

# TORBAY COUNCIL

## TORBAY COUNCIL TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES FRONT SHEET

### *Contract between*

#### **The Authority**

**Torbay Council of Town Hall, Torquay, Devon, TQ1 3DR**

### *And*

#### **The Supplier**

*Guidance: Depending on the nature of the contract you may change this to Contractor or Provider. Please ensure any change is reflected throughout the Contract.*

**[Insert name, registered office address and, where applicable, the company number of the Supplier]**

### *Contract Number and Title*

**[Insert number and title of Contract]**

### *Date*

**[Insert the date when signed by both parties]**

### *Commencement Date*

**[Insert the date on which the Services shall commence]**

### *Termination Date*

**[Insert the date on which the Services shall end]**

### *Summary of Services*

**[Insert a summary of the Services to be supplied by the Supplier]**

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

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

The Definitions in Schedule 3 and any terms defined within this Contract apply to the use of all capitalised terms in this Contract.

#### **Schedules**

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Terms
<b>Schedule 3</b>	Definitions and Interpretations
<b>Schedule 4</b>	Specification
<b>Schedule 5</b>	Supplier's Tender Response Document
<b>Schedule 6</b>	Payment Schedule
<b>Schedule 7</b>	Data Protection Roles and Responsibilities
<b>Schedule 8</b>	Not Used
<b>Schedule 9</b>	Brand Guidelines/Not Used
<b>Schedule 10</b>	Performance Monitoring

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 SUPPLIER**

<b>Name:</b>		<b>Signature:</b>	
<b>Position:</b>		<b>Date:</b>	

## 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 Contract]** on **[insert date that the contract notice was published]** 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 Supplier]**
- (B) The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Contract.
- (C) Documents that form part of this Contract are
- (i) the completed tender documents including the Specification, Supplier Tender Response Payment Schedule, 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 5 of these Key Provisions shall apply to this Contract.
- 1.2 The optional Key Provisions at clauses 6 to 10 of these Key Provisions shall apply to this Contract 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 Contract.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1 .

#### 2 TERM

This Contract 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 Contract.

#### 3 AUTHORISED REPRESENTATIVES

At the Commencement Date:

- (a) the Authority Authorised Representative is:  
**[insert name and role of the Authority's Authorised Representative]**
- (b) the Supplier Authorised Representative is:  
**[insert name and role of the Supplier's Authorised Representative].**

#### 4 NAMES AND ADDRESSES FOR NOTICES

Notices served under this Contract 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 Supplier:
- [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 Supplier above].**

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

## 5 ORDER OF PRECEDENCE

Should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

- (a) the provisions of the Front Sheet of this Contract;
- (b) Schedule 1 : Key Provisions;
- (c) Schedule 4 : Specification;
- (d) Schedule 6 : Payment Schedule;
- (e) Schedule 7 : Data Protection roles and responsibilities
- (f) Schedule 2 : General Terms;
- (g) Schedule 5 : Supplier's Tender Response Document;
- (h) Schedule 3 : Definitions and Interpretations;
- (i) Schedule 10 Performance Monitoring and
- (j) the order in which all subsequent schedules, if any, appear.

### Optional Key Provisions

<input type="checkbox"/>	<b>6 NOT USED</b>
<input type="checkbox"/>	<b>7 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS / NOT USED</b>  <i>Guidance: to be used where the Supplier is carrying out a Regulated Activity.</i>  7.1 The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.  7.2 The Supplier shall: <ul style="list-style-type: none"><li>(a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service;</li><li>(a) monitor the level and validity of the checks under this clause 7 for each member of staff;</li><li>(b) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.</li></ul> 7.3 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

	7.4	The Supplier shall sign up to the Authority's internal safeguarding policies and shall ensure that the Services are carried out in accordance with these policies at all times.
	7.5	The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 7 have been met.
	7.6	The Supplier shall refer information about any person carrying out the Services to the Disclose and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users, children, or vulnerable adults.
<input type="checkbox"/>	8	<b>NOT USED</b>
<input type="checkbox"/>	9	<b>NOT USED</b>
<input type="checkbox"/>	10	<b>NOT USED</b>

#### **Additional Key Provisions**

<input checked="" type="checkbox"/>	<b>11 BUSINESS CONTINUITY</b> 11.1 The Supplier provided the Authority with a copy of its organisational business continuity plan as part of their tender response. That business continuity plan shall: <ul style="list-style-type: none"> <li>(a) address how the Supplier will respond to, and rectify, any destruction or loss of the Hardware, Software, Data or any other facilities used by the Supplier in providing the Services so that there is no disruption to the Authority or the performance of the Supplier's obligations under this Contract, and</li> <li>(b) detail how and when the Supplier will test its business continuity plan;</li> <li>(c) 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 Supplier's Personnel or a Supplier Party; the Supplier's supply chain any issues with regard to the supply of equipment or accommodation;</li> <li>(d) 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>(e) address how it intends to mitigate against any other threats or risks to the provision by the Supplier of the Services.</li> </ul> 11.2 The Supplier shall review its business continuity plan at least every <b>12 months</b> and update it as necessary to reflect any changes in the way the Supplier carries on business or provides the Services, any changes made to any aspect of this Contract 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 Supplier intends to mitigate against impact of:
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	<p>(a) Covid19 or any similar emerging pandemic, epidemic or global health emergency in particular in respect of the Supplier's Personnel or a Supplier Party; the Supplier's supply chain any issues with regard to the supply of equipment or accommodation;</p> <p>any reasonably foreseeable events which would otherwise fall within the definition of Force Majeure Event; and</p>
11.3	any other threats or risks to the provision by the Supplier of the Services.

## **Schedule 2    General Terms**

### **1        SUPPLY OF SERVICES**

The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this Contract in accordance with the provisions of this Contract.

### **2        SERVICE LEVELS**

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 Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

3.2        Without prejudice to clause 2, the Supplier 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 Contract by the Authority;
- (c)        in accordance with the Supplier's Social Value Response (where applicable); and
- (d)        in accordance with all applicable laws.

