption@Heart Regional Adoption Agency**

**Legal Services Specification**

1. **Background**

As part of the government’s Regional Adoption Agency (RAA) programme, the Black Country local authority partners have been working collaboratively to create a regional adoption agency, Adoption@Heart.

Partners have agreed that Adoption@Heart will be formed as a Local Authority Trading Company (LATC), constituted as a Community Interest Company (CIC) Limited by Share, and now require legal support to develop and create the LATC through its transition to going live on July 1st 2018, and to negotiate the transfer from current adoption services.

1. **Legal documentation and services required – outputs to be delivered**

The legal services required are outlined below.

| **Summary** | **Description** |
| --- | --- |
| Legal advice –   1. Formation of Vehicle 2. Articles of Association 3. Members’ Agreement | * Preparation and agreement of articles of association for corporate structure. * Management and completion of relevant forms for incorporation of Company at Companies House and with the CIC Regulator * Governance arrangements - Board composition, voting rights for directors. * Legal advice on duties of Directors. * Preparation of Members’ Agreement to set out how Members will act including list of decisions reserved to them, board appointment rights, dispute resolution, and funding obligations. |
| Teckal / procurement advice | * Confirm or otherwise initial legal advice taken that Regulation 12 will apply to the procurement of the LATC, in which contracting authorities have a control over that legal person which is similar to that which they exercise of their own departments. * Advise on the associated risks of trading. * Advise on any issues and associated risks around the potential provision of ‘back office’ services by the commissioning organisations, whether “in kind” or on a paid basis, including VAT implications. |
| Legal advice - Statutory duties | * Regarding transfer of adoption functions in line with current legislation and guidance identifying the risk and how these can be managed through the commissioning agreement. * Advice regarding the specification of services to ensure statutory duties are identified correctly * Advice on whether the agency will be registered as a local authority adoption agency, or a voluntary adoption agency and implications for registration with Ofsted * Advice as required on options for enabling early permanence placements including dual registration as an adoption agency and a fostering agency. |
| Legal advice and negotiations on behalf of the RAA for the Services Contract | * Negotiation and finalisation with commissioners of the services contract developed by the LA side. * Advice regarding working capital arrangements and facility agreement for working capital (if applicable) * Advice regarding options for ‘back office’ delivery to be provided to the new entity (note procurement points above). * Support services agreements (if applicable) |
| Legal advice and negotiations on behalf of the RAA for the transfer Agreement | * Develop and negotiate the transfer agreement(s) on behalf of the RAA, setting out terms of TUPE transfer of staff, pensions, and transfer of other assets e.g. approved and prospective adopters and novation of contracts and property leases, capital arrangements, how liability for any redundancies will be agreed between LAs and RAA. * Draw up and negotiate a risk sharing agreement to include but not limited to:   + Approach to overspends and underspends   + Approach to transfer of any historical caseloads and disproportionate numbers of children requiring placement at point of transfer   + Approach to staff vacancies, redeployment, redundancies in the LA teams pre go live   + Approach to level of risk related to demand fluctuations and operational performance |
| TUPE/Pensions advice | * Assistance with planning to enable TUPE consultation process to begin. * Assist liaison with LGPS Pension Fund to highlight proposed company model and the basis for participation in the LGPS. * General advice relating to TUPE/Pensions information required and general advice in relation to the process. * Negotiation of employment and pensions provisions in transfer agreement. * Advice regarding Admission Body Agreement and whether a bond shall be required for admitted body status. |
| Property advice/ VAT advice | * Advice regarding any transfer or leases of properties for occupied by adoption services or alternative arrangements (addressing state aid). * Advice regarding licence for access to leased Hub premises and use of LA buildings for hot desking * Advice relating to VAT implications for trading vehicle (utilising external tax advisory services where required) |
| Information Governance advice and Completion | * Advice regarding information and records to be transferred to the new entity * Ensuring compliance with Data Protection and Freedom of Information laws and guidance. * Supporting the reporting of issues; obtaining necessary approvals and preparing and verifying necessary consents, approval and board minutes. |

In addition to the above, advice on any other key aspects relating to the setting up of the new company and transfer of assets into it. Please advise in your application on anything else you see as needed.

The appointed Legal advisor is required to work closely with the Financial advisor and HR advisor working on behalf of the RAA, as well as representatives on the commissioner side (Legal, Finance, HR etc) as required.

1. **Inputs to assist with delivering the legal services required**

The following inputs are available to inform the delivery of services and development of documentation:

* Access to the RAA Project Board as required (meets monthly)
* Previous delivery model options appraisal documentation
* Proposals for RAA governance and accountabilities to commissioners
* Previous legal advice informing selection of delivery model
* Baseline service information including service performance data, HR and financial summary information
* Coordination support and feedback from the Adoption@Heart project manager

**Major milestones:**

* The Partners will need to report to their respective Cabinets in February 2018. The proposed position on the following (currently identified only) will be required for the Cabinet reports by early January 2018:

1. Ownership and governance arrangements for RAA
2. Details of vehicle formation, Members' Agreement and Articles of Association
3. Details of the risk sharing agreement
4. Financial modelling including

* Working capital requirements, how these will be met, and terms under which it may be accessed.
* Capital outlay considerations
* VAT position.
* Insurances

1. Transfers of Assets and Liabilities

* Consultation
* TUPE arrangements
* Pension arrangements for transferring and new staff.
* Pension liabilities and Bonds
* The RAA will be fully operational on 2 July 2018.