

# TORBAY COUNCIL

<b>TORBAY COUNCIL FRAMEWORK AGREEMENT FRONT SHEET</b>
<b><i>Agreement between</i></b>
<b>The Authority</b> <b>Torbay Council of Town Hall, Torquay, Devon, TQ1 3DR</b>
<b><i>and</i></b>
<b>The Provider</b> <b>[Insert name, registered office address and, where applicable, the company number of the Provider]</b>
<b><i>Contract Number and Title</i></b>
<b>[Insert number and title of Contract]</b>
<b><i>Date</i></b>
<b>[Insert the date when signed by both parties]</b>
<b><i>Commencement Date</i></b>
<b>[Insert the date on which the Services shall commence]</b>
<b><i>Summary of Services</i></b>
<b>[Insert a summary of the Services to be supplied by the Provider]</b>

This Agreement is made on the date set out above subject to the terms set out in the schedules listed below (**Schedules**). The Authority and the Provider undertake to comply with the provisions of the Schedules in the performance of this Agreement.

The Provider shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Agreement and any subsequent Call-Off Contract / Lease Agreement.

The Definitions in **Error! Reference source not found.** apply to the use of all capitalised terms in this Agreement.

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Provisions
<b>Schedule 3</b>	Definitions and Interpretations
<b>Schedule 4</b>	Award Procedures
<b>Schedule 5</b>	Tiering and Units
<b>Schedule 6</b>	Specification
<b>Schedule 7</b>	Provider's Tender Response
<b>Schedule 8</b>	Pricing Schedule for Tier 1 Only
<b>Schedule 9</b>	Exit Management
<b>Schedule 10</b>	Exit Management Plan
<b>Schedule 11</b>	Evidence of Employer's Liability Insurance
<b>Schedule 12</b>	Change Control Procedure
<b>Schedule 13</b>	Default Notice
<b>Schedule 14</b>	Provider's Social Value Response
<b>Schedule 15</b>	Not Used
<b>Schedule 16</b>	Notification of Units of Accommodation Tier 2 Only
<b>Schedule 17</b>	Call-off Terms and Conditions

Executed as a deed by affixing the common seal of **Torbay Council** in the presence of:

.....

**Name:**

**Position:**

**COMMON SEAL**

**Signed by the Authorised Representative of THE PROVIDER**

Name:		Signature	
Position:			

## Schedule 1 Key Provisions

### **Background**

- (A) The Authority published a contract notice with contract reference **[insert the contract notice reference that will be found on the Authority's contract notice for this Framework Agreement]** on **[insert date that the contract notice was published]** on Find a Tender and Contracts Finder seeking expressions of interest from potential Providers for **[insert a brief description of the Services to be provided by the Provider]**.
- (B) The Authority has, through a competitive process, appointed the Provider to this Framework and the Provider is willing and able to participate in this Framework and provide the services in accordance with the terms and conditions of this Agreement and any subsequent Call-Off Contract / Lease Agreement.
- (C) Documents that form part of this Agreement are
- (i) the completed tender documents including the Specification, Provider Tender Response Payment Schedule, Call-Off Contract / Lease Agreement and any other supporting documentation; and
  - (ii) the Front Sheet and its associated Schedules.

### **Standard Key Provisions**

#### **1 APPLICATION OF THE KEY PROVISIONS**

- 1.1 The standard Key Provisions at clauses 1 to 6 of these Key Provisions shall apply to this Agreement.
- 1.2 The optional Key Provisions at clauses 7 to 15 of these Key Provisions shall apply to this Agreement if they are set out in the section below. The tick boxes are purely for administrative purposes and have no bearing on the terms of this Agreement
- 1.3 Extra Key Provisions shall only apply to this Agreement where such provisions are set out at the end of this Schedule 1.

#### **2 TERM**

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue for the Term unless terminated early or extended as appropriate in accordance with the terms, conditions or clauses of this Agreement.
- 2.2 The Initial Term shall be the period commencing on the Commencement Date and ending **[insert proposed end date of the Agreement]** unless terminated in advance of this date.

#### **3 AUTHORISED REPRESENTATIVES**

- 3.1 At the commencement of this Agreement:
- (a) the Authority Authorised Representative is:  
**[insert name and role of the Authority's Authorised Representative]**
  - (b) the Provider Authorised Representative is:  
**[insert name and role of the Provider's Authorised Representative]**.

#### **4 NAMES AND ADDRESSES FOR NOTICES**

- 4.1 Notices served under this Agreement are to be delivered to:
- (a) for the Authority:  
**[complete name and/or role (this is normally going to be the Authorised Representative identified at 3 above) and postal address that they shall be contacted at – please note the address may be different to the registered office address of the Authority above]**  
**[insert e-mail address of the person identified above]**
  - (b) for the Provider:

[complete name and/or role (this is normally going to be the Authorised Representative identified at 3 above and postal address that they shall be contacted at – please note the address may be different to the registered office address of the Provider above)]

[insert e-mail address of the person identified above]

## **5 ORDER OF PRECEDENCE**

- 5.1 Should there be a conflict between any other parts of this Agreement the order of priority for construction purposes shall be:
- (a) the provisions of the Front Sheet of this Agreement;
  - (b) Schedule 1: Key Provisions;
  - (c) Schedule 6: Specification;
  - (d) Schedule 8: Payment Schedule for Tier 1 Only;
  - (e) Schedule 2: General Terms;
  - (f) Schedule 4: Award Procedures
  - (g) Schedule 17: Call-Off Terms;
  - (h) Schedule 7: Provider's Tender Response Document;
  - (i) Schedule 3: Definitions and Interpretations; and
  - (j) the order in which all subsequent schedules, if any, appear.

## **6 SCOPE OF FRAMEWORK AGREEMENT**

- 6.1 This Agreement governs the relationship between the Authority and the Provider in respect of the provision of the Services by the Provider to the Authority.
- 6.2 The Authority appoints the Provider as a Framework Provider of the Services and the Provider shall be eligible to receive Orders for such Services from the Authority during the Term.
- 6.3 The Authority may, at its absolute discretion and from time to time, order Services from the Provider in accordance with the ordering procedure set out in Schedule 4 during the Term. The Parties acknowledge and agree that the Authority has the right to order Services pursuant to this Agreement provided that they comply at all times with the Regulations and the ordering procedure in Schedule 4. If there is a conflict between Schedule 4 and the Regulations, the Regulations shall take precedence.
- 6.4 If and to the extent that any Services under this Agreement are required the Authority shall:
- (a) enter into an agreement with the Provider for these Services materially in accordance with the terms of the Agreement; and
  - (b) comply with the ordering procedure in Schedule 4.
- 6.5 The Provider acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for the Services and that the Authority is at all

times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

- 6.6 The Authority shall not in any circumstances be liable to the Provider or any Other Contracting Body for payment or otherwise in respect of any Services provided by the Provider to any Other Contracting Body.

**Optional Key Provisions**

<input checked="" type="checkbox"/>	<p><b>7 INSURANCE</b></p> <p>7.1 In the event that this clause applies, the following shall amend the wording of clause 7.2 of the General Terms:</p> <p style="padding-left: 40px;">(a) employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and</p> <p style="padding-left: 40px;">(the <b>Required Insurances</b>). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of any Call-Off Contract / Lease Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.</p>
<input type="checkbox"/>	<p><b>8 NOT USED</b></p>
<input checked="" type="checkbox"/>	<p><b>9 TERMINATION ON NOTICE (PROVIDER)</b></p> <p>9.1 The Provider may terminate this Agreement at any time by giving the Authority not less than 30 days written notice.</p>
<input type="checkbox"/>	<p><b>10 NOT USED</b></p>
<input checked="" type="checkbox"/>	<p><b>11 EXTENDING THE INITIAL TERM</b></p> <p>11.1 The Authority may extend this Agreement beyond the Initial Term by a further period or periods (Extension Period), permissible under any new Public Contracts legislation which may come into force during the term of this Agreement. If the Authority wishes to extend this Agreement, it shall give the Provider at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period.</p> <p>11.2 If the Authority or any individual member of the Authority gives such notice then the Term shall be extended by the period set out in the notice.</p> <p>11.3 If the Authority does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term and clause 15 of the General Terms shall apply.</p>
<input checked="" type="checkbox"/>	<p><b>12 EXIT MANAGEMENT AND CONSEQUENCES OF TERMINATION</b></p> <p>12.1 The parties shall comply with the provisions of Schedule 9 in relation to orderly transition of the Services to the Authority or a Replacement Provider.</p>
<input checked="" type="checkbox"/>	<p><b>13 REPORTING AND MEETINGS</b></p> <p>13.1 The Provider shall submit Management Information to the Authority in the form set out within any Call-Off Contract / Lease Agreement throughout the Term on the last day of every third Month and thereafter</p>

