

CAMBRIDGE CITY COUNCIL

REPORT OF: Director of Finance

TO: Civic Affairs Committee

30/3/2009

WARDS: All

REVIEW OF THE FOLK FESTIVAL ON-LINE TICKETING 2008

1 INTRODUCTION

- 1.1 The Council appointed a contractor to provide an on-line service for the sale of tickets for the Council's Folk Festival in 2008. The contractor sold a large number of tickets but failed to transfer to the Council the money from the sale of the tickets. The contractor subsequently went into voluntary liquidation.
- 1.2 The Council's Internal Audit section carried out a preliminary review of the circumstances leading up to the events referred to above. It was subsequently agreed by senior officers, in consultation with Members, that an independent review of the arrangements for the provision of the Folk Festival on-line ticketing contract in 2008 should be carried out. The outcome of that review is the subject of this report.
- 1.3 PricewaterhouseCoopers (PwC) has been appointed by the Council to provide an independent external assurance for the review work that has been conducted by two independent Heads of Service led by the Head of Internal Audit.
- 1.4 The review has comprised an assessment of relevant paperwork and interviews with officers directly involved in the procurement and management of the on-line ticketing service.
- 1.5 The attached Cambridge City Council report contains:
 - Scope of work in appendices A and B.
 - Detailed findings and recommendation are aligned to the scope of work identified at the beginning of the investigation

- Next steps and a conclusion

2. **RECOMMENDATIONS**

- 2.1 To endorse the recommendations made in the report
- 2.2 Request Officers to draw up an appropriate action plan to address the recommendation to be submitted to the relevant Committee(s).
- 2.3 Implementation of the action plan be monitored by Civic Affairs
- 2.4 Review the requirement for further work as outlined in the PricewaterhouseCoopers letter of engagement (Appendix B).

3. **IMPLICATIONS**

- (a) **Financial Implications**
- (b) **Staffing Implications** (if not covered in Consultations Section)
- (c) **Equal Opportunities Implications**
- (d) **Environmental Implications**
- (e) **Community Safety**

BACKGROUND PAPERS: There are no background papers for this report.

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Report file:

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CAMBRIDGE CITY COUNCIL
Review of the Folk Festival on-line ticketing 2008

Executive Summary

Scope of work

This report outlines the findings of the review that has been undertaken regarding the events associated with the Folk Festival on-line ticketing for 2008. The terms of reference for the work is covered in the attached Appendices A and B.

Appendix A: Folk Festival Scope on-line ticketing – Cambridge City Council terms of reference

Appendix B: PricewaterhouseCoopers terms of engagement

The findings and recommendations within the report are grouped under the following headings that were identified in the scope of work:

- The appropriateness of the Council's procurement and contract management processes and procedures;
- Whether officers involved in the process made appropriate use of these processes and procedures, and acted in accordance with them;
- Areas for improvement in the processes and procedures and / or in further procurements (both Corporately and specific to the Service concerned);
- The internal checks made on the procurements at each stage and on the payments to the contractor;
- Any lessons for the Council relating to its risk management processes; and
- Reporting to Members of matters relating to the Folk Festival.

Reporting

During this investigation, key findings and recommendations which need to be considered in the planning and delivery of the 2009 Folk Festival have been raised with the Chief Executive and Director of Community Services, to ensure they can be reflected in that project in as timely a manner as possible.

Next Steps and Conclusion

The future actions from this report are identified under the headings of "Next Steps" and "Conclusion" which are located at the end of this report.

CAMBRIDGE CITY COUNCIL
Review of the Folk Festival on-line ticketing 2008

Detailed report

This provides detailed findings and associated recommendations mapped against the headings from the scope of work.

1. The appropriateness of the Council's procurement and contract management processes and procedures

Cambridge City Council has procurement and contract management rules incorporated into the Council's constitution. These have been refreshed in the past 18 months and have been communicated throughout the Authority. Training is made available to Officers on these rules, along with a Strategic Procurement Team being available to support and advise Officers on specific procurement exercises.

The Council has Project Management guidelines available on the Authority's intranet site. Compliance with the guidelines are highlighted to Officers in rule 2.1.1 of the Contract Procedure rules. The constitutional, financial and risk management requirements of Officers would be well covered for projects through the utilisation of these guidelines. The guidelines are written to provide an overall framework that can be utilised for different sizes of projects. Project Management training is available to Officers through the Council's corporate learning and development programme.

Findings

1.F1 The procurement and contract management rules are considered to be fit for purpose and provide the rules for ensuring compliance with the legal requirements for procurement in a Local Authority. However as this is a changing environment it may be appropriate to conduct some benchmarking against similar Local Authorities to see if we are still demonstrating best practice.

1.F2 While training is available to Officers it has been noted during this review that key Officers have attended limited training in procurement and project management.

1.F3 The procurement rules are dependent upon the value of the contract and the complexity of requirements increases along with the value (including ensuring EU compliance). For Officers who are occasional users of the rules it may be difficult to have to go through all the guidance to ensure they are compliant.

1.F4 Project management guidelines have not been updated since August 2005 and while they include key documents they may not reflect the way the Council is conducting key processes such as Risk Management at this time.

CAMBRIDGE CITY COUNCIL

Review of the Folk Festival on-line ticketing 2008

Recommendations

1.R1a) Conduct a benchmarking review of the Contract Procedure Rules against other Local Authorities to ensure that best practice is still being prescribed within Cambridge City Council's rules.

1.R1b) Provide simple flowcharts to enable Officers to obtain a pictorial understanding of procurement rules requirements to provide the awareness of procurement requirements early in any process and improve compliance.

1.R2 Implementation of compulsory attendance at procurement training for those Officers will be involved in significant procurements. These Officers should be identified by Heads of Service and managers and Strategic Procurement team advised to enable training to be delivered in a timely way.

1.R3 Notwithstanding the benchmarking exercise referred to above, amend the existing Rules to require the consent of the Head of Legal Services and the Director of Finance to any proposal for a contract to be entered into which involves a third party holding money for the Council prior to the issue of any requests for estimates or tender documents. Conduct a review of the existing contracts in place that involve Council funds being held by a third party.

1.R4 Project Management guidelines should be reviewed and rewritten to reflect the current risk management and procurement processes within the Council. Once they have been updated they need to be re-launched to Officers in order to improve awareness of what activities need to be considered when delivering a project and how to identify projects themselves. This re-launch needs to reiterate the importance of project planning, project implementation timelines, risk management, escalation paths, providing management information for decision making and record keeping.

2. Whether officers involved in the process made appropriate use of the Council's procurement and contract management processes and procedures, and acted in accordance with them

Overview of the Folk Festival Planning

The Cambridge Folk Festival is a complex event, involving the co-ordination of a number of procurement activities coupled with booking of Artists, provision of site access etc and involves planning all year round to produce the Festival.

The Folk Festival is a project needing co-ordination of resources from several departments, timely completion of activities that have inter-reliance and a clear critical path with careful timetabling.

CAMBRIDGE CITY COUNCIL
Review of the Folk Festival on-line ticketing 2008

Findings

2.F1 There should have been a project plan for the Folk Festival overall, however, there was no such plan.

Whilst a rudimentary wall planner is maintained for the purposes of some responsibilities there is no overall plan for the Festival.

2.F2 As there was no overall project plan, monitoring of progress of the various tasks required for the Festival was only possible at individual Officer level rather than at service level, leading to an incomplete picture of dependencies of activities and overall achievability of the tasks. There should have been clear approval and escalation paths as part of the overall plan.

The wall planner referred to above is monitored, and progress against the dates for the items contained in it, is addressed in the regular organisational team meetings. Attendance at these meetings appears to be patchy and the investigating team has not seen any terms of reference for the group.

2.F3 Other departments should have been systematically involved in various aspects of the delivery of the Folk Festival e.g. Finance, Legal, ICT.

As there was no Folk Festival project plan, the on-line ticketing procurement in 2008 was not part of procurements covered by the copy of the wall planner that has been seen and there is no evidence of any alternative mechanism for the systematic and timely involvement of other departments.

2.F4 There should have been a clear allocation of roles and responsibilities for all aspects of the Folk Festival, including the on-line procurement.

Roles and responsibilities for on-line ticketing procurement were not identified for the 2007 Festival and the 2008 Festival.

2.F5 Training is required in procurement, project and change management for Officers involved in the Folk Festival as Officers indicated they were insufficiently trained during the investigation.

2.F6 No clear decision making or escalation path was available for the activities conducted during the preparation time for the Folk Festival. It is however noted that such paths and details are available for the period when the Festival is taking place.

Recommendations

2.R1 The implementation of a comprehensive project plan to address delivery. The plan should include timeline (with a contingency built in to allow for

CAMBRIDGE CITY COUNCIL

Review of the Folk Festival on-line ticketing 2008

changes in circumstances), risks, controls and allocation of responsibilities. This should be communicated to the right staff around the Authority.

2.R2 Mechanism for monitoring progress of the plan should be introduced along with a clear escalation path for issues.

2.R3 A multi-disciplinary project team of officers should be put in place to ensure that all aspects of the service requirements are dealt with in a timely manner.

