



**TORBAY COUNCIL STANDING LIST  
AGREEMENT, INCORPORATING CALL-OFF  
TERMS AND CONDITIONS**

***Contract between***

**The Authority**

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

***And***

**The Contractor**

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

***Date***

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

***Commencement Date***

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

***Summary of Services***

**[Lot 2 – Approved Social Worker Agency Providers]**

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

The Contractor shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of the call-off Contract.

The Definitions in Schedule 2 apply to the use of all capitalised terms in this Agreement and call-off Contract.

### Schedules

<b>Schedule 1</b>	Standing List Arrangements and Award Procedure
<b>Schedule 2</b>	Definitions and Interpretation
<b>Schedule 3</b>	Specification
<b>Schedule 4</b>	Contractor's Tender Response Document
<b>Schedule 5</b>	Payment Schedule
<b>Schedule 6</b>	Not Used
<b>Schedule 7</b>	Not Used
<b>Schedule 8</b>	Not Used
<b>Schedule 9</b>	Evidence of Insurance
<b>Schedule 10</b>	Not Used
<b>Schedule 11</b>	Change Control
<b>Schedule 12</b>	Not Used
<b>Schedule 13</b>	Form of Default Notice
<b>Schedule 14</b>	Data Processing Agreement
<b>Schedule 15</b>	Call-Off Contract – Key Provisions
<b>Schedule 16</b>	Call-Off Contract – General Terms
<b>Schedule 17</b>	Call-Off Contract – Special Conditions
<b>Schedule 18</b>	Call-Off Contract – Minimum Service Standard
<b>Schedule 19</b>	Call-Off Order Form

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

COMMON SEAL

in the presence of:

.....

Name

Position

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

Name:		Signature	
Position:			

## **Schedule 1. Standing List Arrangements and Award Procedure**

### **Background**

- (A) The Authority placed a contract notice 2019/S 159-392832 on 20 August 2019 in the Official Journal of the European Union seeking expressions of interest from potential service providers for the provision of Services (divided into Lots) to itself and the Other Contracting Bodies identified in the contract notice under a Standing List agreement.
- (B) Following receipt of expressions of interest, the Authority invited potential service providers (including the Contractor) on 20 August 2019 to tender for the provision of Torbay Council Standing List for:
  - Lot 1 – Approved Temporary Agency Staff Providers
  - Lot 2 – Approved Social Worker Agency Providers.
- (C) On the basis of the Contractor's Tender, the Authority selected the Contractor to enter a Standing List agreement to provide services, in accordance with this Standing List Agreement, to the Authority.
- (D) This Standing List Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Contractor under this Standing List Agreement.
- (E) It is the Parties' intention that the Authority has no obligation to place Orders with the Contractor under this Standing List Agreement or at all.
- (F) Documents that form part of this Agreement are:
  - (i) the completed tender documents including the Specification, Contractor Tender Response Payment Schedule, and any other supporting documentation; and
  - (ii) the Front Sheet and its associated Schedules.

### **1. Term of Standing List Agreement**

The Standing List Agreement shall take effect on the Commencement Date and (unless it is terminated in accordance with the terms of this Standing List Agreement or is otherwise lawfully terminated) shall terminate at the end of the Term.

### **2. Scope Of Standing List Agreement**

- 2.1 This Standing List Agreement governs the relationship between the Authority and the Contractor in respect of the provision of the Services by the Contractor to the Authority.
- 2.2 The Authority appoints the Contractor as a Standing List Provider of the Services and the Contractor shall be eligible to receive Orders for such Services from the Authority during the Term.
- 2.3 The Authority may, at its absolute discretion and from time to time, order Services from the Contractor in accordance with the ordering procedure set out in Clause 4 during the Term. The Parties acknowledge and agree that the Authority has the right to order Services pursuant to this Standing List Agreement provided that they comply at all times with the Regulations and the ordering procedure in Clause 4.1. If there is a conflict between Clause 4 and the Regulations, the Regulations shall take precedence.

- 2.4 If and to the extent that any Services under this Standing List Agreement are required the Authority shall:
- (a) Enter into a contract with the Contractor for these Services materially in accordance with the terms of the Contract; and
  - (b) comply with the ordering procedure in Clause 3.2.
- 2.5 The Contractor acknowledges that, in entering this Standing List Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for the Services and that the Authority is at all times entitled to enter into other contracts and arrangements with other contractors for the provision of any or all services which are the same as or similar to the Services.
- 2.6 The Authority shall not in any circumstances be liable to the Contractor or any Other Contracting Body for payment or otherwise in respect of any Services provided by the Contractor to any Other Contracting Body.