	<p>in respect of any Call-Off Contract / Lease Agreement entered into with the Authority.</p> <p>13.2 The Authorised Representatives shall meet in accordance with the details set out within any Call-Off Contract / Lease Agreement and the Provider shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule.</p> <p>13.3 The Authority may share the Management Information supplied by the Provider with any Other Contracting Body.</p> <p>13.4 The Authority may make changes to the nature of the Management Information that the Provider is required to supply and shall give the Provider at least one month's written notice of any changes.</p>
<input type="checkbox"/>	<b>14 NOT USED</b>
<input checked="" type="checkbox"/>	<p><b>15 BUSINESS CONTINUITY</b></p> <p>15.1 Within 3 months following the Commencement Date of the initial Tier 1 Call-Off Contract / Lease Agreement, the Provider shall prepare a draft business continuity plan relating to its provision of the Services and submit that plan to the Authority for its approval. The draft business continuity plan shall:</p> <ul style="list-style-type: none"> <li>(a) address how the Provider will manage and respond to any major accidents or incidents, such as a gas leak, fire or flood, in particular any major incidents that will impact on the availability of the Units of accommodation provided under this Agreement and any Call-Off Contract / Lease Agreement, and</li> <li>(b) address how the Provider will manage and respond to any safeguarding issues raised which may impact on their ability to provide the services under this Agreement and any Call-Off Contract / Lease Agreement</li> <li>(c) detail how and when the Provider will test its business continuity plan;</li> <li>(d) address how it intends to mitigate against any Covid19 or any similar emerging pandemic, epidemic or global health emergency in particular in respect of the Provider's Personnel or a Provider Party; the Provider's supply chain any issues with regard to the supply of equipment or Units of accommodation;</li> <li>(e) address how it intends to mitigate against any reasonably foreseeable events which would otherwise fall within the definition of Force Majeure Event; and</li> <li>(f) address how it intends to mitigate against any other threats or risks to the provision by the Provider of the Services.</li> </ul> <p>15.2 The Authority shall within a reasonable time provide its comments on the Provider's draft business continuity plan, and if necessary, the parties shall discuss the Authority's comments and the Provider shall then promptly prepare a revised draft business continuity plan which addresses the Authority's comments and submit it to the Authority for approval within 30 days of receipt of the Authority's comments provided</p>

	<p>under this clause 15.2. This process shall be repeated until the Authority approves the business continuity plan in writing.</p> <p>15.3 Once the Authority has approved the Provider's draft business continuity plan in writing it will form part of this Agreement and the Provider shall perform its obligations under the approved business continuity plan.</p> <p>15.4 The Provider shall review its business continuity plan at least every 12 months and update it as necessary to reflect any changes in the way the Provider carries on business or provides the Services, any changes made to any aspect of this Agreement or any other changes required as a result of changes by the Authority to its business continuity requirements. Such a plan will as a minimum identify ways in which the Provider intends to mitigate against impact of:</p> <p>(a) Covid19 or any similar emerging pandemic, epidemic or global health emergency in particular in respect of the Provider's Personnel or a Provider Party; the Provider's supply chain any issues with regard to the supply of equipment or Units of accommodation;</p> <p>(b) any reasonably foreseeable events which would otherwise fall within the definition of Force Majeure Event; and</p> <p>any other threats or risks to the provision by the Provider of the Services.</p>
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**Additional Key Provisions**

<input type="checkbox"/>	<b>16 NOT USED</b>
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## **Schedule 2 General Terms**

### **1. SUPPLY OF SERVICES**

- 1.1 The Provider shall provide the Services to the Authority with effect from the Commencement Date of any Call-Off Contract / Lease Agreement and for the duration of said Call-Off Contract / Lease Agreement in accordance with the provisions of this Agreement and said Call-Off Contract / Lease Agreement.
- 1.2 In the event that the Provider does not comply with the provisions of clause 1.1 in any way, the Authority may serve the Provider with a notice in writing setting out the details of the Provider's default (a Default Notice). The Default Notice shall be in the form set out in Schedule 13.

### **2. SERVICE LEVELS**

- 2.1 The Service Level Arrangements (if any) shall apply with effect from the Commencement Date (unless the Specification provides to the contrary).

### **3. COMPLIANCE**

- 3.1 The Provider shall ensure that all Necessary Consents are in place to participate in this Agreement and provide the Services under any Call-Off Contract / Lease Agreement and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 3.2 Where there is any conflict or inconsistency between the provisions of the Agreement or any Call-Off Contract / Lease Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has used best endeavours to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 The Provider warrants and represents to the Authority and to each of the Other Contracting Bodies (where applicable) that:
  - (a) this Agreement is executed by a duly authorised representative of the Provider;
  - (b) in entering into this Agreement or any Call-Off Contract / Lease Agreement it has not committed any Prohibited Act;
  - (c) as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
  - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Agreement and any Call-Off Contract / Lease Agreement which may be entered into with the Authority or Other Contracting Bodies;
  - (e) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and any Call-Off Contract / Lease Agreement; and
  - (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.
- 3.4 Without prejudice to clause 1, the Provider shall provide the Services, or procure that they are provided:
  - (a) with all reasonable skill and care and in accordance with Best Industry Practice;
  - (b) in all respects in accordance with the Authority's requirements set out in the Specification which may from time to time be amended in accordance with this Agreement by the Authority; and

- (c) in accordance with all applicable laws.
- 3.5 Without limiting the general obligation set out in clause 3.1, the Provider shall (and shall procure that the Provider's Personnel shall):
- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998;
  - (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment;
  - (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law; and
  - (d) comply with the Provider's Social Value Response (where applicable).
- 3.6 In performing its obligations under the agreement, the Provider shall and (where applicable) shall ensure that each of its subcontractors shall comply with:
- (a) all applicable laws, statutes, regulations and codes from time to time in force including, but not limited to, the Modern Slavery Act 2015; and
  - (b) in accordance with Customer's the Anti-slavery Policy. (if any)
- 3.7 Where requested by the Provider and agreed by the Authority in writing pursuant to the Brand Guidelines, the Provider may use the Marks (as defined in the Brand Guidelines and agreed by the Authority in the Permission Request Form) for the purposes outlined and agreed by the Authority in the Permission Request Form.
- 3.8 The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Call-Off Contract / Lease Agreement.

#### **4. DUE DILIGENCE**

- 4.1 The Provider acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
  - (b) it has received all information requested by it from the Authority pursuant to paragraph (a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement and the Fees set out in this Agreement;
  - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to paragraph (b);
  - (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
  - (e) it has entered into this Agreement in reliance on its own due diligence.
- 4.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Provider:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Provider's Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Agreement; and

(b) shall promptly notify the Authority in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet the Service Level Arrangements.

4.4 The Provider shall not be entitled to recover any additional costs or Fees from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Provider in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4.5 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## 5. DISPUTE RESOLUTION PROCEDURE

5.1 If a Dispute arises then except as expressly provided in this Agreement or any Call-Off Contract / Lease Agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives of both the Authority and the Provider shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives of the Authority the Provider are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to senior officers of both the Authority and the Provider who shall attempt in good faith to resolve it; and
- (c) if the senior officers of the Authority and the Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

5.2 The Provider shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

5.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clauses 30 and 31 which shall apply at all times.

5.4 If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clauses 30 and 31 of these General Terms.

## 6. SUB-CONTRACTING AND ASSIGNMENT

6.1 The Provider shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement or any Call-Off Contract / Lease Agreement without the prior written consent of the Authority. The Provider shall not sub-contract the whole or any part of its obligations under this Agreement or any Call-Off Contract / Lease Agreement nor shall it replace a Sub-Contractor approved under this Agreement or any Call-Off Contract / Lease Agreement or permit a Sub-Contractor approved under this Agreement or any Call-Off Contract / Lease Agreement to assign, novate or otherwise dispose of any or all of its rights and

obligations under the Sub-Contract, except with the express prior written consent of the Authority.

- 6.2 In the event that the Provider enters into any Sub-Contract in connection with this Agreement or any Call-Off Contract / Lease Agreement it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the Agreement or Call-Off Contract / Lease Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors and shall indemnify and keep indemnified the Authority against any loss or claim arising resulting from the failure of the Sub Contractor or an employee of the Sub Contractor in the performance of the duties of the Sub Contractor to provide the Services on behalf of the Provider under this Agreement or any Call-Off Contract / Lease Agreement;
  - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement or any Call-Off Contract / Lease Agreement and shall procure that the Sub-Contractor complies with such terms and, if necessary, imposes obligations on any further sub-contractors in its sub-contract pursuant to this Agreement or any Call-Off Contract / Lease Agreement; and
  - (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's 'Authorised Representative.
- 6.3 The Authority shall be entitled to novate the Agreement or any Call-Off Contract / Lease Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 6.4 The Authority may, by notice in writing to the Contractor, require the Contractor immediately (or as specified in the notice) to cease to engage a specified Sub-Contractor for the performance of any of its obligations under this Agreement or any Call-Off Contract / Lease Agreement where any of the circumstances specified in Regulation 57(1) or (8) of the Public Contracts Regulations 2015 applies to the Sub-Contractor.

## 7. INSURANCE

- 7.1 The policy limits set out below shall apply unless expressly amended in the Key Provisions.
- 7.2 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and
  - (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims,
- (the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 7.3 The Provider shall, prior to the Commencement Date and on each subsequent anniversary of the Commencement Date, provide the Authority with copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies. This evidence of insurance will be added annually to this Agreement in Schedule 11.
- 7.4 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider including by way of set off against payments that may be made by the Authority to the Provider for the provision of the Services.
- 7.5 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement or any Call-Off Contract / Lease Agreement.

7.6 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Agreement or any Call-Off Contract / Lease Agreement, whichever is the latter.