2.R4 A review of the structure of the team delivering the Festival should be carried out. Roles and responsibilities need to be defined and allocated to individual Officers enabling those responsible to:

- Monitor progress against a critical timeline
- Assess whether a role is appropriately resourced
- Facilitate business continuity in the event that a role becomes vacant for whatever reason
- Establish clear approval lines and clear escalation lines

2.R5 Further training in change management, project management and in the use and application of Contract Procedure Rules should be given to all officers involved in the procurement and in the monitoring for the delivery of the Festival. Simple user guides and template documentation should be provided to assist officers in the carrying out of compliant procurements.

2.R6 Clear decision making processes need to be identified and implemented for all aspects of the Festival project. This includes Officers being clear about the role of Members and who will liaise with Members on this.

Specific details in relation to the On-line ticketing procurement

The procurement of the on-line ticketing service conducted in 2007 and 2008, was for the delivery of a service for one year with a contract value of less than £30,000. The main element that made the procurement more risky was that the Council's funds would be held by a 3rd party for an extended period.

Findings

2.F7. The procurement of the on-line ticketing service should have complied with Contract Procedure Rules.

In terms of demonstrating compliance with the Contract Procedure Rules key evidence was not available to support the correspondence with bidders, the results of evaluations, overall evaluation and compliance with Project Management Guidelines.

CAMBRIDGE CITY COUNCIL
Review of the Folk Festival on-line ticketing 2008

2.F8 The specification for the on-line ticketing service was not fully complete, as it did not contain clear arrangements for the holding of ticket money or payment terms.

2.F9 Given that the move to on-line ticketing for the 2007 Festival was a major change to the way in which tickets for the Folk Festival had hitherto been sold and that it could involve a third party holding large amounts of Council money/assets, it is reasonable to expect that a risk assessment of such a proposal would have been carried out and approved.

The decision to proceed with on-line ticketing as a method of selling tickets in 2007 has not been documented to demonstrate how the proposal was formally approved and the level at which this approval occurred.

2.F10 Comprehensive, accurate and completed contract documents should have been put in place prior to the start of the on-line service.

In 2008, insufficient importance was given to ensuring that the officers involved in the procurement completed contract documentation. Officers concentrated on the customer-facing service and responsibility for the completion of the document and the involvement of the legal department was not properly allocated or clear on the ground.

2.F11. Where the contractor's terms and conditions of a contract are to be used or the contract is complex the Head of Legal Service's advice must be sought.

The very specialist nature of the service being procured and the high sums of money involved in it, made this contract complex. However, rather than asking for advice from the Head of Legal Services about what terms to use, a decision was made to use the contractor's own terms and conditions. In this case, the Rules are explicit that advice from the Head of Legal Services must be sought. Advice was not sought and in 2008 inadequate time was allowed to make good any shortcomings in the terms and conditions proposed, with the result that the Council was left exposed.

2.F12. The contract documentation (specification, terms and conditions, evaluation criteria etc) should have undergone a formal process of approval to ensure their adequacy.

There appears to have been no checking of the adequacy of the specification to be used for the procurement of the on-line service in either 2007 or 2008 because on both occasions the payment arrangements were not included and the Council was reduced to using the (inadequate) arrangements identified by the contractor.

2.F13 The lessons to be learned from the provision of the on-line service in 2007 should have been used to improve matters in 2008.

CAMBRIDGE CITY COUNCIL
Review of the Folk Festival on-line ticketing 2008

A review of the on-line service for 2007 was undertaken by the contractor and identified operational issues with the site such as the system used not being able to cope with the demand of simultaneous hits; not everyone receiving e-mail confirmation of a booking; etc. The Council's debrief of the Folk Festival (which was only attended by members of the Arts and Entertainment service) went through key items of the festival which included on-line booking but the minutes include one line only about how it went. Officers referred to another review meeting during interviews, which concentrated on the operational side. There is evidence that changes were made to the operational requirements in the specification for 2008 as a result. However, no mention is made of the late payment in the notes of the one review meeting that have been seen.

A team de-brief was carried out following the 2008 Festival. Although the fact that the money had not been received from the contractor at that stage was noted no responsibility for action was allocated to this issue.

2.F14 The system used by the contractor was bespoke to the Council. A clear implementation and testing programme should have been developed to ensure that the system was fully functioning and robust before it went live.

In 2008 a basic timeline was produced by the contractor 'as a rough guide' for developing and testing the on-line ticketing system. No evidence could be found for arrangements in 2007.

2.F15. Clear responsibility should have been allocated for the management of the contract in 2007 and 2008 against a set of agreed objectives.

No clear responsibility was allocated for the management of the contract and responsibility for this in either of the years examined. Any management objectives in 2008 appear from the evidence available to have been concentrated exclusively on customer facing issues.

2.F16. Financial viability checks should be carried out on all potential bidders and the contract should have been awarded only to a contractor with an acceptable report. The results of such checks should be acted upon in all cases unless the Director of Finance considers that there are reasons for disregarding them.

In 2007, a financial viability check had been carried out on the parent company of the contractor but not on the contractor itself. It has not been possible to ascertain why the contract was entered into with the subsidiary company rather than the parent company, which had been checked.

In 2008 a request for financial viability was made for the contractor used, but they were a dormant company and therefore financial viability checks were requested upon the parent company.

CAMBRIDGE CITY COUNCIL

Review of the Folk Festival on-line ticketing 2008

The advice from the Finance Department stated that the contractor should not be appointed, however this advice was not followed.

2.F17. Responsibility for liaising with the legal department throughout the procurement process should have been made clear from the outset (preferably in a project plan).

There was no clear allocation of responsibility for liaising with the legal department. As a consequence in 2008, the legal department was engaged late in the process and given insufficient time to consider and agree adequate legal documentation with the contractor. Service Officers decided that there was no practical choice but to proceed with an incomplete document on the Friday before the tickets went on sale on the Sunday. However this decision appears to have been taken without escalation within the Service.

Recommendations

Any procurement process for the on-line ticketing procurement in future years needs to ensure:

2.R7 That the procurement is conducted in accordance with the Contract Procedure Rules, including retention of all relevant documentation.

2.R8 The specification ownership should be clear and it should clearly specify that the funds from ticket sales should be paid direct into the Council's account rather than via a third party or an equivalently secure method.

2.R9 A risk assessment regarding the procurement is completed and then regularly reviewed.

2.R10- 2.R12 That contract documents to be used (terms and conditions) are formally agreed with the legal department in good time and that the legal department are advised as to any amendments to the agreement.

All contractual risks need to be fully assessed and ways of mitigating these risks built into contract documentation starting with the specification. In order to be effective the mitigation measures must be fully understood by those managing and monitoring those contracts. Suitable risk assessments should be conducted where a significant change to processes is being made, for example relating to the collection of funds.

2.R13 A comprehensive (operational and all other aspects) review of each years' festival should be carried out soon after the event. This should include actions on the lessons to be learnt being identified, timeline for completion of these and be allocated to individual Officers.

CAMBRIDGE CITY COUNCIL
Review of the Folk Festival on-line ticketing 2008

2.R14 A comprehensive implementation and testing schedule should be drawn up and shared with other departments within the Council that will be assisting in the testing of the website prior to the sale of tickets. This will, enable all to commit resources to assist in ensuring that the product is as robust as possible and any obvious technical problems are reduced or removed.

2.R15 Contract management responsibilities should be assigned to an appropriate Officer and communicated to those that need to be advised. A comprehensive programme of monitoring needs to be implemented and responsibility allocated at a sufficiently high level of seniority to enable problems and risks to be identified and resolved.

2R.16 Requirement for financial viability results to be observed will be reiterated at the training to be given to Arts and Entertainment Officers, and a timely reminder provided to all other Heads of Service. In both cases it will indicate that any decision not to act on advice from the Finance department must be agreed at operational Director level and with the Director of Finance.

2.R17. Clear liaison with the legal department should be established early in the process, with any decision making required to be appropriately documented and escalated where appropriate. Contractual rights need to be secured in all contracts to ensure that the Council is entitled to put in place such monitoring as may be necessary to confirm satisfactory performance or to address unsatisfactory performance in a timely way.

3. Areas for improvement in the processes and procedures and / or in further procurements (both Corporately and specific to the Service concerned);

Findings

Corporately

3.F1 The Strategic Procurement team provides advice to Officers regarding methods of procurement and best practice. While the resource in this service has recently been increased from one officer to two, the purpose of the service is to advise rather than complete procurement exercises for Services, therefore potential for inexperienced Officers to conduct procurements remains a risk to the Authority.

3.F2 There is a requirement for the provision of and uptake of more frequent training on all procurement aspects.

3.F3 Simple user guides would assist officers in meeting the requirements of the Council's rules.

CAMBRIDGE CITY COUNCIL
Review of the Folk Festival on-line ticketing 2008

3.F4 Recognition of responsibility and the training and skills required for procurement should be recognised in relevant job descriptions, performance reviews, training plans and objectives and as a legitimate management function rather than something that has to be fitted in as an extra alongside the “day job”.

Recommendations

3.R1 That the Council keeps under review the appropriate level of resource within the Strategic Procurement team to facilitate Officer support.

3.R2 The existing procurement training will be examined in light of this report, to establish how the lessons learnt can be best communicated to Officers conducting procurements now and in the future.

3.R3 Flowcharts that have been produced providing a pictorial view of procurement rules should be rolled out throughout the Authority.

3.R4 Reminders should be made to all Heads of Service and Senior Management regarding procurement training and skills, and identifying these skills for incorporation into relevant job roles rather than considering them to be incidental or ad hoc requirements.