3.3        Where requested by the Supplier and agreed by the Authority in writing pursuant to the Brand Guidelines, the Supplier 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.

### **4        AUTHORITY PREMISES**

4.1        The Authority shall, subject to clause 3 and clause 8, provide the Supplier (and its Sub-Contractors) with access to such parts of the Authority Premises as the Supplier reasonably requires for the purposes only of properly providing the Services.

4.2        In the event of the expiry or termination of the Contract, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority Premises to promptly remove any of the Supplier's equipment.

4.3        The Supplier shall ensure that:

- (a)        where using the Authority Premises they are kept properly secure and it will comply and cooperate with the Authority Authorised Representative's reasonable directions regarding the security of the same; and
- (b)        only those of the Supplier's Personnel that are duly authorised to enter upon the Authority Premises for the purposes of providing the Services, do so.

4.4        The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority Premises or to any property of any other recipient of the Services in the course of providing the Services.

### **5        HEALTH AND SAFETY**

5.1        The Supplier shall promptly notify the Authority of any health and safety hazards or incidents that may exist or arise in connection with the performance of the Contract.

5.2        While on the Authority Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority Premises.



5.3 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

## 6 CHARGES AND PAYMENT

6.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this Contract, the Authority shall pay the Charges to the Supplier.

6.2 The Charges shall be calculated as set out in the Payment Schedule.

6.3 Unless otherwise stated in the Payment Schedule the Charges:

- (a) shall be payable from the Commencement Date;
- (b) shall remain fixed during the Term unless agreed by both parties; and
- (c) are the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.

6.4 The Authority shall pay each properly submitted invoice received by the Supplier within 30 days of the date when Authority has determined that the invoice is a valid and undisputed invoice. The Supplier shall accept payment electronically via BACS. In order for an invoice to be properly submitted:

- (a) it must (if required) be submitted appropriately using the Authority's e-invoicing system and/or at least contain the following information:
  - (i) the date of the invoice;
  - (ii) a unique invoice number;
  - (iii) the period during which the Services were provided or other period(s) to which the relevant Fee(s) relate;
  - (iv) where the Fees are to be charged on an open book basis any additional reporting; information in respect of any maximum profit margins and/or any Supplier costs and expenses where required by the Authority;
  - (v) the correct reference for this Contract;
  - (vi) the reference number of the purchase order to which it relates (if any);
  - (vii) the dates between which the Services subject of each of the Fees detailed in the invoice were performed;
  - (viii) a description of the Services provided;
  - (ix) the pricing mechanism used to calculate the Charges (i.e. fixed price; time and materials; target cost and/or guaranteed maximum price);
  - (x) where Services are to be provided to meet certain milestones, any certificates in respect of the achievement of such milestones;
  - (xi) the details of any Services credits under any Service Level Arrangements or delay payments or similar deductions that shall apply to the Fees detailed on the invoice;
  - (xii) reference to any reports required by the Authority in respect of the Services to which the Fees detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
  - (xiii) (where relevant the bank details for the Supplier for payment via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and

- (xiv) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
  - (b) The Supplier shall invoice the Authority in respect of Services in accordance with the requirements the Payment Schedule. The Supplier shall first submit to the Authority a draft invoice setting out the Fees payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
  - (c) Each invoice shall at all times be accompanied by supporting documentation reasonably required by the Authority from time to time. Any assessment by the Authority as to what constitutes supporting documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 6.5 The Authority will consider and verify any invoices submitted by the Supplier for payment in a timely fashion and agrees that undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid and undisputed. The Authority shall regard an invoice as valid only if it complies with the provisions of this clause 6. Where any invoice does not conform to the Authority's requirements set out in this clause 6, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements. For the purposes of this Contract any such 'returned' invoices shall be treated as a disputed invoice and no interest shall be payable thereon or any claim made by the Supplier for non-payment in respect of the same.
- 6.6 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 10. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.
- 6.7 Subject to clause 6.6, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Contract under clause 19 for failure to pay undisputed charges.
- 6.8 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall at all times comply with the requirements relating to VAT as more particularly detailed in this Contract and the Specification. The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Contract. Such records shall be retained for inspection by the Authority for six years from the end of each year to which the records relate.
- 6.9 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this Contract.
- 6.10 In this clause 6.10, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as clauses 6.4 and 6.5 above; and
  - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 6.4 and 6.5 above.

6.11 For the purposes of this clause 6 (but no other) "Sub-Contractor" means a person under a contract, at any stage of remoteness from the Authority in a subcontracting chain, who has entered into a contract wholly or substantially for the purpose of performing (or contributing to the performance of) the whole of any part of this Contract.

6.12 Where IR35 regulations may apply to an individual, sole trader or personal services company, the Authority will conduct an employment status check to find out if such entity or individual should be classed as employed or self-employed for tax purposes (CEST). Where applicable a Status Determination Statement will be issued which will declare the Supplier's deemed employment status following the IR35 assessment and provide reasons for reaching this conclusion. Please note that this may affect the way in which the Supplier is paid and could include the possible deduction of Tax and National Insurance.

## **7 DUE DILIGENCE**

7.1 The Supplier acknowledges and confirms that it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract and has entered into this Contract in reliance on its own due diligence.

7.2 The Supplier as at the Commencement Date, warrants and represents that all information contained in the Supplier'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 Contract; and shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract 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.

## **8 SUPPLIER'S PERSONNEL USED TO PROVIDE THE SERVICES**

8.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services;
- (d) all of the Supplier's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority Premises; and
- (e) where the Services are regulated activities enabling the Supplier to obtain a Disclosure Barring Service (**DBS**) certificate, it holds a clear DBS certificate for each of the Supplier's Personnel.

8.2 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

8.3 The Parties do not intend or envisage that the expiry or termination of this Contract or any Services provided (including any reduction or de-scoping of the Services envisaged) hereunder will constitute a relevant transfer for the purposes of the Employment Regulations. The Supplier shall be liable to the Authority and any Future Service Provider for all any costs, expenses, liabilities (including Employee Liabilities) damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise or be made against the Authority and/or any Future Service Provider by virtue of the Employment Regulations in connection with the termination or expiry of this Agreement or the termination of the provision of any of the obligations, Services or deliverables by or in respect of any person who is or was

employed or engaged in the provision of the same deliverables, obligations or Services at any time.