## **8. FREEDOM OF INFORMATION AND TRANSPARENCY OBLIGATIONS**

8.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and transparency obligations under the Public Contracts Regulations 2015 and shall assist and co-operate with the Authority (at the Provider's expense) to enable the Authority to comply with its obligations under the FOIA and the EIRs and its transparency obligations under the Public Contracts Regulations 2015.

8.2 The Provider shall and shall procure that its Sub-Contractors shall:

- (a) transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within 5 Working Days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.

8.3 The Authority shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
- (b) is to be disclosed in response to a Request for Information.

8.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

8.5 The Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Provider. The Authority shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement or any Call-Off Contract / Lease Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs. The Provider shall ensure that all Information produced in the course of the Agreement or relating to the Agreement or any Call-Off Contract / Lease Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

8.6 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 8.5

8.7 The Provider acknowledges that the United Kingdom Government's transparency agenda, including the transparency obligations under the Public Contracts Regulations 2015, requires that contracts, such as the Contract, and any tender document, such as the invitation to tender and certain other information, are published on a designated, publicly searchable website and the Provider consents to such publication.

8.8 The Provider acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. The Authority shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.

8.9 Notwithstanding any other term of the Agreement, the Provider hereby consents to the Authority publishing the Agreement or any Call-Off Contract / Lease Agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA

redacted) including from time to time agreed changes to the Agreement or any Call-Off Contract / Lease Agreement, to the general public.

- 8.10 The Provider shall assist and co-operate with the Authority to enable the Authority to publish this Agreement and any Call-Off Contract / Lease Agreement(s).

## **9. DATA PROTECTION**

- 9.1 The parties acknowledge and agree that the allocation of the role of data controller, joint data controller or data processor (as such terms are defined in the Data Protection Laws) is a question of fact rather than being determined by contractual agreement. However, the parties agree that circumstances may arise in connection with the provision of the Services whereby:
- (a) both parties are independent data controllers of Contract Personal Data;
  - (b) the parties are joint data controllers of Contract Personal Data;
  - (c) one party acts as a data processor on behalf of the other party in relation to Contract Personal Data; or
  - (d) a combination of two or more of the circumstances set out above.
- 9.2 The parties agree to confirm the role of each party (as described in 9.1 above) prior to the commencement of the processing of personal data under any Call-Off Contract / Lease Agreement in respect of any Services in the relevant SOW or otherwise in writing.
- 9.3 Depending on the roles of each party in relation to any Project or any processing of Contract Personal Data, the parties agree in each case to comply with the terms of this clause 9 and Schedule 15 of any Call-Off Contract / Lease Agreement.
- 9.4 The parties shall each be responsible for their own costs of compliance with this clause 5 and the terms of any Call-Off Contract / Lease Agreement save where any data protection related audit carried out by or on behalf of the Authority reveals any material non-compliance by the Provider in relation to the Provider's obligations under this clause 9, the terms of any Call-Off Contract / Lease Agreement or the Data Protection Laws, in which case Provider shall promptly reimburse the Authority's reasonable costs incurred in relation to such audit.
- 9.5 The Provider shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profits, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by, or awarded against the Authority arising from any breach of the Provider's obligations in this clause 9 except and to the extent that such liabilities have resulted directly from the Authority's instructions.

## **10. CONFIDENTIALITY**

- 10.1 The provisions of this clause shall not apply to any Confidential Information in respect of this Agreement or any Call-Off Contract / Lease Agreement that:
- (a) is required for disclosure by any applicable law, provided that clause 8.5 shall apply to any disclosures required under the FOIA or the EIRs;
  - (b) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Authorised Representatives in breach of this clause);
  - (c) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - (d) is disclosed by the Authority to any other department, office or agency of the Government;
  - (e) where in the reasonable opinion of the Authority it is necessary to disclose information or required to disclose information to any court tribunal arm of Government or Local Government;
  - (f) may assist in the enabling of a determination to be made under clause 5;
  - (g) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality

agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or

(h) the parties agree in writing is not confidential or may be disclosed.

10.2 Each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement or any Call-Off Contract / Lease Agreement (Permitted Purpose); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

10.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,

and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.

10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.

10.5 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

10.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.

10.7 On termination of this Agreement, the Provider shall:

- (a) return to the Authority all documents and materials (and any copies) containing, reflecting, incorporating or based on the Authority's Confidential Information;
- (b) erase all the Authority's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
- (c) certify in writing to the Authority that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the Authority's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

10.8 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

## **11. AUDIT**

11.1 During the Term and for a period of 7 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement or any Call-Off Contract / Lease Agreement) and/or the costs of all Providers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;

- (c) to review the Provider's compliance with the Data Protection Act and the FOIA in accordance with clause 9 and clause 5 and any other legislation applicable to the Services;
  - (d) to review any records created during the provision of the Services;
  - (e) to review any books of account kept by the Provider in connection with the provision of the Services;
  - (f) to carry out the audit and certification of the Authority's accounts;
  - (g) to carry out an examination pursuant of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (h) to verify the accuracy and completeness of the Management Reports (if applicable) and any other management information delivered or required by this Agreement.
- 11.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 11.3 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Provider's Personnel.
- 11.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 11.5 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 11.6 If an audit identifies that:
- (a) the Provider has failed to perform its obligations under this Agreement or any Call-Off Contract / Lease Agreement in any material manner; the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
  - (b) the Authority has overpaid any Charges, the Provider shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
  - (c) the Authority has underpaid any Charges, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Provider in relation to invoicing within 20 Working Days.

## 12. TERMINATION FOR BREACH

- 12.1 The Authority may terminate this Agreement with immediate effect by the service of written notice on the Provider in the following circumstances:
- (a) if the Provider is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy or the Authority has served the Supplier with a Default Notice, the Authority may only terminate this Agreement under this clause 12.1 if the Provider has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
  - (b) if the Provider is in breach of any material obligation under this Agreement and the material breach is not, in the reasonable opinion of the Authority, capable of remedy;



- (c) where the Authority terminates a Contract awarded to the Provider under this Agreement as a consequence of a material breach by the Provider;
- (d) if a Catastrophic Failure has occurred;
- (e) if an Insolvency Event has occurred;
- (f) if the Provider ceases or threatens to cease to meet its obligations under this Agreement for any reason;
- (g) Any warranty given by the Provider under this Agreement is found to be untrue or misleading;
- (h) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Provider to which the Authority reasonably objects; or
- (i) in accordance with clause 18.

12.2 The Authority may terminate this Agreement by giving not less than 30 days written notice on the Provider in any of the following circumstances:

- (a) the Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
- (b) at the Commencement Date one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 (including as a result of the application of regulation 57(2)) applied:
  - (i) to the Provider such that it should have been excluded from the procurement procedure; or
  - (ii) to a Sub-Contractor on which the Provider relied in its tender to the Authority for this Agreement and the Provider does not cease to engage that Sub-Contractor within 30 days of a notice from the Authority requiring the Provider to cease to engage that Sub-Contractor.
- (c) in the event that the Government announces or instigates a national or local lockdown which has the effect of materially impacting the provision of the Services or the Authority's ability to effectively use or apply the output of the Services; and
- (d) in the event that any third party lease (including in respect of any Authority Premises) to which the Authority is a party is terminated or expires provided that the Services provided by the Provider relates specifically to the property to which the lease relates.

12.3 If this Agreement is terminated by the Authority for cause in accordance with clause 12.1 or 12.2 such termination shall be at no loss or cost to the Authority.

### **13. TERMINATION ON NOTICE**

13.1 The Authority may terminate this Agreement at any time by giving not less than 30 days written notice to the Provider.

13.2 Any individual member of the Authority in respect of an applicable Authority Premises may terminate this Agreement in so far as it relates to an applicable named Authority Premises at any time by the service of 30 days written notice on the Provider.

### **14. SUSPENSION OF PROVIDER'S APPOINTMENT**

14.1 The Authority may suspend the Supplier's right to receive Orders against any or all of the Lots awarded to them where:

- (a) the Provider fails to respond to any Further Competitions in any six-month rolling period; or
- (b) the Provider has had a call-off contract or lease agreement terminated for breach;