Arts & Entertainment Service:

3.F5 There should be a process in place to establish the need for procurement training within the service for Officers involved in procurement.

3.F6 The service did not have an adequate monitoring process in place to identify non-compliance with Contract Procedure Rules. This included not keeping sufficient records to support and confirm the details of the decision being made, on what basis and the evidence to support this. This was identified in the Internal Audit report (number 2008/09-13) along with the findings from this investigation.

3.F7 There are numerous types and prices of tickets which makes the sale of such tickets on-line complicated. The complexity limited the number of suppliers able to cope with such a structure and led to the design of a bespoke system for the contract in 2007 and 2008.

3.F8. Key person dependency should be avoided by the dissemination of knowledge and by having systems and procedures that are properly documented.

Knowledge about the operation and management of the Festival rests with a few people and there is little evidence of coherently recorded systems and

CAMBRIDGE CITY COUNCIL
Review of the Folk Festival on-line ticketing 2008

procedures. The documenting of processes and procedures would enable improved ability of another member of staff being able to pick up and continue a service in the event of an unplanned absence of a key officer.

A business continuity plan should be in place for the management and operation of the Festival to ensure resilience in the event of unplanned absences of key staff, loss of key suppliers or systems etc. For business continuity to be effective, systems and procedures need to be properly documented.

3.F9 Evidence examined during the review has highlighted weakness in clear communication (an over-reliance on e-mails with incorrect assumptions being drawn from the failure of the recipient to respond) and co-ordinated team working, leading to activities being inefficient or ineffective. For example in 2008, the award of the on-line ticketing contract was first documented within the Council and advised to the contractor in December 2007, but it was April 2008 when it was identified that the contract had not been addressed.

Recommendations

3.R5 Specific procurement training will be provided to Arts and Entertainment Officers involved in procurement.

3.R6 The service need to examine the checks and balances to put in place to enable management to obtain assurance that Contact Procedure Rules are being followed. This should include confirmation and follow-up that ensures decision making is appropriately conducted, approved and documented.

3.R7 A review of the ticketing structures for the Festival in 2010 onwards, should be considered.

3.R8 Familiarisation of the work carried out by individual officers should be spread throughout the team. Timetables, systems and procedures used should be properly documented to facilitate a continuation of work for the Festival in the event of unplanned absences. Steps to develop strong team working should be undertaken to ensure resilience in the arrangements for the delivery of the Festival. Record keeping for the operation and the management of the Festival needs to be kept in a format that would make it easy for anyone stepping in to any particular role to follow and assume any responsibilities effectively.

3.R9 A clear communication structure needs to be built into the planning process for the Festival.

CAMBRIDGE CITY COUNCIL
Review of the Folk Festival on-line ticketing 2008

4. The internal checks made on the procurements at each stage and on the payments to the contractor;

Findings

4.F1 The progress of each of the procurements should have been monitored on a regular basis at an appropriate level.

There was no structured framework to enable systematic and effective monitoring of the procurement.

4.F2 Those responsible for the management or monitoring of the contract must be clear about what the documents say.

No one appears to have been clear about the detail of the mechanism in the contract (or at least which should have been in the contract) for the holding of ticket fee money or the payment of the contractor's fee on completion of the contract and no one was therefore in a position to know if it was being complied with.

4.F3. The fact that the money for the tickets arrived late from the contractor in 2007 should have highlighted the Council's vulnerability and alerted officers to the risks entailed in the service.

The late arrival of payment for the 2007 Festival and the passing of the due date for payment for the 2008 Festival were not treated with sufficient seriousness. It would appear that the risk inherent in this was not appreciated. There was a failure to escalate the issue promptly for the 2008 Festival.

The payment for the 2007 Festival was made 4½ weeks after the Festival. The funds were due after the Festival and following a reconciliation of the amount by the contractor.

In 2008 the Legal department was not formally instructed regarding the non-payment until 30 September 2008, whereas the funds were due on 11 August 2008.

4.F4 There were no checks made for the 2008 Festival (we have no evidence either way for the 2007 Festival) to see if the money received from ticket sales was being paid into the protected account. Further, the Council carried out only a rudimentary reconciliation of tickets sold against the funds finally (and belatedly) transferred to the Council by the Contractor for the 2007 Festival.

4.F5 A reconciliation of the money owed to the Council from the sale of the tickets should have been completed. However at the time of this investigation the reconciliation had not been completed for the 2008 Festival. This resulted in a lack of clarity to the amount owed to the Council.

CAMBRIDGE CITY COUNCIL

Review of the Folk Festival on-line ticketing 2008

The audit team has now completed the reconciliation for the on-line tickets sold for the 2008 Folk Festival. This reconciliation shows a figure of £644,951 due to the Council. On the basis that the contract allowed for the contractor's management fee to be recovered through the booking fees this has been excluded from the calculation of the amount due to the Council.

Recommendations

Future on-line ticket procurement exercises should ensure:

4.R1 A structured monitoring framework should be put in place for future procurements, to enable key milestones of the procurement process to be reviewed and authorised.

4.R2 Payment mechanisms are incorporated into the specification and that Officers involved in the process are suitable briefed as to what to expect from the contractor.

4.R3 Processes for checking that funds that are received directly into the Council's bank account or into a safe account need to be prescribed and followed. Escalation of concerns regarding late payment should be undertaken promptly to improve the chances of recovering the funds.

4.R4 The service and departments supporting them should ensure that there is clarity in the method of payment and that this is adequately covered in the contract. Suitable checks should be put in place, which are sufficient to the volume of funds at potential risk.

4.R5 Reconciliation should be performed for on-line tickets sales alongside the other types of tickets. This will ensure that all funds have been received, the total number of tickets purchased is known and good management information available regarding the volume of the types of tickets sold. A robust system for recording the number and type of tickets sold and the income received must be put in place to ensure that the Council can verify that the money it receives (and any fees due to an on-line provider) from the sale of tickets is correct. This should include a means of checking:

- The number and type of tickets sold;
- The money received by the Council for such ticket sales;
- Any fee due to a contractor

CAMBRIDGE CITY COUNCIL
Review of the Folk Festival on-line ticketing 2008

5. Any lessons for the Council relating to its risk management processes

Findings

5.F1 Risk management training was provided to Officers when the risk process was introduced and training continues to be made available on a one to one basis. However, it is clear from the findings that awareness of risk identification and how risk integrates with Officers' roles (rather than being an "add on") should be conducted for relevant teams.

5.F2 There should be a project risk plan for the organisation of the Folk Festival with risks recorded in the Corporate plan as appropriate. There should also be a business continuity plan covering each aspect of the organisation of the Festival.

There is no evidence of an overall risk assessment or business continuity plan for the Festival. In particular regarding this investigation no evaluation of the risks of moving to on-line ticketing (which was a significant change to ticket sales) was conducted.

There is however a good operational risk plan in place for the period immediately leading up to and for the event itself.

5.F3 Measures should have been put in place by means of the service specification, contract terms and conditions and monitoring to mitigate the risk associated with large amounts of Council money being held by a third party.

The arrangements that were put in place to mitigate the risks involved in the on-line service were limited, not fully understood and ineffective. The lesson that was to be learnt from a late payment in August 2007 was not heeded.

5.F4 The purpose of a risk plan, which is regularly monitored, is to raise awareness of risks and thereby to highlight problems at an early stage so that they can be addressed and escalated as appropriate. The lack of appreciation of the risk attached to late payment of money due to the Council meant that it was not raised at senior level or with legal services quickly enough for any mitigation to be effective.

Recommendations

5.R1 Consideration should be given to provision of refresher training on risk identification to the Arts and Entertainment section and then across the Council. All officers involved in delivering the Festival must undertake training in risk assessment, identification and management at regular intervals.

5.R2 A comprehensive risk assessment and plan for all aspects of the Folk Festival, not just the operational and the immediate run-up and the event

CAMBRIDGE CITY COUNCIL

Review of the Folk Festival on-line ticketing 2008

itself. This must be prepared on a timely basis and reviewed by the multi-disciplinary team at regular intervals.

5.R3 The key risks for the Folk Festival should be placed onto the Council's Corporate Risk Register. Non-key risks should be populated on the project risk register and reviewed at project team meetings.

5.R4 Risk awareness and risk mitigation should be improved for the non-customer facing risks regarding the Folk Festival to enable the risk register for the Festival to recognise these risks and then set out to mitigate where appropriate or inform management. Again this should be delivered through training and risk being a regular item on the project team meetings.

6. Reporting to Members of matters relating to the Folk Festival.

Findings

6.F1 Officer and Member involvement relating to the arrangements for the Festival should be clear, documented and complied with.

It is not clear what Officer and Member involvement in the arrangements for the provision of the on-line service for the 2007 and 2008 Festivals was, as appropriate documentation could not be evidenced. There are minutes of an initial Officer/Member meeting in December 2007, but minutes of subsequent meetings could not be produced.

Recommendations

6.R1 Member understanding and future involvement in the following should be established and processes put in place to ensure compliance with these. It is considered that the following checklist will be a good start to establishing this:

- The risks associated with running the Folk Festival (in terms of operational, reputation, organisational etc)
- Key decisions which need to be taken during the Festival planning and execution of these plans and Members involvement
- Recognition that operational and low risk matters will be dealt with by Officers
- Periodic reporting on progress with the Festival plans.