- 8.4 The Supplier shall indemnify the Authority against all Employee Liabilities that may arise as a result of claims brought against the Authority by any of the Authority's employees or former employees and/or any of the Supplier's Personnel or a Supplier Party where such claim arises from any act or omission of the Supplier, the Supplier's Personnel or a Supplier Party.

## 9 **MONITORING**

- 9.1 The Authority may monitor the performance of the Services by the Supplier at its discretion.
- 9.2 The Supplier shall co-operate with the Authority in carrying out the monitoring referred to in clause 9.1 at no additional charge to the Authority.

## 10 **DISPUTE RESOLUTION**

- 10.1 If a Dispute arises then except as expressly provided in this Contract, 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 Supplier shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Representatives of the Authority and the Supplier 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 Supplier who shall attempt in good faith to resolve it; and
  - (c) if the senior officers of the Authority and the Supplier 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.
- 10.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.
- 10.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 35 and 36 which shall apply at all times.
- 10.4 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 clause 35 and 36 of these General Terms.
- ## 11 **SUB-CONTRACTING AND ASSIGNMENT**
- 11.1 The Supplier shall not be entitled to assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the Authority. If the Authority consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 11.2 The Supplier shall not sub-contract the whole or any part of its obligations under this Contract nor shall it replace a Sub-Contractor approved under this Contract or permit a Sub-Contractor approved under this Contract 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.
- 11.3 In the event that the Supplier enters into any Sub-Contract in connection with this Contract it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the Contract 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 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 Supplier under this Contract;
  - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract 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 Contract; 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.
- 11.4 The Authority shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 11.5 The Authority may, by notice in writing to the Contractor, require the Supplier 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 Contract where any of the circumstances specified in Regulation 57(1) or (8) of the Public Contracts Regulations 2015 applies to the Sub-Contractor.
- 11.6 Unless otherwise agreed in writing the Authority shall not be liable to the Supplier for any fees which may become due from the Supplier to a Sub-Contractor upon termination or expiry of this Contract (and any subsequent Sub-Contract) including without limitation termination fees, cancellation fees, payments in respect of the unexpired term of any Sub-Contract and /or any other similar costs, charges or exit payments.
- 12 **LIMITATION OF LIABILITY**
- 12.1 Subject to clause 12.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 12.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 12.3 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:
  - (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by its negligence;
  - (c) breach of any obligation as to title implied by statute; or
  - (d) any other act or omission, liability for which may not be limited under any applicable law.
- 13 **INSURANCE**
- During the term of this Contract, the Supplier shall at its own cost effect and maintain in force, with a reputable insurance company, the insurances referred to in the key provisions (or if no insurance is specified, then such insurance to cover reasonably foreseeable liabilities that may arise under or in connection with this Contract including public liability insurance, professional indemnity insurance and employers' liability insurance) and the Supplier will provide the Authority with evidence of such insurance on reasonable request.
- 13.1 The Supplier shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Contract, save to the extent that

the same is directly caused by or directly arises from the negligence, breach of this Contract by the Authority.

**14 FREEDOM OF INFORMATION AND TRANSPARENCY OBLIGATIONS**

- 14.1 The Supplier 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 Supplier'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.
- 14.2 The Supplier 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.
- 14.3 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.
- 14.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 14.5 The Supplier 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 Supplier. The Authority shall take reasonable steps to notify the Supplier 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 Contract) 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 Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 14.6 The Supplier 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 Supplier consents to such publication.
- 14.7 The Supplier 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.
- 14.8 Notwithstanding any other term of the Contract, the Supplier hereby consents to the Authority publishing the Contract 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 Contract, to the general public.

14.9 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Contract.

## 15 **DATA PROTECTION**

15.1 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.

15.2 The parties agree to confirm the role of each party (as described in 15.1 above) prior to the commencement of the processing of personal data in respect of any Services in the relevant SOW or otherwise in writing.

15.3 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 15 and Schedule 7.

15.4 The parties shall each be responsible for their own costs of compliance with this clause 15 and Schedule 7 save where any data protection related audit carried out by or on behalf of the Authority reveals any material non-compliance by the Supplier in relation to the Supplier's obligations under this clause 15, Schedule 7 or the Data Protection Laws, in which case Supplier shall promptly reimburse the Authority's reasonable costs incurred in relation to such audit.

15.5 The Supplier 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 Supplier's obligations in this clause 15 except and to the extent that such liabilities have resulted directly from the Authority's instructions.

## 16 **CONFIDENTIALITY**

16.1 Each party shall keep the other party's Confidential Information confidential and shall not use such Confidential Information except for performing its rights and obligations under this Contract.

16.2 The provisions of this clause shall not apply to Confidential Information that:

- (a) is required for disclosure by any applicable law;
- (b) is or becomes generally available to the public;
- (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.

## 17 **AUDIT**

17.1 The Authority may conduct audits of the Supplier from time to time and the Supplier 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 during the Term and for a period of 7 years after the Termination Date.

17.2 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 Contract in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

17.3 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this Contract in any material manner; the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier'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 Supplier shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 Working Days.

## 18 **INTELLECTUAL PROPERTY RIGHTS**

18.1 Unless expressly stated otherwise in the Specification or in a separate prior written agreement signed by both parties to the contrary, all Intellectual Property Rights created by the Supplier, Supplier Personnel, a Sub-Contractor or any other employee, agent or subcontractor of the Supplier:

- (a) in the course of performing the Services; or
  - (b) exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.