- (c) three instances of any one or more of the following occur in any twelve-month rolling period:
    - (i) refusing suitable nominations without reasonable justification on the part of the Provider;
    - (ii) failing to maintain up to date information on spot purchase units available;
    - (iii) units proposed do not meet the specified standards
    - (iv) complaints are not acknowledged and/or addressed in a timely manner.
- 14.2 The Supplier shall be given the opportunity to provide an explanation before a decision to suspend is made.
- 14.3 Without prejudice to the Authority's rights to terminate the Agreement in clauses 12 and 13 above, if a right to terminate this Agreement arises in accordance with clauses 12 and 13, the Authority may suspend the Provider's right to receive Orders in any or all Provider's Lots by giving notice in writing to the Provider. If the Authority provides notice to the Provider in accordance with this clause 14, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Authority in writing from time to time.
- 15. EXIT MANAGEMENT AND CONSEQUENCES OF TERMINATION**
- 15.1 Notwithstanding the service of a notice to terminate the Agreement, the Provider shall continue to fulfill its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this clause 15.
- 15.2 Unless expressly stated to the contrary, the service of a notice to terminate the Agreement shall not operate as a notice to terminate any Call-Off Contract / Lease Agreement made under the Agreement. Termination or expiry of the Agreement shall not cause any Call-Off Contract / Lease Agreements to terminate automatically. For the avoidance of doubt, all Call-Off Contract / Lease Agreements shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 15.3 On termination or expiry of this Agreement for any reason, the Provider shall:
- (a) immediately deliver to the Authority all Authority Assets (where applicable), copies of information, documentation and Data provided by the Authority to the Provider for the purposes of this Agreement;
  - (b) immediately repay to the Authority all Charges that it has been paid in respect of Services not provided by the Provider as at the date of expiry or termination or any other sums due to the Authority in accordance with this Agreement
  - (c) cease to use the Authority Data;
  - (d) provide the Authority with a complete and uncorrupted version of all Authority Data;
  - (e) certify to the Authority that it has not retained any copies of any Authority documentation or other information or data, except for one copy which the Provider may use for audit purposes only and subject to the confidentiality obligations in clause 10 of the General Terms;
  - (f) vacate any Authority Premises; and
  - (g) provide such information relating to the Services as remains in the possession or control of the Provider.
- 15.4 If the Provider fails to fulfil its obligations under clause 15.1, then the Authority may enter the Provider's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Provider shall be solely responsible for their safe keeping.
- 15.5 The provisions of clauses 7 (Insurance), 8 (Freedom of Information), 9 (Data Protection), 10 (Confidentiality), 11 (Audit), 12 (Termination for Breach) and this clause 15 of the General Terms and clause 13 (Reporting and Meetings) (if applicable) of the Key Provisions shall survive termination or expiry of this Agreement.

15.6 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## 16. FORCE MAJEURE

16.1 Subject to the remaining provisions of this clause 16, neither party to this Agreement or any Call-Off Contract / Lease Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.

16.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement or any Call-Off Contract / Lease Agreement by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement or any Call-Off Contract / Lease Agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

16.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's willful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

16.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.

16.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement or any Call-Off Contract / Lease Agreement. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

16.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement or any Call-Off Contract / Lease Agreement. Following such notification, this Agreement or any Call-Off Contract / Lease Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

16.7 The Authority may, during the continuance of any Force Majeure Event, terminate this Agreement or any Call-Off Contract / Lease Agreement by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 60 Working Days.

## 17. ANTI-SLAVERY

17.1 The Provider will not and will procure that any other persons who perform services or supply goods for or on behalf of it in connection with this Agreement or any Call-Off Contract / Lease Agreement (including each Provider Party and/or the Provider's Personnel) will not engage in any practice or omit to do any act or thing that amounts to modern slavery as defined under the Modern Slavery Act 2015 ("**Modern Slavery Practice**").

17.2 The Provider will (and procure that its Provider Party/ies or Provider Personnel will):

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;

- (b) comply with all applicable any anti-slavery policy and/or code of conduct adopted by the Authority from time to time;
- (c) conduct proper and detailed checks on its own suppliers and contractors and all persons employed or engaged on or in connection with the Services to ensure that they do not engage in any Modern Slavery Practice;
- (d) include in its contracts with its subcontractors and suppliers (including any Provider Party) anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 17
- (e) provide the Authority (at the Provider's cost) with assistance and information to enable the Authority to prepare a slavery and human trafficking statement as required by section 54 Modern Slavery Act 2015;
- (f) permit the Authority and any person nominated by it for this purpose to have such access on demand to the Provider's (or any relevant Provider Party's) premises, personnel, systems, books and records as the Authority may require to verify the Provider's compliance with this clause 17.

17.3 The Provider represents and warrants (on behalf of itself and its Provider Personnel and Provider Party/ies) that neither the Provider (its Provider Party/ies or Provider Personnel) nor any of its/their officers, employees or other persons associated with it:

- (a) have been convicted of any offence involving slavery and human trafficking;
- (b) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

17.4 The Provider will (and procure that its Provider Party/ies and/or Provider Personnel) immediately give written notice to the Authority upon a breach, potential or suspected breach, of any of its obligations referred to in Clauses 17.1 to 17.3 occurring. The notice will set out full details of the breach or suspected breach or non-compliance.

17.5 The Authority may terminate this Agreement or any Call-Off Contract / Lease Agreement (or any part thereof as applicable) immediately and without liability by giving written notice to that effect to the Provider if the Provider (or any of the Provider Party/ies or Provider Personnel) is/are in breach of any of their obligations under this clause 17 or has reasonable cause to believe such a breach has occurred.

17.6 The Provider will indemnify the Authority (against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Authority does or will incur or suffer arising out of or in connection with any breach by the Provider (or its Provider Party/ies or Provider Personnel) of any of its obligations under this Clause 17.

## **18. PREVENTION OF BRIBERY AND CORRUPTION**

18.1 The Provider:

- (a) shall not, and shall procure that any Provider Party and all Provider Personnel shall not, in connection with this Agreement or any Call-Off Contract / Lease Agreement commit a Prohibited Act or contravene any of the Authority's policies or rules with regard to anti-bribery notified to the Provider in writing from time to time;
- (b) shall not do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act;
- (c) warrants, represents and undertakes that:
  - (i) it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement;

- (ii) neither the Provider, the Provider Party/ies or any of the Provider Personnel has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Bribery Act;
- (iii) neither the Provider, the Provider Party/ies or any of the Provider Personnel has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts including, without limitation, any exclusion under regulation 57 of the Public Contracts Regulations 2015 or regulation 80 of the Utilities Contracts Regulations 2016 (SI 2016/274);
- (iv) (except as notified in writing to the Authority, specifically referring to this clause 25.1(c)(iv)) none of the officers or employees of the Provider or any person associated with it or any other person who is performing the Services in connection with this Agreement or any Call-Off Contract / Lease Agreement is a foreign public official; and/or
- (v) (except as notified in writing to the Authority, specifically referring to this clause 25.1(c)(v)) no foreign public official owns a direct or indirect interest in the Provider or any person associated with it (including any Provider Party or the Provider Personnel) or any other person for whom the Provider is responsible under this Agreement and no public official has any legal or beneficial interest in any payments made by the Authority under this Agreement or any Call-Off Contract / Lease Agreement.

18.2 The Provider shall promptly notify the Authority if, at any time during the continuance of this Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clauses 18.1 and 18.3 at the relevant time. Breach of clause 18.1 and 18.3 shall be a material breach of this Agreement. If the Authority terminates this Agreement for breach of clause 18.1, the Provider shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

18.3 The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider Party or Provider Personnel, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

18.4 The Provider shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Provider) compliance with this clause 18 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

18.5 The Provider shall establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, an anti-bribery policy (which shall be disclosed to the Authority)

to prevent any Provider Party or Provider Personnel from committing a Prohibited Act and that are compliant with the Bribery Act and shall enforce it where appropriate. Any sub-contract shall be recorded in writing and shall:

- (a) impose on and secure from the Sub-Contractor obligations, liabilities, undertakings, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Provider in this clause 18 (**Relevant Terms and Conditions**) in each case for the benefit of the Authority, such provisions to be directly enforceable by the Authority under the Contract (Rights of Third Parties) Act 1999 (**Third Party Rights Act**);
- (b) include an undertaking from the Sub-Contractor in favour of the Authority (directly enforceable by the Authority under the Third Party Rights Act) not to enter into any further subcontract with any third party;
- (c) include provisions, directly enforceable by the Authority under the Third Party Rights Act, granting the Authority and its representatives:
  - (i) the same direct access to the premises, records, information and personnel of the Sub-Contractor as the Authority has to the premises, records, information and personnel of the Provider; and
  - (ii) the same auditing rights in respect of the Sub-Contractor's compliance with the Relevant Terms and Conditions as the Authority has regarding the Provider's compliance with this clause; and
  - (iii) include provisions allowing termination of the Sub-Contract by the Authority in accordance with this Agreement and a provision for automatic termination of the subcontract in the event of, and at the same time as, the termination of this Agreement.

18.6 After any subcontract has been entered into, the Provider shall:

- (a) within thirty (30) days (or such other period agreed in writing with the Authority) of it being entered into, provide the Authority with a copy of the Subcontract;
- (b) be responsible for the observance and performance by the Sub-Contractor of the Relevant Terms and Conditions, and shall be directly liable to the Authority for any breach by the Sub-Contractor of any of the Relevant Terms and Conditions;
- (c) notify the Authority in the case of any such breach; and
- (d) if the Sub-Contractor fails to perform or observe any of the Relevant Terms and Conditions, and if requested by the Authority, immediately give the Sub-Contractor notice, specifying the breach complained of, and:
  - (i) where the breach is not capable of remedy, terminating the subcontract immediately; or
  - (ii) where the breach is capable of remedy, giving notice that the subcontract is to terminate thirty (30) day`s from the date of the notice being given unless the Sub-Contractor has remedied the breach within that period.

18.7 If any breach of clause 18.1 or clause 18.3 is suspected or known, the Provider must notify the Authority immediately.

18.8 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clause 18.1 or clause 18.3, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

18.9 The Authority may terminate this Agreement by written notice with immediate effect and without liability to the Provider, Provider Party or any Provider Personnel if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 18.1 or clause 18.3. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Authority; or,
- (b) with the actual knowledge;
- (c) of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or
- (d) in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.

18.10 Any notice of termination under clause 18.9 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

18.11 Despite clause 5, any dispute relating to:

- (a) the interpretation of clause 16; or
- (b) the amount or value of any gift, consideration or commission,
- (c) shall be determined by the Authority and its decision shall be final and conclusive.