Councillors should give consideration to the extent to which they wish to be involved in or informed of decisions about the Festival, monitoring of progress and event evaluation. Officers then need to put in place an appropriate mechanism to enable the requirement to be met.

CAMBRIDGE CITY COUNCIL

Review of the Folk Festival on-line ticketing 2008

Next Steps

Following this report there are a number of key stages of activity that will need to take place. These include:

- Preparation of an action plan indicating the detail of how the recommendations will and are being addressed.
- Taking appropriate action with individual staff in accordance with the Council's employment policies and procedures.

Conclusion

A range of factors contributed to the loss of money due to the Council from the on-line ticket contractor. However, had the procedures and safeguards listed above been in place during the course of the procurement and subsequent management of that contractor it is likely that the Council would have been in a position where it was better able to protect its interests.

Had detailed thought been given in an early assessment of the risks of introducing on-line ticketing, including the risks inherent in a third party holding large amounts of Council money. It is reasonable to assume that better safeguards would have been implemented and or monitoring undertaken such that the money would either have not been placed with the third party supplier in this manner or that receipts into a protected account would have been followed through. It is likely that there would have been earlier appreciation of the problem, which caused the delay in payment for the 2007 Festival and the failure to pay in 2008, which may then have been addressed. Whether any earlier action would have been effective is unknown.

During the investigation of the procurement of the on-line ticket contractor, it has become apparent that there is an overall lack of planning and robust management to enable the Festival to be delivered in an acceptable way.

Unless the recommendations above are carefully considered and implemented, there is an on-going risk to the successful delivery of the Festival and effective use of resources.

CAMBRIDGE CITY COUNCIL
Proposed scope of work – Independent Review
Folk Festival on-line ticketing 2008

Appendix A

Background

This document provides the scope for the independent review work to be conducted relating to the provision of on-line ticketing for the 2008 Folk Festival.

PricewaterhouseCoopers (PwC) have been appointed to provide external assurance for independent review work which will be conducted by Officers of the Council, led by the Head of Internal Audit.

The work is being performed following the non-payment of the on-line ticket monies by the external contractor to the Council in respect of the 2008 Folk Festival.

Context

It is intended that the work undertaken commences with consideration of the 2007 on-line ticketing exercise, as context for the events in 2008.

The Council's Internal Audit team has also recently conducted an audit of the procurement process within Arts and Entertainment. Of the three procurements reviewed, two related to the Folk Festival in 2008 and in both of these cases the procurement process controls were identified as weak, leading to Internal Audit providing a "no assurance" rating on the area.

Internal Audit have already undertaken a limited initial exercise to gather, catalogue and file the documentary evidence regarding the procurement and contracting for the 2008 Folk Festival on-line ticketing contract. However, no interviews have been conducted with any of the officers involved, at this stage. The work has also included an overview of the 2007 process and outcomes.

A copy of the initial findings, and full access to the supporting evidence, will be utilised as the starting point for the review.

The procurement and contract management processes surrounding this contract need to be examined to establish if controls operated effectively and whether appropriate activities took place to minimise the risks to the Council.

Objectives of the Independent Review

The main aim of the independent review work is to provide a report on the activities that took place in relation to the Folk Festival on-line ticketing for 2008. The Internal Audit team will conduct the work with interviews being undertaken by two Independent Heads of Services, external assurance to the process will be provided by PwC.

It is anticipated that the report would cover (but not be limited to) consideration of:-

- The appropriateness of the Council's procurement and contract management processes and procedures;

CAMBRIDGE CITY COUNCIL
Proposed scope of work – Independent Review
Folk Festival on-line ticketing 2008

Appendix A

- Whether officers involved in the process made appropriate use of these processes and procedures, and acted in accordance with them;
- Areas for improvement in the processes and procedures and / or in further procurements (both Corporately and specific to the Service concerned);
- The internal checks made on the procurements at each stage and on the payments to the contractor;
- Any lessons for the Council relating to its risk management processes; and
- Reporting to Members of matters relating to the Folk Festival.

Work to be Undertaken

Interviews will be conducted with Officers relevant to the procurement processes to establish the availability of additional and / or missing information, as well as to clarify correspondence and / or events. Two senior officers will conduct these interviews and the results will be fed back to Head of Internal Audit.

Review of evidence gathered will be conducted, including examination of the activity against the Council's contract procedure rules and any reasonable practice that should have been followed.

The work should be conducted on the basis of strict confidentiality, as the Council is still pursuing the contractor involved for payment of the outstanding monies.

Resources and Arrangements

The final scope and the resulting commissioning of the work supported by PwC will be agreed by the Council's Chief Executive, in consultation with relevant Members, including the timetable for conducting the work.

The Chief Executive will be the lead officer for the Council, and reports should be made to him.

If any additional work is identified during the course of the review which members of the Council's Internal Audit team, or PwC, could appropriately undertake this will be examined separately and engaged upon completion of this initial work.

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Director of Finance
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17 February 2009

Dear Sir

PwC support relating to a review of Folk Festival on-line ticketing 2008

The purpose of this Engagement Letter, which incorporates the attached Terms of Business dated December 2006 (together the "Contract"), is to confirm the Services that PricewaterhouseCoopers LLP ("PwC") will undertake for Cambridge City Council (the 'Council').

Please note, as set out in Clause 12.16 of the Terms of Business, that we use the term "partner" in this letter and more generally to refer to our members (unless the context otherwise requires).

The Services

Cambridge City Council entered into an arrangement with Secureticket (UK) Ltd to operate an on-line ticketing service for the Cambridge Folk Festival in 2007 and 2008. The company has failed to pay over the income from ticket sales in respect of the Folk Festival in 2008 amounting to in excess of £600,000.

Cambridge City Council therefore plans to undertake a review into the circumstances surrounding the failure of the online ticket service provider and the losses incurred by the Council. You have informed us that the review will cover the following areas:

- The appropriateness of the Council's procurement and contract management processes and procedures;
- Whether officers involved in the process made appropriate use of these processes and procedures, and acted in accordance with them;
- Areas for improvement in the processes and procedures and / or in further procurements (both Corporately and specific to the Service concerned);
- The internal checks made on the procurements at each stage and on the payments to the contractor;
- Any lessons for the Council relating to its risk management processes; and
- Reporting to Members of matters relating to the Folk Festival.



The review will be conducted by the following means:

- Interviews with Officers involved in the procurement processes to understand the actions taken and to obtain relevant information relating to the contract;
- Review of the evidence obtained, including examination of the activities against the Council's contract procedure rules and any reasonable practice that should have been followed.

The work will be conducted on the basis of strict confidentiality, as the Council is still pursuing the contractor involved for payment of the outstanding monies.

You have engaged us to assist the team undertaking the review by providing challenge to the review process in the form of a 'critical friend'. The 'critical friend' role will comprise of the following activities (the "Services"):

- Review of the draft scope of work and the provision of any comments and / or suggestions for changes;
- Meetings with Sarita Haggart, Head of Internal Audit during the conduct of the review to discuss progress and any issuing arising;
- Comments on progress and any issuing arising as requested by Sarita Haggart;
- Review of the draft report and any comments and / or suggestions for changes; and
- A letter at the end of the engagement confirming the nature and extent of the support provided as a 'critical friend' to Cambridge City Council during the conduct of the review.

Following completion of this stage, the requirement for further work will be reviewed with the Council, potentially to include issues such as :

- Action being taken by the Council to recover monies owed by the contractor;

As noted in Clause 1.4 of the Terms of Business, the Services do not constitute assurance; you and we agree that we have not been engaged to, and will not, perform an audit or a review, the objective of which would be the expression of an opinion. Accordingly, we will not express such an opinion.

Client Responsibilities

The internal audit department at Cambridge City Council are responsible for the conduct of the review. You will therefore ensure that appropriately skilled staff undertake the review. Cambridge City Council will also be responsible for the findings from the review and production of any report. You also agree to append a copy of our letter setting out PwC's involvement to any report produced by the Council.

Timing

The review is scheduled to take place during [insert details], with a draft report being produced by the Council by [insert date] and a final report expected to be produced by [insert date]. Our support will be provided during this period.

The Deliverables

Cambridge City Council are responsible for any report produced in connection with the review. As set out in our scope of work, we will provide guidance and support to the review team, but will have no responsibilities for the findings from the review.



Our deliverables will therefore be limited to agreed notes of any meetings and / or discussions held with the Council and a letter at the end of the review to confirm the extent of the advice and guidance that we have provided. This letter will be addressed to the Members of Cambridge City Council and should be appended to any report produced by the Council.

We draw your attention to Clause 8.11 of the Terms of Business which states that: The Services and Deliverables are provided solely for your internal benefit and use, and then only for the purpose set out in the Engagement Letter. They are not intended to be relied upon by any other person. For the purpose of this engagement, you and we agree that the letter will accompany the report that will be made to the Council's Civic Affairs committee and, as such, will be a public document.

Fees and payment

Our fees will be charged on a time and materials basis and will depend on the levels of skill and experience of the staff required for work of this nature.

Our total estimated fees amount to £10,000 - £12,000, exclusive of VAT (if applicable) and out of pocket expenses.

This is based on 5 - 6 days of Partner time. Should the extent of our support vary from this, then we will discuss and agree a variation in the fee with you in writing.

Our Team

Our advice and support will be provided by Rob Bennett, a Partner in our Government and Public Sector practice.