### **3. Award Procedures**

#### **Awards under the Standing List Agreement**

- 3.1 When a new requirement for an Agency Worker arises, all Providers on the relevant Standing List will be invited to put forward Candidate's for the available temporary position and the selection will be based upon an assessment of the Candidate's CV and the outcome following an interview undertaken by the Authority.

#### **Standard Services provision (awards procedure)**

- 3.2 Any Customer ordering Standard Services under the Standing List Agreement shall:
- (a) identify the relevant Lot which its Standard Services' requirements fall into;
  - (b) Contact all Providers on the relevant Standing List and invite them to put forward Candidate's for the available temporary position;
  - (c) Select the Candidate based upon an assessment of the Candidate's CV and the outcome following an interview undertaken by the Authority.
  - (d) Send an Order to the Standing List Provider who has proposed the most suitable Candidate for the available temporary position;
  - (e) If for any reason, the Standing List Provider who was who has proposed the most suitable Candidate for the available temporary position, is unable to supply the Candidate, the Customer will send an Order to the Standing List Provider who can supply the next most suitable candidate;
  - (f) Repeat the process set out in clauses 3.2(c) to (e) until the Order is fulfilled or there are no further Standing List Providers available to fulfill it.
- 3.3 Notwithstanding the fact that the Authority has followed the procedure set out above for Standard Services, the Authority may cancel, postpone, delay or end the procedure without placing an Order for Services or awarding a Contract. Nothing in this Standing List Agreement shall oblige the Authority to place any Order for Services.

### **Responsibility for awards**

- 3.4 The Contractor acknowledges that each Customer is independently responsible for the conduct of its award of Contracts under the Standing List Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- (a) the conduct of Other Contracting Bodies in relation to the Standing List Agreement; or
  - (b) the performance or non-performance of any Contracts between the Contractor and Other Contracting Bodies entered into pursuant to the Standing List Agreement.

### **Form of Order**

- 3.5 Subject to clause 3.1 to clause 3.4 above, the Authority may place an Order with the Contractor by serving an order in writing in substantially the form set out in Schedule 19 or such similar or analogous form agreed with the Contractor including systems of ordering involving fax, e-mail or other online solutions.

### **Accepting and declining Orders**

- 3.6 Following receipt of an Order, the Contractor shall promptly and in any event within a reasonable period determined by the Authority and notified to the Contractor in writing at the same time as the submission of the Order (which in any event shall not exceed three Working Days) acknowledge receipt of the Order and either:
- (a) notify the Authority in writing and with detailed reasons that it is unable to fulfil the Order; or
  - (b) notify the Authority that it is able to fulfil the Order by signing and returning the Order Form.
- 3.7 If the Contractor:
- (a) notifies the Authority that it is unable to fulfil an Order; or
  - (b) the time limit has expired;

then the Order shall lapse and the Authority may then send that Order to another Standing List Provider in accordance with the procedure set out in clause 3.2(e)

- 3.8 If the Contractor modifies or imposes conditions on the fulfillment of an Order, then the Authority may either:
- (a) reissue the Order incorporating the modifications or conditions; or
  - (b) treat the Contractor's response as notification of its inability to fulfil the Order and the provisions of Clause 4.9 shall apply.
- 3.9 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Authority. Accordingly, the Contractor shall sign and return the Order Form which shall constitute its offer to the Authority. The Authority shall signal its acceptance of the Contractor's offer and the formation of a Contract by counter-signing the Order Form.

## **4. Contract Performance and Precedence Of Documents**

- 4.1 The Contractor shall perform all Contracts entered into with the Authority in accordance with:
- (a) the requirements of this Standing List Agreement; and

(b) the terms and conditions of the respective Contracts.

4.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Standing List Agreement and the terms and conditions of a Call-Off Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

(a) the clauses of the call off Contract;

(b) the Order Form;

(c) the terms of the Standing List Agreement, the Schedules to the Standing List Agreement; and

(d) any other document referred to in the clauses of the call off Contract.