18.12 Any termination under clause 18.9 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

## **19. NON-SOLICITATION**

Neither party shall (except with the prior written consent of the other) during the term of this Agreement or any Call-Off Contract / Lease Agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Agreement or any Call-Off Contract / Lease Agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

## **20. WAIVER**

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Provider in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Provider of its obligations to deliver the Services in accordance with the provisions of this Agreement.

## **21. ACCUMULATION OF REMEDIES**

Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given there under or existing at law or in equity by statute or otherwise.

## **22. SEVERABILITY**

22.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

22.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend

such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**23. PARTNERSHIP OR AGENCY**

23.1 Nothing in this Agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.

23.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

**24. THIRD PARTY RIGHTS**

No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

**25. PUBLICITY**

The Provider shall not:

- (a) make any press announcements or publicise this Agreement or any Call-Off Contract / Lease Agreement or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority.

**26. NOTICES**

26.1 Notices shall be in writing and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Agreement. Notices may be sent by:

- (a) first-class mail,
- (b) e-mail (provided that the e-mail is sent to the e-mail address of the Authorised Representative of the receiving party as set out at clause 4 of the Key Provisions, or as notified by one party to the other in writing from time to time and are confirmed within 24 hours by first class mailed confirmation of a copy) however notice of a parties' intention to terminate this Agreement or informing the other party of a breach of this Agreement shall not be accepted in email form and may only be sent by first class mail or facsimile transmission; or
- (c) facsimile transmission (provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy).

26.2 This table sets out:

- (a) delivery methods for sending a notice to a party under this agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 26.3:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage.	9.00 am on the third Working Day after posting or at the time recorded by the delivery service.



Pre-paid airmail providing proof of postage.	9.00 am on the fifth Working Day after posting or at the time recorded by the delivery service.
Facsimile transmission/E-mail.	At the time of transmission provided that they are confirmed as set out above.

26.3 For the purpose of clause 26.2 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday, outside the hours of 9.00 am to 5.00 pm, or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

**27. CHANGES TO THE AGREEMENT**

No Change to this Agreement shall be effective unless it is processed in accordance with the Change of Control Procedure set out in Schedule 12.

**28. ENTIRE AGREEMENT**

This Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

**29. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each party has executed at least one counterpart.

**30. GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) shall be governed by and construed exclusively in accordance with the law of England and Wales.

**31. JURISDICTION**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement of its subject matter or formation (including non-contractual disputes).

This Agreement has been entered into on the date stated at the beginning of it.

### Schedule 3 Definitions and Interpretation

#### 1 Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Agreement:** means this Agreement and all Schedules to this Agreement and no other.

**Authorised Representative:** the persons respectively designated as such by the Authority and the Provider, the first such persons being set out in the Key Provisions

**Authority Premises:** the premises which are to be made available for use by the Provider for the provision of the Services on the terms set out in this Agreement as set out in the Specification.

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Call-Off Contract / Lease Agreement:** means the terms and conditions in Schedule 17.

**Catastrophic Failure:** any action by the Provider, whether in relation to the Services and this Agreement or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.

**Change:** any change to this Agreement including to any of the Services.

**Change Control Procedure:** the procedure for making a Change, as set out in clause 27 of the General Terms.

**Commencement Date:** the date on which this Agreement commences as set out on the Front Sheet, or, if the Front Sheet does not expressly state the Commencement Date, the date on which the Contract is signed.

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its Representatives) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with the Contract, concerning:

- (a) the existence and terms of this Agreement;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
- (c) any information developed by the parties in the course of carrying out this Agreement.

**Contract:** means a legally binding agreement (made pursuant to the provisions of this **Agreement**) for the provision of Services made between the Authority and the Provider comprising an Order Form, its appendices, and the Call-off Terms and Conditions (as may be amended pursuant to Schedule 4).

**Contract Personal Data:** any and all personal data which is collected or otherwise processed by the Provider as a result of or in connection with this Agreement or the Services.

**Data:** shall have the meaning as set out in the Specification.

**Data Protection Laws:** Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (commonly referred to as

the "GDPR"), the Data Protection Act 2018, the UK GDPR (as defined by the Data Protection, Privacy and Electronic Communications (amendments etc.) (EU Exit) Regulations 2019 (SI 2019/419)), the Privacy and Electronic Communications (EC Directive) Regulations 2003, , the Investigatory Powers Act 2016, the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018/356, the Electronic Communications Data Protection Directive 2002/58/EC, together with any and all other laws, regulations or other statutory instruments relating to the protection of personal data applicable to either party in any relevant jurisdiction.

**Default Notice:** is defined in clause 1.2 of the General Terms.

**Dispute:** a dispute arising out of or in connection with this Agreement or the performance, validity or enforceability of it.

**Dispute Resolution Procedure:** the procedure set out in clause 5 of the General Terms.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Employee Liabilities:** means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fines, losses, orders, penalties, disbursements, payments made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation and any legal costs and expenses.

**Framework Agreement:** means this Agreement and all Schedules to this Agreement and no other.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure Event:** any circumstance not within a party's reasonable control affecting the performance by a party of its obligations under this Agreement arising from acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic (including any subsequent act of Government including lockdown, trade restriction, travel ban or trade embargo), terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, collapse of buildings, fire, explosion or accident, interruption or failure of utility service, and any labour or trade dispute, strikes, industrial action or lockouts, but excluding any industrial dispute relating to the Provider, the Provider's Personnel or any other failure in the Provider's supply chain.

**Front Sheet:** the front sheet of the Contract.

**General Terms:** the provisions set out in Schedule 2

**Hardware:** shall have the meaning as set out in the Specification.

**Information:** has the meaning given under section 84 of FOIA.

**Initial Term:** shall have the meaning as set out in the Key Provisions.

**Insolvency Event:** where;

- (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or

arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of that other party;

- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- (g) the Provider (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
- (j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

**Key Personnel:** those personnel identified in the Specification for the roles attributed to such personnel, as modified from time to time in accordance with the terms of this Agreement.

**Key Provisions:** the terms set out in Schedule 1

**Management Reports:** the reports to be prepared and presented by the Provider in accordance with clause 13 of the Key Provisions and the Specification.

**Necessary Consents:** means all consents required from time to time by UK law and all reasonable local consents required by the Authority.

**Other Contracting Bodies:** means all Customers except the Authority.

**Payment Schedule:** the document set out at Schedule 8.

**Personal Data Breach:** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:

- (i) under the Bribery Act;
- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

**Public Contracts Regulations 2015:** the Public Contracts Regulations 2015 as enacted or the same or equivalent provisions in any re-enactment/amendment.

**Remediation Notice:** a notice served by the Authority in accordance with clause 12.1(a) of the General Terms.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Service Level Arrangements:** the service level arrangements set out in the Specification.

**Services:** means the services detailed in Schedule 6

**Software:** shall have the meaning as set out in the Specification.

**SOW:** Scope of Work.

**Provider Party:** the Provider's agents and contractors, including each Sub-Contractor.

**Provider's Personnel:** all employees, staff, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Provider's Social Value Response:** means the response set out (where applicable) at Schedule 14.

**Provider's Tender Response:** the tender response document submitted by the Provider and other associated documentation set out in Schedule 7

**Services:** the services to be delivered by or on behalf of the Provider under this Agreement, as more particularly described in the Specification which may from time to time be altered by the Authority.

**Specification:** the specification detailed in Schedule 6.

**Sub-Contract:** any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

**Sub-Contractor:** the contractors or suppliers that enter into a Sub-Contract with the Provider.

**Term:** the period of the Initial Term as may be varied by:

- (a) any extensions to this Agreement which are agreed pursuant to clause **Error! Reference source not found.** of the Key Provisions; or
- (b) the earlier termination of this Agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this Agreement.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

**Year:** means a period of 12 months, commencing on the Commencement Date.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to statute, legislation, regulations or a statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes facsimile transmission and e-mail.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression so far as any party is aware or to any party's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

## Schedule 4 Award Procedures

1. If the Authority decides to source Services through the Agreement then it may only do so in accordance with the terms for award set out in this Schedule 4.
2. The Authority will not award any Call-Off Contracts / Lease Agreement to any Provider nor invite them to participate in any further competition where there is not a fully signed Framework Agreement in place.

### **3. Awards under the Framework Agreement**

#### Tier 1 Only - Awards without Re-opening Competition

- 3.1 Providers will be awarded a Call-Off Contract / Lease Agreement for the Units awarded under Tier 1 of this Framework Agreement.
- 3.2 Prior to the date identified by the Provider on which the proposed Unit will be available the Authority will undertake an inspection to ensure the Unit is as described in the Provider's submission and that it is capable of being used for the purposes set out in this tender.
- 3.3 Where the proposed Unit meets the requirements a Call-Off Contract / Lease Agreement will be awarded in respect of that Unit.
- 3.4 Where the proposed Unit is deemed by the Authority not to meet requirements a Call-Off Contract / Lease Agreement will not be awarded.
- 3.5 In the case of non-award the Authority reserves the right to allow the Provider additional time to ensure the proposed Unit meets the requirements. Where this cannot be achieved within a reasonable timescale the Authority reserves the right to remove the proposed Unit from Tier 1 and to promote the next highest scoring Unit of the same capacity to Tier 1 in its place.
- 3.6 Any Call-Off Contract / Lease Agreement will be for a maximum period of 4 years.