Limitation of liability

We draw your attention to the liability provisions set out in Clause 8 of the Terms of Business, which include:

- a limit on our liability to a maximum amount of three times the amount paid or payable to us by you under this Contract or £1 million, which ever is the greater and, subject to that overall financial limit, to the part of any loss suffered which is proportional to our responsibility. This limit applies to the Services set out in this Engagement Letter; and
- a limit on the period within which a claim may be brought.

General

For the purposes of Clause 9.16 of the Terms of Business, you may contact the Engagement Leader, Rob Bennett, or, if you prefer, Richard Sexton, Head of Assurance at our office at 1 Embankment Place, London, WC2N 6RH. You also have a right to address any complaint to the Institute of Chartered Accountants of England and Wales.

Client identification

As with other professional services firms, we are under stringent requirements to identify our clients for the purposes of anti-money laundering legislation. We are likely to request from you and retain some information and documentation for these purposes and/or make searches of appropriate databases. If satisfactory evidence of your identity is not provided within a reasonable time, there may be circumstances in which we are not able to proceed with the engagement.



Money laundering reporting

All the services we provide are in the regulated sector under The Proceeds of Crime Act 2002 (as amended) and as such partners and staff in audit and accountancy firms are required to report all knowledge or suspicion, or reasonable grounds to know or suspect, that a criminal offence giving rise to any direct or indirect benefit from criminal conduct has been committed, regardless of whether that offence has been committed by their client or by a third party. If as part of our work we have knowledge or suspicion, or have reasonable grounds to know or suspect, that such offences have been committed we are required to make a report to the Serious Organised Crime Agency. In such circumstances it is not our practice to discuss such reports with you because of the restrictions imposed by the tipping off provision of the anti-money laundering legislation.

Acceptance

Please record your agreement to the terms of this Contract by signing the enclosed copy of this letter in the space provided and returning it to us.

Yours faithfully

PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP

Confirmation of Contract

Having read the Contract comprising the Engagement Letter dated 17 February 2009 and the attached Terms of Business dated December 2006, we acknowledge acceptance of and agree to engage PricewaterhouseCoopers LLP upon the provisions of the same.

Signed for and on behalf of Cambridge City Council:

.....
Signature	Name	Date

Enclosure: PricewaterhouseCoopers LLP Terms of Business

TERMS OF BUSINESS

These Terms of Business together with the Engagement Letter form the Contract between the parties.

1 THE SERVICES

- 1.1 **Services** - We will provide the Services set out in the Engagement Letter. You confirm that the definition and scope of the Services detailed in the Contract is sufficient to meet your needs.
- 1.2 **Timetable** - Unless the Engagement Letter states otherwise, dates are not binding; however, we will use reasonable efforts to comply with any timetable set out in the Engagement Letter.
- 1.3 **Other Engagements** - We shall not be deemed to have knowledge of information from other engagements for the purposes of the provision of the Services, except to the extent specified in the Engagement Letter.
- 1.4 **No Assurance** - Save as expressly stated in the Engagement Letter, we will rely on and will not verify the accuracy or completeness of any information provided to us. The Services do not constitute an audit or review carried out in accordance with generally accepted auditing standards and no assurance will be given by us.
- 1.5 **Restrictions on Provision of Services**
- 1.5.1 Nothing in this Contract requires us to perform services which may cause us to breach any professional or regulatory rules or guidelines applicable to us or our Affiliates, or precludes us or any Personnel from complying with the professional or ethical rules or guidelines of any relevant professional body.
- 1.5.2 Our Deliverables and advice are not the only factors to be taken into account by you when deciding whether or not to proceed with a specific course of action and it is your decision alone as to whether or not to proceed. Unless the Engagement Letter states otherwise we are not responsible for the implementation of our advice.

2 DELIVERABLES

- 2.1 **Draft Deliverables and Oral Advice** - Draft Deliverables and oral advice will not constitute PwC's definitive opinions and conclusions. We will have no liability to you for the content or use of any draft Deliverables or for our oral advice, except where such oral advice is confirmed in writing in a final version of any Deliverable.
- 2.2 **Ownership of Deliverables**
- 2.2.1 You will own such copyright as may vest in PwC in all those final versions of Deliverables identified in the Engagement Letter as "Client Materials", subject to the remainder of this Clause 2.2, and to payment to us of amounts due under this Contract. You grant to us a non-exclusive, royalty-free, worldwide, perpetual right to use, copy, modify and sub-license such Client Materials.
- 2.2.2 The copyright and all other intellectual property rights in any materials or software created by or licensed to us prior to this Contract or outside this engagement (including materials or software licensed to PwC for the purposes of this Contract) and any subsequent modifications to the same ("Pre-Existing Works") will remain vested in us (or our licensors). To the extent that these form part of any of the Deliverables themselves, you will have a licence to use them in accordance with Clause 2.2.3 below.
- 2.2.3 We (or our licensors, as applicable), will own the copyright and all other intellectual property rights in all Deliverables which are not identified in the Engagement Letter as Client Materials, and in all other materials or software created under this Contract, whether created by us alone, or by PwC and any Addressee. Subject to payment of amounts due under this Contract, you will have a non-exclusive, non-transferable licence to use these Deliverables (and any Pre-Existing Works to the extent that these form part of the Client Materials) for your own internal use and then only for the purposes for which they were delivered but you must not provide these Deliverables (or any Pre-Existing Works to the extent that these form part of the Client Materials) or copies of them to any third party. Any third party software that does not form part of any Deliverables and which is needed to enable you to read or use the Deliverables will be obtained by you at your cost.
- 2.2.4 Each party will at the request and reasonable expense of the relevant party execute all such documents and do all such acts as may be reasonably necessary in order to vest in the relevant party the rights granted pursuant to this Clause 2.2.
- 2.3 **Financial Model** - Without prejudice to the other provisions of this Clause 2, you accept that any model and related documentation developed, used or supplied by us as part of the provision of the Services ("Model") is prepared by us, wholly or in part, in reliance upon the assumptions and other information provided by you or by a third party. You accept and agree that any such Model and its related output do not to any extent substitute for the exercise of professional or business judgement on your part and that of your employees and third parties contracted to you. Notwithstanding any other provision of this Contract, you shall not reproduce any such Model without the Important Notice (if any) contained in the Model. In any event, you agree not to sell, rent, lease, network, loan, electronically transfer or distribute the whole or any part of any such Model to any third party without our prior written consent, which shall be at our sole discretion.
- 2.4 **Freedom to Use Ideas** - Neither we nor our Affiliates will be prevented or restricted by any provision of this Contract from developing or using any techniques, ideas, concepts, information or know-how relating to methods or processes of general application.
- 2.5 **Working Papers** - Notwithstanding anything else in this Contract, our working papers and other internal documentation created by us or on our behalf in connection with the Services will belong to us, and will not be provided to you.

3 YOUR RESPONSIBILITIES

- 3.1 **Our Performance** - Our performance is dependent on you co-operating with us and carrying out your responsibilities as set out in this Contract. We shall not be responsible for delay or other consequences resulting from your failure to perform your obligations under this Contract.
- 3.2 **Staff and Support Facilities** - You will provide us with assistance from suitably qualified and experienced staff. Where we work on your premises or with your computer facilities, you will: (a) provide us with such office, communication and support facilities as we may reasonably require to perform the Services; (b) ensure that you have appropriate back-up, security and virus-checking procedures in place for any computer facilities you provide or which may be affected by the Services; and (c) provide a safe and secure working environment for our Personnel.
- 3.3 **Information and Materials** - To the extent that our Services are dependent on information to be provided to us by you or on your behalf, you will ensure such information is provided on a timely basis. You will ensure that all such information will be complete, accurate and not misleading. Where information is based on assumptions you will advise us of them. You are responsible for informing us immediately of any changes to the information, if the information should no longer be relied upon or the appropriateness of assumptions presented to us.
- 3.4 **Suppliers and Other Third Parties** - When you use or provide us with third party information, support or materials, you will ensure that you have appropriate agreements in place with those third parties to enable us to perform the Services. You will be responsible for the management of such third parties, the quality of their input and work and for the payment of their fees. You will be responsible for any third party items used in connection with the Services. We will not review services provided by such third parties.

4 FEES AND PAYMENT

4.1 **How Fees will be Calculated** - PwC's fees will be charged on the basis set out in the Engagement Letter, and any estimates by us are not binding. Where PwC's fees are charged on the basis of daily rates, the fees will be calculated on the basis of 7 working hours per day. Hours worked in excess of 7 hours per day will be charged and unless otherwise agreed in the Engagement Letter, travel time will be chargeable. All fees stated are exclusive of expenses which will also be payable by you.

4.2 **Taxes** - Fees and expenses are stated exclusive of any taxes and duties. You will pay VAT and any other taxes and duties arising from this Contract for which you are legally liable.

4.3 **Payment of Invoices** - We will invoice you on a monthly basis unless the Engagement Letter states otherwise. All invoices are due for payment within 30 days of the invoice date. In the event of late payment we may suspend the provision of Services and charge interest on amounts overdue at the rate prescribed by law. Unless otherwise indicated in the Engagement Letter, our invoices will be paid by the Original Addressee.