18.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis and all other reasonable professional costs and expenses), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## 19 **TERMINATION**

19.1 The Authority may terminate this Contract with immediate effect by the service of written notice on the Supplier in the following circumstances:

- (a) if the Supplier is in breach of any material obligation under this Contract which breach is irremediable or (if such breach is remediable), fails to remedy that breach within a period of 30 calendar days after being notified in writing to do so;
- (b) if a Service Failure Default has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) if an Insolvency Event has occurred;
- (e) if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if the Supplier ceases or threatens to cease to meet its obligations under this Contract for any reason;
- (g) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Supplier to which the Authority reasonably objects; or
- (h) in accordance with clause 22.5 and 23.4.



- 19.2 The Authority may terminate this Contract by giving not less than 30 days written notice on the Supplier in any of the following circumstances:
- (a) the Contract 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 Supplier such that it should have been excluded from the procurement procedure; or
    - (ii) to a Sub-Contractor on which the Supplier relied in its tender to the Authority for this Contract and the Supplier does not cease to engage that Sub-Contractor within 30 days of a notice from the Authority requiring the Supplier 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 to which the Authority is a party is terminated or expires provided that the Services provided by the Supplier relates specifically to the property to which the lease relates.
- 19.3 If this Contract is terminated by the Authority for cause in accordance with clause 19.1 or 19.2 such termination shall be at no loss or cost to the Authority.
- 19.4 The Authority may terminate this Contract, or any part of the Contract or the Services at any time by giving not less than 30 days written notice to the Supplier.
- 19.5 Either party may terminate this Contract pursuant to the provisions and in accordance with the notice periods set out in clause.
- 20 **CONSEQUENCES OF TERMINATION**
- 20.1 On termination or expiry of this Contract for any reason, the Supplier shall:
- (a) immediately cease to use and deliver to the Authority copies of information, documentation and Data relating to the Services as remains in the possession or control of the Supplier or where reasonably stipulated by the Authority held on the Authority's behalf in accordance with the terms of this Contract in respect of the security and confidentiality of such Data;
  - (b) immediately repay to the Authority all Charges that it has been paid in respect of Services not provided by the Supplier as at the date of expiry or termination or any other sums due to the Authority in accordance with this Contract;
  - (c) 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 Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 16 of the General Terms; and
  - (d) vacate any Authority Premises.
- 20.2 On termination of this Contract for whatever reason or in the case of any suspension of this Contract (or part thereof), the Supplier, subject to any other relevant clauses in this Contract, will only be entitled to the payment of Charges relating to the Services provided properly and in accordance with the terms of this Contract up to the date of termination or expiry or suspension (as the case may be).
- 20.3 On termination or expiry of this Contract 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 Contract which existed at or before the date of termination or expiry, shall not be affected;

- (b) the Supplier 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 Contract) and the Authority shall not be liable to the Supplier for any of the following:
- (i) any costs expenses or payments to any Supplier's Personnel or a Supplier Party in respect of the redeployment or reallocation of their respective Supplier's Personnel or Supplier 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 Supplier in order to facilitate the provision of the Services or its other obligations under this Contract;
  - (iv) any other additional shutdown costs, expenses or liabilities that may be incurred in relation to the termination or expiry of this Contract;
  - (v) any sums incurred by the Supplier under this Contract (but not yet invoiced to the Authority up to the date of termination) that the Supplier has used its best endeavours to avoid paying to any sub-contractor or any third party suppliers or Supplier Party in relation to the Services (or part thereof);
  - (vi) any sums paid or payable by the Authority to the Supplier under this Contract 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 Contract. In the event that the Authority has paid the Supplier for such amounts, the Supplier 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 Supplier Party.

20.4 The provisions of clauses 12 (Limitation of Liability), 13 (Insurance), 14 (Freedom of Information), 15 (Data Protection), 16 (Confidentiality), 17 (Audit), 18 (Intellectual Property Rights), 19 (Termination for Breach) of the General Terms and this clause 20 shall survive termination or expiry of this Contract.

20.5 Termination or expiry of this Contract 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 Contract which existed at or before the date of termination or expiry.

## 21 **FORCE MAJEURE**

21.1 A **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic, pandemic, world health emergency or any subsequent action taken by a relevant Government or authority in respect of the same (including lockdown or travel restrictions);

- (c) 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;
  - (d) nuclear, chemical or biological contamination or sonic boom;
  - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - (f) collapse of buildings, fire, explosion or accident;
  - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and
  - (h) interruption or failure of utility service.
- 21.2 Provided it has complied with clause 21.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly but only in proportion to the magnitude of the Force Majeure Event and the impact on the Affected Party.
- 21.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 21.4 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
  - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 21.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 8 Weeks, the party not affected by the Force Majeure Event may terminate this Contract by giving 30 Days' written notice to the Affected Party
- 22 **ANTI-SLAVERY**
- 22.1 The Supplier 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 Contract (including each Supplier Party and/or the Supplier'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**").
- 22.2 The Supplier will (and procure that its Supplier Party/ies or Supplier Personnel will):
- (c) 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;
  - (d) comply with all applicable any anti-slavery policy and/or code of conduct adopted by the Authority from time to time;
  - (e) 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;
  - (f) include in its contracts with its subcontractors and suppliers (including any Supplier Party) anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 22;

- (g) provide the Authority (at the Supplier'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;
  - (h) permit the Authority and any person nominated by it for this purpose to have such access on demand to the Supplier's (or any relevant Supplier Party's) premises, personnel, systems, books and records as the Authority may require to verify the Supplier's compliance with this clause 22.
- 22.3 The Supplier represents and warrants (on behalf of itself and its Supplier Personnel and Supplier Party/ies) that neither the Supplier (its Supplier Party/ies or Supplier 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.
- 22.4 The Supplier will (and procure that its Supplier Party/ies and/or Supplier Personnel) immediately give written notice to the Authority upon a breach, potential or suspected breach, of any of its obligations referred to in clauses 22.1 to 22.3 occurring. The notice will set out full details of the breach or suspected breach or non-compliance.
- 22.5 The Authority may terminate this Contract (or any part thereof as applicable) immediately and without liability by giving written notice to that effect to the Supplier if the Supplier (or any of the Supplier Party/ies or Supplier Personnel) is/are in breach of any of their obligations under this clause 22 or has reasonable cause to believe such a breach has occurred.
- 22.6 The Supplier 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 Supplier (or its Supplier Party/ies or Supplier Personnel) of any of its obligations under this clause 22.
- 23 PREVENTION OF BRIBERY AND CORRUPTION**
- 23.1 The Supplier:
  - (a) shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Contract commit a Prohibited Act or contravene any of the Authority's policies or rules with regard to anti-bribery notified to the Supplier 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 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 Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract.
- 23.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Party or Supplier 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.