#### Tier 2 Only - Awards with Further Competition

- 3.7 Short Term Call-Off Contracts / Lease Agreements will be awarded to Tier 2 Providers on a spot purchasing basis using the following further competition process.
- 3.8 All Providers who have proposed Units of the size required will be emailed to notify them of the Authority's requirements. The Call-Off Contract / Lease Agreement will be awarded on a "first-come, first-served" basis to the Provider who can meet the Authority's needs.
- 3.9 During the term of this Agreement the Authority may develop a central database which Providers will be required to maintain with details of properties available. When this system is in place, only those Providers who have registered details of the Unit size required will be invited to respond to the further competition.

#### Additional Long-Term Tier 1 Contracts

- 3.10 Providers will be required to re-submit Part 7 Pricing with details of any Units they are proposing to provide under a long-term Call-Off Contract / Lease Agreement. Submissions will be evaluated using the new Unit availability and pricing information together with the Quality and Social Value scores attributed to the Provider for their tender to be admitted to the Framework. The same award criteria and methodology used for the Framework set-up will be applied to the Further Competition.
- 3.11 Please Note: All percentage scores will be calculated to two decimal places. Where the scoring for two or more Tender submissions is tied, the top scoring Provider will be the Provider who has achieved the higher score on a combination of Pricing and Availability.

3.12 Providers are advised to ensure they have read and fully understand the criteria below, which will be used in the evaluation process:

Stage Two Award	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
<b>Mandatory Criteria</b>				
<b>Mandatory Pass / Fail Requirements – Applicable to Lot 1 and Lot 2</b>	This/These criteria will be assessed on the basis of pass or fail, using the score attributed to the Provider for their tender to be admitted to the Framework.	Pass		Pass
<b>Discretionary Pass / Fail Requirements – Applicable to Lot 1 Only</b>	This/These criteria will be assessed on the basis of pass or fail, using the score attributed to the Provider for their tender to be admitted to the Framework.	Pass		Pass
<b>Total Score Available (MEAT)</b>		<b>100%</b>		
<b>Quality</b>		<b>35.00%</b>		
<b>Award Questionnaire</b>	<u>Method Statement 1</u> These criteria will be assessed on the zero to five scoring basis, using the score attributed to the Provider for their tender to be admitted to the Framework.		35.00%	
<b>Unit Availability Criteria</b>		<b>15.00%</b>		
<b>Availability of Proposed Units of Accommodation</b>	These criteria will be evaluated in accordance with the scoring methodology at section 3.13 below. Applicants are required to provide this information within the Part 7 Pricing response document.		15.00%	
<b>Social Value Criteria</b>		<b>10.00%</b>		
<b>Qualitative Criteria</b>	Torbay Council will assess using the social value zero to five scoring basis, using the score attributed to the Provider for their tender to be admitted to the Framework.		7.00%	
<b>Quantitative Criteria</b>	These criteria will be assessed on the comparative scoring basis, using the score attributed to the Provider for their tender to be admitted to the Framework.		3.00%	
<b>Pricing Criteria</b>		<b>40.00%</b>		
<b>Pricing Schedule</b>	This/These criteria will be assessed on a comparative scoring basis, in accordance with the scoring methodology set out in section 3.14 below.		40.00%	



Stage Two Award	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
	To ensure a fair comparison between Lot 1 and Lot 2 pricing the following fixed costs to cover Council overheads will be added to the prices provided by Applicants bidding for Lot 2: a) £60.00 per household per week for self-contained units (regardless of size); and b) £30.00 per household per week for HMOs.			

### 3.13 Scoring Methodology – Availability of Units (Zero to Ten Scoring)

The availability of units will be evaluated using the zero to ten scoring system in the table below.

<b>Score 10</b>	The Applicant has identified the proposed Unit of accommodation will be available during the first month following the further competition.
<b>Score 8</b>	The Applicant has identified the proposed Unit of accommodation will be available between the second and third month following the further competition.
<b>Score 6</b>	The Applicant has identified the proposed Unit of accommodation will be available between the fourth and sixth month following the further competition.
<b>Score 4</b>	The Applicant has identified the proposed Unit of accommodation will be available between the seventh and ninth month following the further competition.
<b>Score 2</b>	The Applicant has identified the proposed Unit of accommodation will be available after the ninth month following the further competition.
<b>Score 0</b>	The Applicant has not identified a date for availability of the proposed Unit of accommodation.

### 3.14 Scoring Methodology – Pricing (Comparative Scoring)

Applicants offering the lowest price will score maximum marks out of a possible 100 and Applicants submitting higher prices will be awarded marks proportionate to their distance from the lowest price.

In the event an Applicant submits a bid which results in any of the Pricing evaluation criteria being a zero, in order to return a score for the other Applicants the price used for evaluation purposes will be £0.01.

#### Scoring Example 1

$$\frac{\text{Lowest Price}}{\text{Provider's Price}} \times \text{Available Marks} = \text{Score}$$

Lowest Price: £1,000,000    Criteria: 60.00%

#### Scoring Example 2

$$\frac{\text{Lowest Price}}{\text{Provider's Price}} \times \text{Available Marks} = \text{Score}$$

Lowest Price: £0.01    Criteria: 60.00%

Provider	Price	Score
Provider A	£1,000,000	60.00%
Provider B	£1,100,000	54.55%
Provider C	£1,273,050	47.13%
Provider D	£1,899,999	31.58%

Provider	Price	Score
Provider A	£0.00	60.00%
Provider B	£1,100,000	(0.00000055%) Awarded Score to 2 Decimal Places = 0.00%
Provider C	£1,273,050	(0.00000047%) Awarded Score to 2 Decimal Places = 0.00%
Provider D	£1,899,999	(0.00000032%) Awarded Score to 2 Decimal Places = 0.00%

4. **Not Used**

5. **Not Used**

6. **Issuing and Signing Contracts / Leases**

6.1 Following acceptance of a Call-Off Contract / Lease Agreement the Provider shall promptly and in any event within a reasonable period determined by the Authority and notified to the Provider in writing sign and return the Call-Off Contract / Lease Agreement to the Authority.

6.2 A fully signed Call-Off Contract / Lease Agreement must be in place in order for the Authority to utilise the Units and make payments to the Provider. Payment to the Provider will only commence once the Authority has placed someone in the Unit.

7. **Contract Performance and Precedence of Documents**

7.1 The Provider shall perform all Contracts / Lease Agreements entered into with the Authority in accordance with:

- (a) the requirements of this Agreement; and
- (b) the terms and conditions of the respective Call-off Contract / Lease Agreement.

7.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of a Call-Off Contract / Lease Agreement, such conflict or inconsistency shall be resolved according to the order of priority set in out in clause 5 of the Key Provisions.

8. **Prices for Services**

8.1 Pricing will be reviewed using the Consumer Price Inflation (CPI) index. The pricing put forward by the Provider within their tender submission is firm and fixed for the first two years of the Call-Off Contract / Lease Agreement.

8.2 Any price variations will not take effect until they have been mutually agreed by both parties in accordance with the Change Control Procedure at Schedule 12 of the Framework Agreement.

**Schedule 5 Tiering and Units**

*Guidance - Insert details of the Unit(s) / tiers awarded to the Provider*

## Schedule 6 **Specification**

*Guidance - See Specification in the tender pack – before signing the Agreement the Specification will need to be inserted here.*

*Guidance: Insert the details of what the Provider shall be doing as fully and completely as possible.*

**Schedule 7 Provider's Tender Response**

*Guidance - See Provider's tender response document – before signing the Contract the Tender Response Document will need to be inserted here.*

**Schedule 8 Pricing Schedule for Tier 1 Only**

*Guidance - before signing the Contract insert Tier 1 Provider Pricing Schedule here.*

## **Schedule 9 Exit Management**

### **1 INTRODUCTION**

- 1.1 This Schedule describes the duties and responsibilities of the Provider to the Authority or any individual member of the Authority leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Agreement or any Call-Off Contract / Lease Agreement and the transfer of service provision to a Replacement Provider.
- 1.2 The objectives of this Schedule 9 are to ensure a smooth transition of the availability of the Services from the Provider to the Authority and/or Replacement Provider at the termination (howsoever arising) (including partial termination) or expiry of this Agreement or any Call-Off Contract / Lease Agreement.

### **2 EXIT AND SERVICE TRANSFER ARRANGEMENTS**

The Provider agrees to indemnify and keep the Authority fully indemnified for itself and on behalf of any replacement Provider in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to the Authority by the Provider, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.