5 CONFIDENTIALITY

5.1 **Restrictions on Disclosure and Exceptions** - Each party agrees that any Confidential Information received by it under this Contract may only be used for the purposes of providing or receiving Services (or for the related purposes identified in Clause 6.4) and it will not disclose any Confidential Information of another party to any third party without the prior written consent of the disclosing party. These restrictions will not apply to any information which (a) is in or enters the public domain other than as a result of a breach of an obligation under this Clause 5; (b) is acquired from a third party who owes no obligation of confidence in respect of the information; or (c) is or has been independently developed by the receiving party or was known to it prior to receipt.

5.2 **Entitlement to Disclose** - Notwithstanding anything else in this Contract, each party will be entitled to disclose Confidential Information of another party to (a) its respective insurers or legal advisers (but in each case only for the purposes of and in relation to any actual, potential or threatened dispute relating to provision or receipt of the Services); or (b) a third party: (i) to the extent that this is or may be required by any court of competent jurisdiction, by a governmental or regulatory authority or by a professional body of which PwC or relevant Personnel are members; or (ii) where such party reasonably believes there is a legal right, duty or requirement to disclose, provided (in the case of disclosure pursuant to (b) above) where reasonably practicable (and without breaching any legal or regulatory requirements) not less than 2 business days' notice in writing is first given to the party whose Confidential Information is to be disclosed.

5.3 **Citation of Services** - Notwithstanding the above provisions of this Clause 5, you agree that as an indication of our experience we may cite to third parties the performance of the Services and, in a transaction, the names of those entities involved in the subject matter of this Contract and any related transaction consideration.

5.4 **Tax Treatments** - Notwithstanding any other provision of the Contract or any other agreement or confidentiality markings on communications, you may disclose to any person the tax (including social security) treatment and structure of any transaction in respect of which we have provided tax Services. In the event of a disclosure pursuant to this clause: (i) you will provide us with (a) the name and address of the person to whom you have made the disclosure; and (b) a description of the information and materials so disclosed; and, (ii) you will notify such person that, in the absence of an express written agreement by us to the contrary (a) such person may not rely upon such information and materials; and (b) we have no liability or responsibility to such person with respect to such information and materials.

5.5 **Rule 3522 of the US Public Companies Accounting Oversight Board** - Where, in respect of our Services, rule 3522 of the US Public Companies Accounting Oversight Board applies in relation to the audit independence of PwC or any PwC Entity, you confirm that no other adviser has imposed any conditions of confidentiality on the tax (including social security) treatment and structure of any transaction related to our Services. In addition, you agree that if, after we begin providing the Services, any other tax adviser imposes such conditions of confidentiality, you will notify us immediately so that we can cease all work relating to tax Services in order to avoid any impairment to independence.

6 DATA PROTECTION

6.1 **Data Protection** - In connection with the Contract, each party shall comply with all relevant provisions of the Data Protection Act 1998 (the "1998 Act") and any other applicable data protection legislation in any relevant jurisdiction (together the "Data Privacy Legislation"). For the purposes of this Clause 6, "Data Controller" and "Data Processor" have the meanings given to them under the 1998 Act. "Personal Data" means any personal data as defined in the 1998 Act (including any sensitive personal data) which: (a) relates to you, your employees, or your customers or clients; or (b) is otherwise personal data which you have provided to PwC in connection with the Services.

6.2 **Lawful Processing** - You confirm that processing Personal Data in connection with the Services and this Contract will not place PwC (or Beneficiaries) in breach of the Data Privacy Legislation.

6.3 **Processing as a Data Processor** - If, in connection with the Contract, PwC processes any Personal Data as a Data Processor on your behalf: (a) PwC shall process such Personal Data only on your instructions (express or implied); and (b) in relation to such Personal Data, PwC shall comply with obligations equivalent to any imposed on you (as Data Controller) by the seventh principle of the 1998 Act.

6.4 **Disclosure by PwC** - Notwithstanding the provisions of Clause 5 and this Clause 6, PwC may use and disclose to Beneficiaries Confidential Information and Personal Data: (a) for the purposes set out in Clause 5 and this Clause 6; (b) in respect of the contact details of those of your personnel who have been connected with the Services or this Contract, for updating PwC's records and databases in order to facilitate contact with such personnel; (c) for purposes incidental to the provision of Services, including quality and risk management reviews; and (d) for storage, hosting, IT and other maintenance and support facilities (including outsourcing of the same) in relation to information and data (including Confidential Information and Personal Data) relating to this Contract. In relation to all the above, you agree that PwC may transfer, where appropriate, Confidential Information or Personal Data outside the European Economic Area.

7 TERM, TERMINATION, SUSPENSION AND SURVIVAL

7.1 **Duration of Contract** - This Contract will be effective from the commencement date stated in the Engagement Letter, if any, or the commencement of our Services, whichever is the earlier. Unless the Engagement Letter states otherwise, this Contract will continue until all the Services and Deliverables have been provided unless it is terminated earlier in accordance with the terms set out below.

7.2 **Termination on Notice** - This Contract may be terminated by a party at any time by giving not less than 30 days' notice except where all or part of the Services are being provided on a contingent fee basis, in which case no party may terminate this Contract on notice pursuant to this Clause 7.2, unless the Engagement Letter states otherwise.

7.3 **Termination for Breach of Contract** - This Contract may be terminated by a party by notice with immediate effect if another party commits a material breach of any term of this Contract which is irremediable or which, if remediable, is not remedied within 30 days of a written request to remedy the same (or, if it is not practical to remedy the breach within such period, where reasonable steps have not been taken within the 30 days towards remedying the breach).

7.4 **Termination for Insolvency** - This Contract may be terminated by a party by notice with immediate effect if another party is unable to pay its debts or has a receiver, administrator, administrative receiver or liquidator (or in each case, the equivalent in another jurisdiction) appointed or calls a meeting of its creditors or ceases for any reason to carry on business or if in the reasonable opinion of the party wishing to terminate any of these events appear likely.

7.5 **Termination for Regulatory Reasons** - This Contract may be terminated by PwC at any time by notice with immediate effect if it reasonably believes that its performance, or any aspect of it, results, or might result, in PwC or any PwC Affiliate breaching any legal, regulatory, ethical or audit independence requirement in any jurisdiction. Notwithstanding the above, PwC may either suspend the Contract or seek to agree variations to this Contract to avoid such breach.