- 23.3 The Supplier warrants that:
- (a) neither the Supplier, the Supplier Party/ies or any of the Supplier 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;
  - (b) neither the Supplier, the Supplier Party/ies or any of the Supplier 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 (SI 2015/102) or regulation 80 of the Utilities Contracts Regulations 2016 (SI 2016/274);
  - (c) none of the officers or employees of the Supplier or any person associated with it or any other person who is performing the Services in connection with this Contract is a foreign public official; and/or
  - (d) no foreign public official owns a direct or indirect interest in the Supplier or any person associated with it (including any Supplier Party or the Supplier Personnel) or any other person for whom the Supplier is responsible under this Contract and no public official has any legal or beneficial interest in any payments made by the Authority under this Contract.
- 23.4 The Supplier shall promptly notify the Authority if, at any time during the continuance of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clauses 23.1 and 23.3 at the relevant time. Breach of clauses 23.1 to 23.3 shall be a material breach of this Contract. If the Authority terminates this Contract for breach of clause 23, the Supplier 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
- 23.5 The Supplier 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 Supplier) compliance with this clause 23 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 23.6 The Supplier 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 Supplier Party or Supplier Personnel from committing a Prohibited Act and that are compliant with the Bribery Act and shall enforce it where appropriate.
- 23.7 If any breach of clause 23 is suspected or known, the Supplier must notify the Authority immediately.
- 23.8 If the Supplier notifies the Authority that it suspects or knows that there may be a breach of clause 23, the Supplier 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.
- 23.9 The Authority may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 22.1 to clause 23.3. The expression "not acting

independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Authority; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Supplier ought reasonably to have had knowledge.

23.10 Any notice of termination under clause 23.9 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 Contract will terminate.

23.11 Despite clause 10, any dispute relating to:

- (a) the interpretation of clause 23; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

23.12 Any termination under clause 23.9 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

## 24 **NON-SOLICITATION**

Neither party shall (except with the prior written consent of the other) during the term of this Contract, 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 Contract.

## 25 **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 Supplier 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 Supplier of its obligations to deliver the Services in accordance with the provisions of this Contract.

## 26 **ACCUMULATION OF REMEDIES**

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract 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.

## 27 **SEVERABILITY**

If any provision or part-provision of this Contract 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 Contract.

28 **PARTNERSHIP OR AGENCY**

28.1 Nothing in this Contract 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 Contract.

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

29 **THIRD PARTY RIGHTS**

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

30 **PUBLICITY**

The Supplier shall not:

- (a) make any press announcements or publicise this Contract 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.

31 **NOTICES**

31.1 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 Contract. Notices may be sent by first-class mail or e-mail.

31.2 Notices will be deemed to have been received:

- (a) if hand delivered, on the day delivered;
- (b) if sent by registered post, on the second business day after being sent;
- (c) if sent by email, at the time of transmission.

32 **CHANGES TO THE CONTRACT**

32.1 Changes to the Agreement are permitted only where there is a requirement to alter the method of delivery originally proposed by the Applicant in order to ensure the achievement of project outputs and outcomes in accordance with UKSPF programme timescales.

32.2 No Change to this Contract shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives). Such Change shall be made only where permitted by Regulation 72(1)(b) – (f) of the Public Contracts Regulations 2015. Notwithstanding the provisions of this clause, the Authority may request an emergency Change to this Contract which the Supplier shall not unreasonably refuse to accommodate any Change required as a result of any of the circumstances envisaged under clause 21.

33 **ENTIRE AGREEMENT**

This Contract, 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.

34 **COUNTERPARTS**

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

35      **GOVERNING LAW**

This Contract 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.

36      **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 Contract of its subject matter or formation (including non-contractual disputes).

This Contract 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 Contract.

**Authorised Representative:** the persons respectively designated as such by the Authority and the Supplier, 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 Supplier for the provision of the Services on the terms set out in this Contract 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.

**Brand Guidelines:** means the guidelines applicable to the use by the Supplier of the Authority's brand (including the Marks as defined in the Brand Guidelines) as set out in Schedule 9.

**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.

**Catastrophic Failure:** any action by the Supplier, whether in relation to the Services and this Contract 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 Contract including to any of the Services.

**Charges:** means the charges referred to in clause 6 of the General Terms and more particularly set out in the Payment Schedule.

**Commencement Date:** the date on which this Contract 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 Contract in connection with the Contract, concerning:

- (a) the existence and terms of this Contract;
- (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 Contract.

**Contract:** means this agreement and no other.

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

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

**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.

**Employment Regulations:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Council Directive 77/187/EEC on the approximation of laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

**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.

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

**Future Service Provider:** means any person who provides services to the Authority following the termination or expiry of this Contract or the termination or reduction of any of the obligations (whether indirectly or directly) by the Authority or the Supplier;

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

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

**Intellectual Property Rights:** any and all intellectual property rights of any nature anywhere in the world whether registered, or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars

of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**Insolvency Event:** means, in relation to the Supplier, the occurrence of any of the following events: insolvency, inability to pay its debts as they fall due, admission of its inability to pay its debts, general assignment, arrangement or composition with or for the benefit of its creditors, commencement of insolvency proceedings (including rehabilitation or restructuring, whether instituted by itself or others against it) which, in the case of any proceeding brought by another party against it, has not been dismissed within 30 days, passing of a resolution for its winding-up, official management, liquidation or dissolution (other than pursuant to a consolidation, amalgamation or merger), appointment of an administrator, provisional liquidator, receiver or similar official over its assets or any similar.