### **3 EXIT MANAGEMENT PLAN**

- 3.1 Where required by the Authority, no later than three (3) months after the Commencement Date, and thereafter as specified in paragraph 3.4 of this Schedule, the Provider shall prepare an Exit Management Plan for review by the Authority which will set out the Provider's proposed methodology for achieving an orderly transition of the Services from the Provider to the Authority and/or its Replacement Provider on the expiry or termination of this Agreement or any Call-Off Contract / Lease Agreement.
- 3.2 The Authority shall review the Exit Management Plan within twenty (20) Working Days of receipt from the Provider and shall notify the Provider of any suggested revisions to the Exit Management Plan. In this respect, the Authority will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days of them being communicated to the Provider. Once agreed, the Exit Management Plan shall be inserted into this Agreement at Schedule 10 The agreed Exit Management Plan shall be signed as approved by each party. If the parties are unable to agree the contents of the Exit Management Plan within 30 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 3.3 The Exit Management Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services, including the following details as a minimum:
- (a) how the information in paragraph 6.1 of this Schedule 9 is obtained;
  - (b) how the Provider will deal with the expiry or termination of this Agreement or any Call-Off Contract / Lease Agreement;
  - (c) a detailed description of both the transfer and cessation processes, including a timetable;
  - (d) how the Services will transfer to the Replacement Provider and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Provider or its Sub-Contractors (where applicable);
  - (e) the scope of any services and activities to be performed by the Provider to assist the Authority and/or the Replacement Provider in the transfer of the Services to the Authority and/or Replacement Provider including a timetable (where applicable);
  - (f) how each of the issues set out in this Schedule 9 will be addressed to facilitate the transition of the Services from the Provider to the Authority and/or the Replacement Provider with the aim of ensuring that there is no disruption to or degradation of the Services;

- (g) proposals for the identification and transfer of documentation providing details of the Services;
- (h) proposals for the identification of all leases, maintenance agreements and support agreements utilised by the Provider in connection with the provision of the Services, together with details of the relevant lessors and contractors, the payment terms, expiry dates and any relevant novation and/or early termination provisions;
- (i) proposals to enable the Authority or the Replacement Provider to recruit suitably skilled personnel;
- (j) proposals for the training of key members of the Authority's and/or the Replacement Provider's personnel in connection with the continuation of the provision of the Services following the expiry or termination (howsoever arising) of this Agreement or any Call-Off Contract / Lease Agreement charged at rates agreed between the parties at that time;
- (k) proposals for the granting of licences to use all software (including the Software) necessary for the Authority's receipt of the Services and the provision of copies of all related documentation;
- (l) proposals for the transfer of all Authority Data then in the Provider's possession to either the Authority and/or a Replacement Provider, including:
  - (i) an inventory of all Authority Data;
  - (ii) details of the data structures in which the Authority Data is stored, in the form of an agreed data model together with information on other data structures in which the Authority Data could be stored;
  - (iii) proposed transfer methods, both physical and electronic; and
  - (iv) proposed methods for ensuring the integrity of the Authority Data on transfer;
- (m) proposals for providing the Authority and/or a Replacement Provider with copies of all documentation used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Provider; and
- (n) proposals for the supply of any other information or assistance reasonably required by the Authority or a replacement Provider in order to affect an orderly hand over of the provision of the Services.

3.4 The Exit Management Plan shall be reviewed and updated by the Provider. In this regard, the Provider shall provide a revised version of the Exit Management Plan to the Authority on each year (or more frequently as may be agreed between the parties). The revised Exit Management Plan shall be reviewed and agreed in accordance with the provisions of paragraph 3.2 of this Schedule.

3.5 Within 20 Working Days after service of a notice to terminate this Agreement or any Call-Off Contract / Lease Agreement by either party or 6 months prior to the expiry of this Agreement, the Provider will submit for the Authority's approval the Exit Management Plan in a final form that could be implemented immediately. The final form of the Exit Management Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Management Plan was last agreed.

#### **4 TERMINATION OBLIGATIONS**

4.1 The Provider shall comply with all of its obligations contained in the Exit Management Plan.

4.2 On termination or expiry of this Agreement or any Call-Off Contract / Lease Agreement for any reason, the Provider shall (to the extent that it does not adversely affect the Provider's performance of the Services and the Exit Management Plan):

- (a) immediately deliver to the Authority all Authority Assets (where applicable), copies of information, documentation and Data provided by the Authority to the Provider for the purposes of this Agreement or any Call-Off Contract / Lease Agreement;



- (b) immediately repay to the Authority all Charges that it has been paid in respect of Services not provided by the Provider as at the date of expiry or termination or any other sums due to the Authority in accordance with this Agreement or any Call-Off Contract / Lease Agreement;
- (c) cease to use the Authority Data or where reasonably stipulated by the Authority hold the Authority's Data on the Authority's behalf in accordance with the terms of this Agreement or any Call-Off Contract / Lease Agreement in respect of the security and confidentiality of such Authority Data until release is requested by the Authority in writing;
- (d) provide the Authority and/or the Replacement Provider with a complete and uncorrupted version of all Authority Data;
- (e) certify to the Authority that it has not retained any copies of any Authority documentation or other information or data, except for one copy which the Provider may use for audit purposes only and subject to the confidentiality obligations in clause 5 of the General Terms;
- (f) vacate any Authority Premises; and
- (g) provide such information relating to the Services as remains in the possession or control of the Provider.

4.3 On termination of this Agreement or any Call-Off Contract / Lease Agreement for whatever reason or in the case of any suspension of this Agreement or any Call-Off Contract / Lease Agreement (or part thereof), the Provider, subject to any other relevant clauses in this Agreement or any Call-Off Contract / Lease Agreement, will only be entitled to the payment of Fees relating to the Services provided properly and in accordance with the terms of this Agreement or any Call-Off Contract / Lease Agreement up to the date of termination or expiry or suspension (as the case may be).

4.4 On termination or expiry of this Agreement or any Call-Off Contract / Lease Agreement for any reason:

- (a) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement or any Call-Off Contract / Lease Agreement which existed at or before the date of termination or expiry, shall not be affected;
- (b) the Provider shall pay to the Authority any amounts that are then outstanding immediately (including any overpayments for Services not yet provided or where the Authority has not received deliverables or the Services in accordance with this Agreement or any Call-Off Contract / Lease Agreement) and the Authority shall not be liable to the Provider for any of the following:
  - (i) any costs expenses or payments to any Provider's Personnel or a Provider Party in respect of the redeployment or reallocation of their respective Provider's Personnel or Provider Party including any other costs of redeployment of the same;
  - (ii) any costs or expenses, including any contractual penalties, in respect of the termination, novation or assignment of any contracts with any third party suppliers or any sub-contracts incurred following and as a result of termination or expiry of the Contract;
  - (iii) the cost of any assets, equipment, connectivity, infrastructure or other materials purchased, leased or otherwise procured by the Provider in order to facilitate the provision of the Services or its other obligations under this Agreement or any Call-Off Contract / Lease Agreement;
  - (iv) any other additional shutdown costs, expenses or liabilities that may be incurred in relation to the termination or expiry of this Agreement or any Call-Off Contract / Lease Agreement;
  - (v) any sums incurred by the Provider under this Agreement or any Call-Off Contract / Lease Agreement (but not yet invoiced to the Authority up to the date of termination) that the Provider has used its best endeavours to avoid

paying to any sub-contractor or any third party suppliers or Provider Party in relation to the Services (or part thereof);

(vi) any sums paid or payable by the Authority to the Provider under this Agreement or any Call-Off Contract / Lease Agreement for Services or any other deliverables or any other materials provided (whether invoiced or not and/or paid or outstanding) for which the Authority has not received any benefit under this Agreement or any Call-Off Contract / Lease Agreement. In the event that the Authority has paid the Provider for such amounts, the Provider shall refund the Authority for any such sums immediately and/or upon written request (including any pro rata amounts paid by the Authority for an unexpired period during which the Services would have been supplied if the termination had not occurred); and

(i) any termination or cancellation fees or other breakage costs (including anything similar to any third party suppliers or any Provider Party.

4.5 The provisions of clauses 7 (Insurance), 8 (Freedom of Information), 9 (Data Protection), 10 (Confidentiality), 11 (Audit), 12 (Termination for Breach) of the General Terms and this paragraph 4 and clause 13 (Reporting and meetings) (if applicable) of the Key Provisions shall survive termination or expiry of this Agreement or any Call-Off Contract / Lease Agreement.

4.6 Termination or expiry of this Agreement or any Call-Off Contract / Lease Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement or any Call-Off Contract / Lease Agreement which existed at or before the date of termination or expiry.

## **5 ASSISTANCE ON EXPIRY OR TERMINATION**

5.1 In the event that this Agreement or any Call-Off Contract / Lease Agreement expires or is terminated the Provider shall, where so requested by the Authority in accordance with this Schedule 9, provide assistance to the Authority to migrate the provision of the Services to a Replacement Provider.