- 7.6 **Suspension of the Contract** - Any party may suspend this Contract by giving notice to the other parties (a) while circumstances exist in relation to any other party to this Contract which, in the reasonable opinion of the suspending party, materially adversely affect either the basis on which this Contract was entered into or the suspending party's performance of its contractual obligations; or (b) where the suspending party reasonably believes that performance of the Contract or any part of it results, or might result, in a party or any of its Affiliates breaching any legal, regulatory, ethical or audit independence requirement in any jurisdiction. However, you may not suspend this Contract where any payment is to be made on a contingent fee basis. If, following suspension of this Contract, PwC agrees to resume performance of the Services, the parties will first agree any changes to this Contract which may be necessary as a result of its suspension, including fees, costs and timetable. If a period of suspension pursuant to this Clause 7.6 exceeds 30 days, any party may terminate this Contract with immediate effect by written notice to the others.
- 7.7 **Effect of Termination** - On the termination of this Contract, you will pay us for all Services provided up to the date of termination and any related expenses. In the case of Services provided on a fixed price fee or contingent fee basis, unless the Engagement Letter states otherwise, and without prejudice to any fees that may become due after termination, you will pay us all sums due at the date of termination in accordance with the payment plan set out in the Engagement Letter, plus any retention of fees, together with fees (at our then standard time and materials fee rate) for Services provided after the date of the last applicable payment under the payment plan. Without prejudice to any right to recover additional amounts at law, you will pay us for additional costs we reasonably incur as a result of any early termination of the Services, save where we have terminated the Contract pursuant to Clause 7.2, or you have terminated the Contract pursuant to Clause 7.3. In the event of the termination of a Contract by an Addressee where there is more than one Addressee, PwC and the remaining Addressee(s) may agree to enter into a new engagement letter for the completion of the engagement.
- 7.8 **Return of Property** - On the termination of this Contract each party will, if requested to do so in writing, return to another party as soon as reasonably practicable any property of that other party that it then has in its possession or control. Notwithstanding the foregoing sentence, we may retain a copy of any documentation or software: (a) prepared or modified by us; (b) received by us from you or a third party; or (c) upon which our Services are based. You may retain the signed originals of the final versions of Deliverables and any copies of them made in accordance with this Contract.
- 7.9 **Survival** - The provisions of this Contract which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind each party. Termination of the Contract will be without prejudice to any accrued rights of each party.
- 8 **LIABILITY**
- 8.1 **Performance** - We will provide the Services with reasonable skill and care.
- 8.2 **Exclusions** - Nothing in this Contract will exclude or restrict a person's liability: (a) for death or personal injury caused by that person's negligence; (b) for that person's fraud; or (c) for anything else that cannot by law be excluded or restricted. This does not in any way confer greater rights than a person would otherwise have at law or in equity.
- 8.3 **Regulated Activities** - Nothing in this Clause 8 or elsewhere in this Contract will exclude or restrict any liability or duty we may have to you under the Financial Services and Markets Act 2000 or the rules of the FSA, in respect of services provided to you as a customer, as defined in the FSA Handbook.
- 8.4 **Our Liability** - Subject to the exclusions set out in this Contract, our aggregate liability for Damage will, in respect of all claims brought, be limited to three times the amounts paid or payable to us by you under this Contract (excluding VAT) or £1,000,000, whichever is the greater.
- 8.5 **Proportionality**
- 8.5.1 Our liability to you for Damage will further be limited to such proportion thereof as represents our proportionate share of responsibility for the loss, damage, costs and expenses suffered or incurred by you, having regard to the extent to which: (a) you, your agents and employees; and (b) any other person who is or was responsible or liable to you for the occurrence of any such loss, damage, costs and expenses, have contributed to or are culpable for such loss, damage, costs and expenses.
- 8.5.2 In assessing our proportionate share of responsibility for such loss, damage, costs and expenses in accordance with Clause 8.5.1, it is agreed that no account is to be taken of: (a) any exclusion or restriction imposed or agreed between you and any other person in connection with their responsibility or liability to you for loss, damage, costs or expenses for which they are or might otherwise be responsible or liable; (b) whether or not any person whose contribution to or culpability for any such loss, damage, costs or expenses may be relevant in respect of the determination to be made under this Clause 8.5 is or could be made a party to the proceedings in which our liability in accordance with this Clause 8.5 is to be determined (and, for the avoidance of any doubt, we shall have no responsibility whatsoever to take any steps to ensure that they are made a party thereto); and (c) the ability or otherwise of any such other person to satisfy in whole or in part any liability to you for any such loss, damage, costs or expenses.
- 8.6 **Exclusions of Liability for Specific Types of Loss**
- 8.6.1 We will not be liable for Damage in respect of: (a) loss of profit, goodwill, business opportunity or anticipated savings or benefits; (b) loss or corruption of data; or (c) indirect or consequential loss or damage.
- 8.6.2 We accept no responsibility for detecting fraud or misrepresentation (whether by management, employees or third parties). Accordingly, we will not be liable for Damage arising in any way from, or in connection with, fraudulent or negligent acts or omissions, misrepresentations, or defaults whether on your part, on the part of your directors, partners, employees, contractors or agents, on the part of any of your Affiliates and their directors, partners, employees, contractors or agents, or on the part of any third party.
- 8.6.3 Without prejudice to Clause 8.6.2, in the course of the provision of the Services we may uncover irregularities or matters which we are required to report under statutory or regulatory obligations. We will not be liable for Damage incurred by you (or your Affiliates) in respect of liabilities or penalties which we uncover or which arise as a result of any such report.
- 8.7 **Addressees**
- 8.7.1 Where there is more than one Addressee, the limit of liability specified in Clause 8.4 above must be allocated between the Addressees. Such allocation will be entirely a matter for the Addressees, who will be under no obligation to inform us of it; if (for whatever reason) no such allocation is agreed, no Addressee will dispute the validity, enforceability or operation of the limit of liability on the grounds that no such allocation was agreed.
- 8.7.2 Any actions or steps taken by any Addressee in relation to this Contract (including, for the avoidance of doubt, termination of the Contract) will be deemed to be taken pursuant to a unanimous decision of all Addressees and such Addressees shall be jointly and severally responsible and liable for their acts and omissions unless the Engagement Letter states otherwise.
- 8.8 **Group Entities** - You will procure that no member of your Group (unless it is an Addressee), both whilst it is a member of your Group and thereafter, brings or seeks to enforce any claim or claims against us or any Beneficiary in respect of any liability relating to or arising out of the Services or the Contract.
- 8.9 **Commencement of Legal Proceedings** - Any legal proceedings you bring arising from, or in connection with, the Services or the Contract must be commenced within 2 years from the date when you become aware of, or ought reasonably to have become aware of, the facts which give rise to the alleged liability and, in any event, not later than 4 years after any alleged breach of contract, act of negligence, commission of any other tort or breach of statutory duty.
- 8.10 **Exclusion of Liability of Beneficiaries** - In the course of providing Services, PwC may, at its discretion, draw on the resources of Beneficiaries. However, provision of the Services remains the responsibility of PwC alone and you will not bring any claim, whether in contract, tort (including negligence) or otherwise against any Beneficiary in respect of this Contract or the Services. Any Beneficiary who deals with you in the course of providing the Services does so on behalf of PwC alone. The provisions of this Clause 8.10 have been stipulated by PwC expressly for the benefit of its Beneficiaries. Beneficiaries will have the right to rely on this Clause 8.10 as if they were parties to the Contract and will have the right (subject to the discretion of the Court) to a stay in proceedings if you bring any claim against any Beneficiary in breach of this Clause 8.

- 8.11 **Provision of Services and Deliverables** - The Services and the Deliverables are provided solely for your internal benefit and use, and then only for the purpose set out in the Engagement Letter. We therefore accept no responsibility or liability for Damage arising from any other use or purpose. The Services and Deliverables are not intended to be relied upon by any other person. Accordingly, you may not provide the Deliverables or any copies or make the benefit of the Services available to any third party.
- 8.12 **Use of Services and Deliverables** - We accept no liability or responsibility to any third party who benefits from or uses the Services or gains access to the Deliverables. You agree to reimburse and hold us and the Beneficiaries harmless against any liabilities, losses, demands, expenses or other costs we or any Beneficiary reasonably incur in connection with or arising out of this Contract or our provision of the Services in respect of: (a) any claims howsoever caused, brought or threatened against us or any Beneficiary by any such third party (including Group members, both whilst they are members of the Group and thereafter, save to the extent such Group members are Addressees who are allowed to make claims against us pursuant to the terms of this Contract); and (b) any claims brought or threatened against us or any Beneficiary arising from your breach of this Contract, except in either case to the extent finally determined by a court of competent jurisdiction to have resulted from the fraudulent behaviour of PwC or the Beneficiary claiming under this Clause 8.12.
- 8.13 **Exclusion of Warranties** - To the extent permissible by law, all warranties, conditions, representations or terms other than those expressly set out in this Contract are excluded, including all implied and statutory conditions.
- 8.14 **Remedies** - The only remedies available to you and the absolute limit of our liability arising under, or in connection with, this Contract and the Services are the remedies and liabilities set out in this Contract. Nothing in this Contract shall, however, prohibit a party from seeking injunctive relief in the case of a breach or threatened breach of the provisions in Clauses 2, 5, 6, 8.8 or 8.10.
- 9 **GENERAL**
- 9.1 **Rights of Third Parties** - Save in respect of the rights of Successors (as defined in Clause 9.3) and Beneficiaries which are expressly provided for in this Contract (including the rights set out in Clauses 8.8, 8.10, 8.12 and 9.3) a person who is not a party to this Contract has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The parties to the Contract do not require the consent of any Beneficiary or any other third party to rescind or vary any term of the Contract at any time.
- 9.2 **Force Majeure** - No party will be liable to the others to the extent that any failure to fulfil obligations is caused by circumstances outside its reasonable control including any advice, warning or prohibition by any appropriate local, national or supra-national authority or foreign office, or PwC management relating to travel to, visiting or working in any country or territory. Without prejudice to the provisions of Clause 7.2, if any circumstances continue such that a party is unable to fulfil its obligations for a continuous period of 30 days, a party will have the right to terminate the Contract by giving 15 days notice any time after that 30 day period, provided that the relevant circumstances are continuing.
- 9.3 **Assignment**
- 9.3.1 No party may assign, transfer, charge or otherwise seek to deal in any of its rights or obligations under this Contract without the prior written consent of the other parties to this Contract save that if a person or partnership ("the Successor") succeeds or is formed to succeed (whether by sale, assignment, transfer, merger, operation of law or otherwise) to the whole or part of the business of PwC, we will have the right to novate to the Successor, and the Successor shall have the right to accept and assume PwC's rights and obligations under or in connection with this Contract, as set out in the rest of this Clause 9.3. In such case PwC and the Successor may effect the novation by giving you written notice in which the Successor agrees to accept and assume the rights and the obligations of PwC. The effect of such notice will be that: (a) the Successor will be substituted for PwC with effect from the date specified in the notice and PwC will no longer have those rights and obligations but such notice shall not affect any rights or obligations in respect of work performed prior to that date, (including any right for PwC or any Beneficiary to be reimbursed and held harmless under Clause 8.12); and (b) any limit on the liability of PwC under the Contract will apply to PwC and the Successor on an aggregated basis so that the maximum combined liability of PwC and the Successor will not exceed the limit of liability of PwC before the novation takes effect. PwC will be entitled and bound to pass over to the Successor all information, records and other data which we have in relation to this Contract but may retain one copy for record-keeping purposes subject to the obligations of confidentiality set out in these Terms of Business.
- 9.3.2 Where a Successor succeeds to part of the business of PwC, PwC and the Successor may only exercise their rights under this Clause 9.3 where the relevant part includes this Contract.
- 9.4 **Waiver** - No waiver of any term or condition of this Contract will be effective unless made in writing and signed by the waiving party.
- 9.5 **Notices** - Notices must be in writing and delivered by hand or sent by registered post, in each case to the address of the relevant party given in this Contract or to any other address that the relevant party has notified to the others during the period of this Contract. Any notice (including invoices) sent by post will be deemed to have been delivered 3 business days after sending. Notices to us at our address should be marked for the attention of the person(s) specified in the Engagement Letter.
- 9.6 **Amendment** - Any amendment of this Contract will not be effective unless agreed in writing and signed by each party. Until a change is agreed in writing, each party will continue to act in accordance with the latest agreed version of this Contract.
- 9.7 **Validity of Contract Provisions** - If any provision of this Contract is held to be invalid, in whole or in part, such provision (or relevant part, as the case may be) shall be deemed not to form part of this Contract. In any event, the enforceability of the remainder of this Contract will not be affected.
- 9.8 **Staff** - During the period of this Contract and within 6 months of its termination or expiry neither we nor you will employ any partner, director or employee of any other party (and you will not employ any Partner) who was directly involved in providing or receiving Services hereunder. This will not restrict a party from employing an individual who applies unsolicited in response to a general advertising or other general recruitment campaign, or who have been involved in the Services on a purely administrative or secretarial basis.
- 9.9 **Headings** - The headings and titles in this Contract are included to make it easier to read but do not form part of this Contract.
- 9.10 **Independent Contractor** - In providing Services to you, we are acting only as an independent contractor. We do not undertake to perform any of your obligations, whether regulatory or contractual, or to assume any responsibility for your business or operations.
- 9.11 **Entire Agreement** - This Contract forms the entire agreement between the parties in connection with the Services. It replaces and supersedes any previous proposals, correspondence, understandings, contracts or other communications whether written or oral. No party is liable to any other party, in contract, tort (including negligence) or otherwise, for a representation (other than a fraudulent misrepresentation on which a party can be shown to have relied) that is not set out in this Contract. Each party represents that it has not relied on or been induced to enter into this Contract by a statement or representation made by another party, other than those expressly set out in this Contract.
- 9.12 **Conflict** - All terms used in the Engagement Letter shall have the same meaning in these Terms of Business and vice versa. In the event and only to the extent of any conflict between these Terms of Business and the Engagement Letter or any other document which forms part of this Contract, these Terms of Business shall prevail except where amended by specific reference to the relevant Clause of the Terms of Business. In the event and only to the extent of any conflict between the Engagement Letter and any document forming part of this Contract other than the Terms of Business, the Engagement Letter will take precedence.
- 9.13 **Electronic Communications** - We shall regard your acceptance of this Contract as including your consent to our communicating with you using electronic means. You agree that Personnel may access the PwC network via your internet connection and that Personnel may do this by connecting their PwC computers to your network. Each party accepts the risks of, and authorises such electronic communications (including the use by us of your network and internet connection) and, save to the extent provided in Clause 8.2, no party (in each case including its respective partners, directors, employees or agents (and in the case of PwC, Partners)) shall have any liability to any other party on any basis, whether in contract, tort (including negligence) or otherwise, in respect of any error, damage, loss or omission arising from or in connection with the electronic communication of information between the parties and the parties' respective reliance on such information or our use of your network and internet connection. To the extent that the Services involve us communicating with