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

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

**Payment Schedule:** the document set out at Schedule 6 .

**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 Contract;
- (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 Contract 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.

**Regulated Activity:** in relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 in relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**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 Failure Default:** a failure by the Supplier to provide the Services in accordance with the Service Level Arrangements that the Authority deems shall result in termination of the Contract as set out in the Specification.

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

**SOW:** Statement of Work

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

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

**Supplier's Social Value Response:** means the provisions set out in Schedule 8 .

**Supplier's Tender Response:** the tender response document submitted by the Supplier and other associated documentation set out in Schedule 5 .

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

**Specification:** the specification detailed in Schedule 4 .

**Sub-Contract:** (except in clause 6.10 of the General Terms) any contract between the Supplier and a third party pursuant to which the Supplier 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 Supplier.

**Term:** the period commencing on the Commencement Date and ending on the Termination Date.

**Termination Date:** the date of expiry or termination of this Contract as set out in the Front Sheet, or, if the Front Sheet does not expressly state the Commencement Date, the date on which the Contract is signed.

**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.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 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 Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract 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 Contract 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 Contract) at any time.

#### **Schedule 4    Specification**

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

**Schedule 5    Supplier's Tender Response Document**

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

## **Schedule 6    Payment Schedule**

- 1        Payment to the Supplier will be linked to the delivery of project outputs and outcomes, in accordance with the payment schedule in the table below:

*Guidance - Before signing the Agreement the agreed Payment Schedule linked to the delivery of outputs / outcomes will need to be inserted here.*



## Schedule 7 Data Protection Roles and Responsibilities

1. When both parties act as **independent data controllers** of Contract Personal Data:
  - (a) both parties shall comply at all times with the Data Protection Laws when processing Contract Personal Data which shall include, but not be limited to, where applicable:
    - (i) promptly informing the competent supervisory authority or affected data subjects of a personal data breach;
    - (ii) providing the data subject with required information under the Data Protection Laws' transparency requirements;
    - (iii) complying with any data subject's valid rights requests regarding the processing of their personal data; and
    - (iv) only processing Contract Personal Data where the party has a valid lawful basis to do so;
  - (b) both parties agree not to do, or fail to do, or permit to be done, anything which causes the other party to be in breach of its obligations under the Data Protection Laws;
  - (c) both parties shall establish and maintain a lawful basis for processing the Contract Personal Data in accordance with the Data Protection Laws and, where a party no longer has a lawful basis to process all (or part of) the Contract Personal Data, the party shall permanently and securely delete all the relevant parts of (as applicable) the Contract Personal Data;
  - (d) on written request, each party shall provide (and, if it is updated, shall continue to provide throughout the term of the Agreement) the other party with the party's privacy policy so that the other party may provide said policy to data subjects on request in order to fulfil transparency related obligations or other obligations under the Data Protection Laws; and
  - (e) each party shall provide reasonable cooperation and assistance to the other party to enable the latter party to fulfil its respective obligations under the Data Protection Laws.
2. When one party (the "**Controller**") is a data controller and the other party acts as a data processor (the "**Processor**") appointed on behalf of the Controller in relation to the Contract Personal Data:
  - (a) the parties shall agree the details of the processing and include these details in the "particulars of processing" table set out in paragraph 4 below. The Processor shall only process Contract Personal Data for the purposes of complying with its obligations under this Contract (and for no other purpose whatsoever) and only in accordance with the Controller's written instructions from time to time;
  - (b) the Processor shall comply with its obligations under any applicable laws regarding the Contract Personal Data (including the Data Protection Laws), and shall not by any act or omission put the Controller in breach of any such laws (including the Data Protection Laws). The Supplier will not engage a sub-processor without first receiving the written consent of the Authority and any agreed arrangements with sub-processors must be subject to a written contract;
  - (c) other than as required to do so by applicable law in the UK or European Union (in which case the Processor shall inform the Controller of the relevant legal requirement before processing), the Processor shall only process any Contract Personal Data for the purposes of complying with its obligations under this agreement (and for no other purpose whatsoever) and only in accordance with the Controller's written instructions from time to time;

- (d) the Processor shall notify the Controller as soon as is reasonably practicable if the Processor reasonably believes an instruction from the Controller breaches (or could cause either party to breach) the Data Protection Laws;
- (f) the Processor shall ensure that access to the Contract Personal Data is strictly limited to persons who need access to it as strictly necessary to comply with the Processor's obligations under this agreement and that all such persons are informed of the confidential nature of the Contract Personal Data, are subject to contractual or statutory obligations of confidentiality, are assessed by the Processor to ensure their reliability, and have received appropriate training with regards the processing of personal data and the Data Protection Laws;
- (g) the Processor shall keep appropriate records of all processing activity carried out on behalf of the Controller in accordance with this agreement;
- (h) the Processor shall implement, and at all times during this agreement maintain, appropriate technical and organisational measures to protect the Contract Personal Data (ensuring in each case a level of security appropriate to the risk, including in relation to any special categories of personal data) against unauthorised or unlawful processing or accidental loss or damage;
- (i) without prejudice to the generality of sub-paragraph (g) immediately above, where the Supplier is the Processor, the Supplier shall ensure that it implements any and all measures as may be necessary to ensure that the Contract Personal Data is protected in accordance with the minimum standards notified to the Supplier by the Authority;
- (j) the Processor shall provide to the Controller at any time on request a detailed written description of the technical and organisational measures in place to protect the Contract Personal Data as required under sub-paragraph (g) above;
- (k) the Processor shall not transfer the Contract Personal Data to countries outside the UK or the European Economic Area ("EEA") without Controller's prior written authorisation (not to be unreasonably withheld or delayed) and, at the reasonable request of the Controller, shall enter into a separate written agreement relating to the transfer of personal data outside of the UK or EEA (or otherwise enter into an alternative arrangement as may be approved under the Data Protection Laws relating to the transfer of data outside of the UK or EEA). The parties may agree to pre-authorise specific transfers of Agreement Personal Data in the particulars or processing table set out in paragraph 4 below. This provision shall equally apply to circumstances where the Supplier is a Joint Controller in respect of the relevant Personal Data;
- (l) the Processor shall promptly and fully notify the Controller in writing of any notices received by the Processors (or any sub-processor) relating to the processing of any Contract Personal Data, including requests from individual data subjects in relation to the exercise of their rights (including subject access requests), complaints and/or correspondence from any regulatory body including any competent data protection supervisory authority and provide such information and assistance as the Controller may reasonably require in relation to any such notice;
- (m) the Processor shall assist the Controller in meeting the Controller's obligations regarding the exercise of data subjects' rights in accordance with the Data Protection Laws;
- (n) the Processor shall assist the Controller in meeting the Controller's obligations under the Data Protection Laws with respect to data security, breach notification (including notifications to competent supervisory authorities and/or data subjects), data protection impact assessments and prior consultation with or notification to a competent data protection supervisory authority;