## **6 PRE- SERVICE TRANSFER OBLIGATIONS**

6.1 The Provider agrees that subject to compliance with the Data Protection Legislation:

(a) within twenty (20) Working Days of the earliest of:

- (i) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer; or
- (ii) receipt of the giving of notice of early termination of any Call-Off Contract / Lease Agreement or any part thereof; or
- (iii) the date which is six (6) months before the expiry date of any Call-Off Contract / Lease Agreement,

it shall provide to the Authority and/or its Replacement Providers:

- (iv) details of the Services;
- (v) details of all Authority Assets currently used in providing the Services;
- (vi) details of the Transferable Contracts;
- (vii) a list of those of its, or its Sub-Contractors', employees who are wholly or mainly assigned to the provision of the Services which the Provider believes will transfer to the Authority or the replacement Provider (as the case may be), together with Staffing Information in relation to such employees,
- (viii) an inventory of any Authority Data in the Provider's possession or control;

- (ix) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
    - (x) a list of ongoing and/or threatened disputes in relation to the provision of the Services,
    - (xi) such other material and information as the Authority shall reasonably require, and
  - (b) at least ten (10) Working Days prior to the Service Transfer Date, the Provider shall provide to the Authority for itself or on behalf of any replacement Provider (as the case may be) a final list of employees which shall transfer under TUPE.
- 6.2 Within 10 Working Days of the Authority receiving the information in 6.1(a), the Authority shall notify the Provider which, if any, of the Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Provider (the **Transferring Contracts**). Where requested by the Authority and/or its Replacement Provider, the Provider shall provide all reasonable assistance to the Authority and/or its Replacement Provider to enable it to determine which Transferable Contracts the Authority and/or its Replacement Provider requires to provide the Services.
- 6.3 The Provider shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Provider of the Transferring Contracts. The Provider shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 6.4 The Authority shall:
- (a) accept assignments from the Provider or join with the Provider in procuring a novation of each Transferring Contract; and
  - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Provider, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Provider does the same.
- 6.5 The Provider shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Provider has been effected.
- 6.6 The Provider shall indemnify the Authority (and/or the Replacement Provider, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Provider) pursuant to paragraph 6.3 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.
- 6.7 The Provider acknowledges that the Authority may disclose the Provider's Confidential Information to an actual or prospective Replacement Provider or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement.
- 6.8 The Provider warrants that all information provided under paragraph 6 of this Schedule shall be true, accurate and complete and the level of detail to be provided by the Provider shall be such as would be reasonably necessary to enable a third party to prepare an informed offer for those Services and to not be disadvantaged in any subsequent procurement process compared to the Provider.
- 6.9 The Provider shall notify the Authority within 5 Working Days of any change to the information provided in paragraph 6.1 and shall consult with the Authority regarding such changes
- 6.10 From the date of the earliest event referred to in paragraphs 6.1(a)(i) to 6.1(a)(iii) of this Schedule 9, the Provider agrees that it shall not, and agrees to procure that its Sub-Contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:
- (a) increase or reduce the total number of employees so engaged, or give notice to terminate the employment of any such employees; or

- (b) replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise; or
- (c) make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment).

**Schedule 10 Exit Management Plan**

**Schedule 11 Evidence of Employer's Liability Insurance**

*Guidance: To insert evidence of the Provider's compliance with the employer's liability insurance obligations on receipt.*

## Schedule 12 Change Control Procedure

### 1 DEFINITIONS

The definitions in this paragraph apply in this Schedule 12.

**Change Control Note:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

### 2 PERMITTED CHANGES

2.1 Changes to the Framework Agreement or any Call-Off Contract / Lease Agreement shall be made only where:

- (a) such a Change is permitted by the Public Contracts Regulations 2015, Regulation 72(1)(b) to (f); or
- (b) permitted under paragraph 2.2 below.

2.2 A Change is permitted where each of requirements (a) to (d) below is satisfied:

(a) the Change is of the following scope and nature:	(b) the price of the Change is calculated as follows:	(c) the circumstances necessitating the Change are:
i Increasing the term of the Framework	i In accordance with prevailing market rates, CPI and the Provider's originally submitted pricing	i Changes in public contracts legislation
ii Re-opening the framework to enable new entrants	ii In accordance with prevailing market rates, CPI and the Provider's originally submitted pricing	<ul style="list-style-type: none"> <li>ii Insufficient capacity to meet demand, in relation to the number of and/or types of Units available</li> <li>iii Change of standards or use as a result of legislative change such as health and safety, planning, or any other change in legislation affecting the use or management of the Units of accommodation</li> <li>iv Additional self-contained Units of accommodation suitable for individuals and families fleeing domestic violence or abuse may be required at a future date, in respect of the Authority's duties to provide support to victims of domestic violence and their children under the Domestic Abuse Act 2021</li> <li>v Units of accommodation are re-allocated as move-on accommodation</li> <li>vi Changes in public contracts legislation</li> </ul>
iii Amending the Tier 1 capacity	iii In accordance with prevailing market rates, CPI and the Provider's originally submitted pricing	<ul style="list-style-type: none"> <li>vii Insufficient capacity to meet demand, in relation to the number of and/or types of Units available</li> <li>viii Reduction in demand for temporary accommodation</li> <li>ix Change of standards or use as a result of legislative change such as health and safety, planning, or any other change in legislation affecting the use or management of the Units of accommodation</li> </ul>

(a) the Change is of the following scope and nature:	(b) the price of the Change is calculated as follows:	(c) the circumstances necessitating the Change are:
		x Additional self-contained Units of accommodation suitable for individuals and families fleeing domestic violence or abuse may be required at a future date, in respect of the Authority's duties to provide support to victims of domestic violence and their children under the Domestic Abuse Act 2021 xi Units of accommodation are re-allocated as move-on accommodation
iv Use of Units of accommodation as move-on accommodation	iv There is no price associated with this change	xii Landlord, Authority and Occupant agree to the Occupant taking up a long term tenancy within the property, resulting in a direct arrangement being put in place between the Landlord and Occupant
v Tier 2 Providers propose alternative units under further competition to those proposed when the Framework was set up	v In accordance with prevailing market rates, CPI and the Provider's originally submitted pricing	xiii Units no longer available xiv Provider able to provide different/additional unit types
vi The way in which the Units of accommodation are used and/or managed	vi In accordance with prevailing market rates, CPI and the Provider's originally submitted pricing	xv Change of standards or use as a result of legislative change such as health and safety, planning, or any other change in legislation affecting the use or management of the accommodation
vii The way in which the Units of accommodation are allocated	vii In accordance with prevailing market rates, CPI and the Provider's originally submitted pricing	xvi Changes in technology and improved systems xvii Legislative changes xviii Changes to the amount of Units of accommodation available xix Changes to the type and size of Units of accommodation required

(d) the Change does not alter the overall nature of the Contract.

2.3 In respect of paragraph 2.2(b) the cost of additional services, changes or modifications will:

- (a) be proportionate to the changes being made;
- (b) be calculated in accordance with the Authority's budget and/or any additional funding available;
- (c) offer best value to the Authority;
- (d) take into consideration the pricing proposals set out in the Provider's tender submission.

### 3 GENERAL PRINCIPLES

3.1 Where the Authority or the Provider sees a need to change this Agreement, the Authority may at any time request and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 4 of this Schedule 12.

3.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Provider shall continue to perform this Agreement in compliance with its terms before such Change.



3.3 Any discussions which may take place between the Authority and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

3.4 Any work undertaken by the Provider and the Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 12 shall be undertaken entirely at the expense and liability of the Provider.

#### **4 PROCEDURE**

4.1 Discussion between the Authority and the Provider concerning a Change shall result in any one of the following:

- (a) no further action being taken; or
- (b) a request to change this Agreement by the Authority; or
- (c) a recommendation to change this Agreement by the Provider.

4.2 Where a written request for an amendment is received from the Authority, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Authority within three weeks of the date of the request.

4.3 A recommendation to amend this Agreement by the Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.

4.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Agreement including:
  - (i) the timetable for the provision of the Change;
  - (ii) the personnel to be provided;
  - (iii) the Charges;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Provider.

4.5 For each Change Control Note submitted by the Provider the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
  - (i) request further information;
  - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Provider; or

(iii) notify the Provider of the rejection of the Change Control Note.

4.6 A Change Control Note signed by the Authority and by the Provider shall constitute an amendment to this Agreement.

4.7 The Authority may identify a Change request as an emergency Change or agree on a Change request being a minor Change. If this occurs then the procedure for agreeing the Change shall either be:

- (a) accelerated in accordance with the emergency as indicated by the Authority in the Change request. A Change would be an emergency Change request in circumstances where there is a new or continuing Force Majeure Event (inter alia) and the Authority requires the terms of the Contract to be amended to circumvent or alleviate the circumstances arising from the Force Majeure Event. Where an emergency Change is agreed by the parties in respect of what would otherwise be determined to be a Force Majeure Event which enables the Provider to continue performing its obligations (as amended by the emergency Change) the Provider will no longer be permitted to claim relief in respect of that Force Majeure Event to the extent that its performance is no longer restricted or prevented; or
- (b) truncated in accordance with the minor nature of the Change request.

### Schedule 13 Default Notice

**This is a Default Notice given by the Authority to the Provider under the contract referred to below.**

If the defaults referred to below are capable of remedy, it is important that the Provider remedies those defaults. Failure to remedy the defaults may give rise to a right for the Authority to terminate the Contract.

Name of the Authority	
Name of the Provider	
Contract Description	
Contract Commencement Date	
Details of Provider's default	
Any additional information	
Details of agreed actions to remedy the default and timescales for completion	
Details of consequences of failing to meet timescales for completion of remedial actions	



**Schedule 15 Not Used**

## **Schedule 16 Notification of Units of Accommodation Tier 2 Only**

The Authority intends to implement a SharePoint system which will require providers signed up to the Framework to keep the system up to date with available Units of accommodation. It is intended that when the Authority identify an accommodation need then an alert will be sent out on the system to notify providers that a particular Unit accommodation is required.

In the event this system is not in place on Framework commencement a variation will be issued to Providers to amend this schedule to include the relevant information.

**Schedule 17 Call-Off Terms and Conditions**

[The Call-Off Contract forms Appendix G of this Agreement.] OR

[The Lease Agreement forms Appendix H of this Agreement.]