third parties on your behalf (for example, HM Revenue & Customs), you consent to our communicating electronically and by fax with such third parties unless and until you instruct us otherwise in writing.

- 9.14 **Audit Independence** - You confirm that in order to assist us in identifying potential independence issues you have notified (and in the future, will notify) us of any audit relationship or potential audit relationship (including any engagement carried out under U.S. attest standards) between you or your Affiliates on the one hand and PwC or a PwC Affiliate on the other hand. Where we, or another PwC Affiliate, act as auditor, our obligations under this Contract are entirely separate from that role as auditor; nothing in this Contract or said or done in the course of or in connection with the Services should be taken to extend any duty of care PwC or any PwC Affiliate may have in its capacity as auditor of any financial statements.
- 9.15 **Relationships with Other Clients** - Neither we nor our Affiliates will be prevented or restricted by virtue of our relationship with you under this Contract from providing services to other clients, including clients who may be in competition with you or whose interests may be in conflict with your own. You understand and agree that the deployment of our industry experts or other specialists is not exclusive and, as a result, we may deploy such Personnel at any time (including on concurrent engagements) for the benefit of other clients, which may include others in your sector.
- 9.16 **Complaints** - If you wish to make a complaint about the Services you receive, you may contact the person identified in the Engagement Letter or the head of the applicable line of service. You have the right to refer a complaint to the Institute of Chartered Accountants in England and Wales ("ICAEW") or for certain complaints, to the Financial Ombudsman Service. In the course of handling your complaint we will inform you of the appropriate body to which you may refer. A copy of our complaints handling procedure may be obtained from our compliance department at our registered office.
- 9.17 **Professional Time and Expenses** - In the event that either (i) we are required by regulation, statute, court order or other legal process, or (ii) that we agree at our sole discretion following a request made by you, to produce our working papers or our personnel as witnesses with respect to our engagement for you, you will reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such a request. For the avoidance of doubt, this paragraph shall not apply in the event of legal proceedings brought against us by you in relation to this engagement, or to a UK regulatory inspection or investigation of PwC.

10 GOVERNING LAW

- 10.1 **Applicable Law** - This Contract will be governed by, and interpreted in accordance with, the laws of England and Wales.
- 10.2 **Resolving Disputes** - Should any dispute arise in connection with this Contract or the Services, the parties will work together in good faith with a view to resolving the dispute. Where each party agrees, the parties will seek to resolve the dispute through mediation. Each party irrevocably agrees to submit to the exclusive jurisdiction of the English Courts if the dispute is not resolved through negotiation or mediation.

11 INVESTMENT BUSINESS

- 11.1 **Our Status** - PwC is authorised and regulated by the FSA for designated investment business. The Engagement Letter will state if our Services constitute investment business. In the unlikely event that we are unable to meet any liabilities we may have to you then, to the extent that the Services include regulated activities, you may be entitled to compensation under the Financial Services Compensation Scheme.
- 11.2 **Legal and Regulatory Requirements** - If the Services are or become a regulated activity (as defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), we may be required to communicate with you further in respect of your status as an intermediate customer or market counterparty as appropriate (as defined in the FSA Handbook).

12 DEFINITIONS AND INTERPRETATIONS

For the purpose of this Contract:

- 12.1 "Addressee" means: (a) the original addressee of the Engagement Letter; and (b) any other person whom you and we have agreed in writing may have the benefit of the Services, and to whom we have assumed a duty of care in respect of the Services under written arrangements (signed by both PwC and such other persons) or by written notice to them;
- 12.2 "Affiliate" means any entity which from time to time controls, is controlled by, or is under common control with the relevant party, where control means having the ability (including by means of a majority of voting rights or the right to appoint or remove a majority of the board of directors) to control the management and policies of an entity. PwC's Affiliates shall be deemed also to include any entity (whether or not incorporated) which carries on business under a name which includes all or part of the PricewaterhouseCoopers name or is otherwise within (or associated or connected with an entity within) or is a correspondent firm of the worldwide network of PricewaterhouseCoopers firms;
- 12.3 "Beneficiary" means PwC Affiliates, Contractors or Personnel;
- 12.4 "Confidential Information" means any confidential information received for the purposes of providing or receiving Services (including the Contract and the relationship between the parties) which: (a) if disclosed in tangible form is marked confidential; or (b) if disclosed otherwise than in tangible form is confirmed in writing as being confidential; or, (c) is manifestly confidential;
- 12.5 "Contract" means the Terms of Business and the Engagement Letter each as amended pursuant to Clause 9.6;
- 12.6 "Contractor" means any third party entity or individual engaged by us or any of our Affiliates;
- 12.7 "Damage" means any and all losses or damages (including interest thereon, if any) expenses and costs suffered or incurred by you under the Contract or in connection with the Contract or any Services provided pursuant to it;
- 12.8 "Deliverable(s)" means the final versions of materials, documents (in whatever format), software or other items provided by PwC in the performance of its Services, as identified in the Engagement Letter;
- 12.9 "Engagement Letter" means a letter setting out details of the Services. The Engagement Letter includes its schedules (if any);
- 12.10 "Engagement Partner" means the individual designated as such in the Engagement Letter;
- 12.11 "FSA" means the Financial Services Authority;
- 12.12 "Group" means, for the purposes of Clauses 8.8 and 8.12 only: (a) you, and any entity which from time to time is your subsidiary or holding company or a subsidiary of such holding company within the meaning of Section 736 of the Companies Act 1985; and (b) any representative or assignee (whether direct or indirect) of the above;
- 12.13 "include" or "including" means including without limitation;
- 12.14 "or" means "and/or";
- 12.15 "Original Addressee" means the original addressee to the Engagement Letter as detailed in Clause 12.1 (a);
- 12.16 "Partner" means both in this Contract and more generally in our dealings with you, a member of PwC in their capacity as such (unless the context reasonably requires otherwise);
- 12.17 "party" or "parties" means the party or parties to this Contract, including their respective assignees and transferees under Clause 9.3 (unless the context reasonably requires otherwise);

- 12.18 “Personnel” means: (a) Partners, members and employees of PwC and PwC Affiliates; and (b) Contractor personnel and agency personnel of PwC and of PwC Affiliates;
- 12.19 “Services” are those services to be provided under the terms of this Contract;
- 12.20 “Terms of Business” means this document which describes the terms pursuant to which PwC will provide the Services;
- 12.21 “we”, “PwC”, “us” or “our” means PricewaterhouseCoopers LLP, a limited liability partnership incorporated in England (number OC303525) whose registered office is at 1 Embankment Place, London WC2N 6RH;
- 12.22 “you” means the Original Addressee of the Engagement Letter together with any other Addressee; and
- 12.23 Any reference in this Contract to any act or statutory provision or subordinate legislation shall be construed as a reference to it as from time to time replaced, amended, consolidated or re-enacted (with or without modification) and includes all orders and instruments thereunder.