- (o) in the event of a Personal Data Breach or reasonably suspected Personal Data Breach in relation to Contract Personal Data, the Processor shall (without prejudice to sub-paragraph (o) above:
  - (i) immediately (or as soon as practicable thereafter and in any event within 24 hours of becoming aware of the relevant incident) provide the Controller with details in writing of the Personal Data Breach, potential breach or threat. Where the Controller is the Authority, the Supplier shall contact the Authority by emailing [infocompliance@torbay.gov.uk](mailto:infocompliance@torbay.gov.uk);
  - (ii) immediately initiate a full investigation and take appropriate steps to remedy the Personal Data Breach or prevent the potential breach or remove the threat;
  - (iii) promptly implement measures to ensure there is no repetition of the incident in the future;
  - (iv) promptly (and in any event within 48 hours of becoming aware of the relevant incident) provide the Controller with full details in writing of the steps and measures taken to mitigate risks and comply with this agreement and the Data Protection Laws; and
  - (v) comply with all reasonable requests made by the Controller in respect of the same;
- (p) the Processor shall not permit any processing of the Contract Personal Data by any agent, sub-contractor, service provider or other third party ("**sub-processor**") without the prior written authorisation of the Controller in each case, and shall ensure in each case that prior to the sub-processor processing any Contract Personal Data, terms equivalent to this Schedule 7 paragraph 2 are included in a written contract between the Processor and any sub-processor engaged in the processing of Contract Personal Data;
- (q) on request at any time and on termination of this agreement, at the Controller's option either return to the Controller all Contract Personal Data and copies of it in such format as the Controller may require or, at the Controller's written request, securely destroy the Contract Personal Data in any manner the Controller may specify; and
- (r) at the reasonable request of the Controller, make available to the Controller all information reasonably necessary to demonstrate the Processor's (and any sub-processor's) compliance with this clause Schedule 3 paragraph 2 and on reasonable prior notice and on reasonable terms, permit the Controller and its representatives to inspect and audit the Processor's data processing activities (and those of its sub-processors) and comply with all reasonable requests to enable the Controller to verify that the Processor (and any sub-processor) is complying with this Schedule 7 paragraph 2.

3. When the parties act as **joint data controllers** of Contract Personal Data:

- (a) the parties shall specify in writing:
  - (i) their respective roles in relation to the Contract Personal Data; and
  - (ii) their respective responsibilities for compliance with the Data Protection Laws, in particular but without limitation as regards to the obligation to provide information to individual data subjects and the exercising of the rights of individual data subjects;

- (b) both parties shall comply at all times with the Data Protection Laws when processing Contract Personal Data;
- (c) both parties agree not to do, or fail to do, or permit to be done, anything which causes the other party to be in breach of its obligations under the Data Protection Laws; and
- (d) each party shall provide reasonable cooperation and assistance to the other party to enable the latter party to fulfil its respective obligations under the Data Protection Laws.

4. Whenever the parties are required to describe the processing of Contract Personal Data in accordance with paragraph 3(a) above, the following shall be completed and shall apply:

<b>Role of Supplier</b>	Data Processor acting on behalf of the Authority in respect of the processing of Contract Personal Data described below.  <b>OR</b>  Joint Data Controller with the Authority in respect of the Contract Personal Data below.
<b>Subject matter of the processing</b>	Processing of the Contract Personal Data in connection with the provision of the Services.
<b>Duration of the processing</b>	[Describe the duration of the processing, e.g. by reference to a fixed period, or the term of the Contract.]
<b>Nature and purpose of the processing</b>	[Describe the nature and purpose of the processing, e.g. "Hosting of HR data in UK-based servers and the provision of outsourced payroll services on behalf of the Authority.]
<b>Type of personal data processed</b>	[Describe the types of personal data being processed, e.g. "HR data including employee name, employee ID number, role, salary details, bank details, home address" etc.]
<b>Categories of data subjects</b>	[Describe the data subjects, e.g. "staff and third party contractors working for the Authority"]
<b>Method of Processing</b>	[Describe how the Data will be processed]
<b>Rights and obligations of the controller</b>	As described in the Contract dated [date].
<ul style="list-style-type: none"> <li>• <b>Approved sub-processors and in each case:</b> <ul style="list-style-type: none"> <li>○ <b>Nature and purpose of processing</b></li> <li>○ <b>Location of processing</b></li> </ul> </li> </ul>	[List approved sub-contractors as may be provided for by Schedule 7, paragraph 3(q)] [or] [N/A]
<b>Details of approved international transfers of Contract Personal Data together with details of approved transfer mechanisms</b>	[As provided for by Schedule 7, paragraph 3(l)] [or] [N/A]
<b>Details of the technical and organisational measures in place to protect Contract Personal Data.</b>	[Provide details of measures employed]

**Schedule 8    Not Used**

## **Schedule 9 Brand Guidelines/Not Used**

1. If granted permission to use the Authority's visual identity, logo, trade marks or trade names (**Marks**), you will do so in accordance with these terms.
2. Permission is granted on a case-by-case basis. Further usage must be granted via subsequent requests.
3. The Authority's grant of permission at one point does not prevent it from revoking that permission at a later point. Any revocation can be for whatever reason and at the complete discretion of the Authority.
4. The Authority owns and reserves all rights (including Intellectual Property Rights) in the Marks and these are protected by law. Save as set out in these Brand Guidelines nothing in this Contract transfers or shall be deemed to transfer or otherwise grant any rights in the Marks to the Supplier or any other party.
5. The Authority's identity is provided 'as is' and must not be altered in any way.
6. The Supplier agrees to use the Marks only in accordance with these Brand Guidelines.
7. If the Authority approves the Supplier's request to use the Marks, the Supplier agrees to be bound by these Brand Guidelines.
8. The Supplier agrees to comply with the Authority's visual identity guidelines. So long as the Supplier does so, and provided that the Authority expressly approves the Supplier's permission request, the Authority grants the Supplier a non-transferable, non-exclusive, royalty-free limited licence to use the Marks set out in any written Supplier corresponding Permission Request Form for the sole purpose and duration set forth therein.
9. Mock ups of all items that include the Marks should be emailed to [design@torbay.gov.uk](mailto:design@torbay.gov.uk) in the first instance for approval by the Authority prior to production.
10. The Authority reserves the right in its sole discretion to terminate or modify the Supplier's permission to display or use the Marks, and to take action against any use that does not conform to these Brand Guidelines, infringes any Authority Intellectual Property Right or other right, or violates applicable law.
11. Except as set out in these Brand Guidelines, nothing in this Contract grants or should be deemed to grant to the Supplier any right, title or interest in or to the Authority's visual identity or the Marks.
12. The Supplier agrees not to challenge or assist others to challenge the Authority's visual identity or Marks (except to the extent such restriction is prohibited by applicable law), and the Supplier agrees not to register or attempt to register any sub-brands, domain names, trademarks, trade names, or other distinctive brand features that may be similar to those of the Authority (including without limitation in respect of the Marks).
13. The Marks are provided "as is" and must not be altered in any way.
14. The Supplier may not assign its rights or delegate its obligations under these Brand Guidelines without the Authority's prior written consent. The Brand Guidelines are not intended to benefit, nor shall they be deemed to give rise to, any rights in any third party. These Brand Guidelines, the Contract and the Permission Request Form, constitute the entire agreement between the parties with respect to the use of the Marks.

## Schedule 10 Performance Monitoring

1 The Authority requires good quality service. The Supplier acknowledges this requirement and undertakes to use its best endeavours to provide such a service based on the philosophy of "Get it right first time. The Authority shall be entitled to take steps to ascertain whether the Supplier has performed the Service and that they have done so in complete accordance with the Agreement.

2 The Supplier's performance will be measured against delivery of the following Outputs and Outcomes:

**Guidance: The Outputs / Outcomes table from the Applicant's tender response document will be inserted here prior to issuing the Agreement.**

3 Within 4 weeks following the end of each quarter the Supplier shall submit to the Authority a report in respect of the quarter just ended detailing the outputs and outcomes achieved during the quarter.

4 Where any agreed outputs or outcomes have not been met the Supplier shall explain why they have not been met and shall provide a plan for bringing delivery back on track.

5 As a minimum the Authority and the Supplier shall meet monthly to monitor the delivery of the service and performance of this Agreement.

6 The Supplier shall report on the Outputs and Outcomes for the entire duration of the Contract.

### 7 Default and Remedies

7.1 The Authority will issue a Default Notice to the Supplier when:

- (a) the Supplier's delivery of any of the agreed outputs and/or outcomes have not been met in accordance with the schedule at paragraph 2 above and the Supplier has not been able to provide a plan for bringing delivery back on track; or
- (b) the Supplier fails to meet an agreed plan to bring delivery back on track.

7.2 The Default Notice will set out:

- (a) details of the incident(s) of non-performance;
- (b) any additional information in relation to the incident(s) of non-performance;
- (c) a timeframe for rectification by the Supplier of the incident(s) of non-performance, including submission of a remedial action plan;
- (d) details of any consequences of failing to rectify the non-performance within the agreed timeframe.

7.3 Where a Default Notice is issued, the Supplier will acknowledge receipt within one Working Day. The Supplier will provide the Authority with a Remedial Action Plan for approval by the Authority, within the timescale specified within the Default Notice. Once agreed by the Authority, the Supplier will implement the Remedial Action Plan within the agreed timescale.

7.4 The Remedial Action Plan must set out:

- (a) details of the incident(s) of non-performance;
- (b) the actions required to make the necessary improvements;
- (c) the dates on which the actions will be completed;
- (d) who will be responsible for completing the actions;
- (e) any issues or concerns, if applicable, that the Supplier has and wants to raise with the Authority, in order to assist with the completion of the necessary actions.

7.5 Should the Supplier fail to remedy the issue referred to in a Default Notice then the Authority shall have power to rely on the provisions of clause **Error! Reference source not found.** Termination of the Key Provisions depending upon the nature and seriousness of the breach.

- 7.6 The Authority reserves the right to notify the Supplier's Chief Executive and/or Board of Directors or any relevant Regulatory Body of the default in order that each of them may take whatever steps they think are appropriate.
- 7.7 If the Supplier breaches a Remedial Action Plan:
- (a) the Authority may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority, from the date of issuing the Default Notice in respect of the breach and for each month the Supplier's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority in relation to each Remedial Action Plan;
  - (b) the Authority must pay the Supplier any sums withheld under paragraph 7.7(a) above within 10 Working Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to paragraph 7.8 below no interest will be payable on those sums.
- 7.8 If the Authority withholds sums under paragraph above and within 20 Working Days of the date of that withholding the Supplier produces evidence satisfactory to the Authority that the relevant sums were withheld unjustifiably, the Authority must pay those sums to the Supplier within 10 Working Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld. If the Authority does not accept the Supplier's evidence the Supplier may refer the matter to dispute resolution.
- 7.9 If the Supplier does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Agreement, the Authority may retain permanently any sums withheld under paragraph 7.7(a) above7.7 above.