## **5. Prices for Services**

5.1 The prices offered by the Contractor for Contracts to Customers for Standard Services shall be the prices listed in the Pricing Matrix for the relevant Lot and such prices shall be adjusted in accordance with the provisions of Schedule 5.

5.2 The prices offered by the Contractor for Contracts to Customers for Completed Services shall be based on the prices set out in the Pricing Matrices.

## **Schedule 1 Contractor's General Standing List Obligations**

## **6. Warranties and Representations**

The Contractor warrants and represents to the Authority and to each of the Other Contracting Bodies that:

(a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Standing List Agreement;

(b) this Standing List Agreement is executed by a duly authorised representative of the Contractor;

(c) in entering into this Standing List Agreement or any Contract it has not committed any Prohibited Act;

(d) as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Standing List Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;

(e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Standing List Agreement and any Contract which may be entered into with the Authority or Other Contracting Bodies;

- (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Standing List Agreement and any Contract; and
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.
- (h) In performing its obligations under the agreement, the Contractor shall and shall ensure that each of its subcontractors shall comply with:
  - (i) all applicable laws, statutes, regulations and codes from time to time in force including, but not limited to, the Modern Slavery Act 2015; and
  - (ii) in accordance with Customer's the Anti-slavery Policy.(if any)

## **7. Service Pre-Requisites**

The Contractor shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Standing List Agreement and any Contract.

## **Contractor's Information Obligations**

### **8. Reporting and Meetings**

- 8.1 The Contractor shall submit Management Information to the Authority in the form set out in Schedule 3 throughout the Term on the last day of every third Month and thereafter in respect of any Contract entered into with the Authority.
- 8.2 The Authorised Representatives shall meet in accordance with the details set out in Schedule 3 and the Contractor shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule.
- 8.3 The Authority may share the Management Information supplied by the Contractor with any Other Contracting Body.
- 8.4 The Authority may make changes to the nature of the Management Information that the Contractor is required to supply and shall give the Contractor at least one month's written notice of any changes.

### **9. Records and Audit Access**

- 9.1 The Contractor shall keep and maintain until seven years after the date of termination or expiry (whichever is the earlier) of this Standing List Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Standing List Agreement including the Services provided under it, the Contracts entered into with Customers and the amounts paid by the Authority.
- 9.2 The Contractor shall keep the records and accounts referred to in Clause 9.1 above in accordance with good accountancy practice.
- 9.3 The Contractor shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.

- 9.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Term and for a period of seven years after expiry of the Term to the Authority and the Auditor.
- 9.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services pursuant to the Contracts, save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 9.6 Subject to the Authority's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit;
  - (b) reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and
  - (c) access to the Staff.
- 9.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 9, unless the Audit reveals a Material Default by the Contractor in which case the Contractor shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

## **10. CONFIDENTIALITY**

- 10.1 Subject to Clause 10.2, the Parties shall keep confidential all matters relating to this Standing List Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 10.2 Clause 10.1 shall not apply to any disclosure of information:
- (a) required by any applicable law;
  - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Standing List Agreement;
  - (c) that is reasonably required by Other Contracting Bodies;
  - (d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 9.1;
  - (e) by the Authority of any document to which it is a party and which the Parties to this Standing List Agreement have agreed contains no Confidential Information;
  - (f) to enable a determination to be made under Clause 20;
  - (g) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
  - (h) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
  - (i) by the Authority relating to this Standing List Agreement and in respect of which the Contractor has given its prior written consent to disclosure.

## **11. Insurance**

The Contractor is required to maintain insurances at the level set out in the tender documents for the duration of this Standing List Agreement.

## **12. Data Protection**

12.1 The Contractor shall (and shall procure that any of its Contractor's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

12.2 Notwithstanding the general obligation in Clause 12.1, where the Contractor is processing Personal Data as a Data Processor for the Authority, the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 14 to the DPA; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;
- (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to Clause 13.2; and ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

### **12.3 Intellectual Property**

12.3.1 The Contractor hereby assigns to the Authority, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services .

12.3.2 The Contractor shall, promptly at the Authority's request, do or procure to be done all such further acts and things and the execution of all such other documents as the Authority may from time to time require for the purpose of securing for the Authority the full benefit of this agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Authority in accordance with clause 12.3.1.

## **13. Freedom of Information**

13.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Contractor shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

13.2 The Contractor 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 Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) 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.

#### **14. Publicity**

- 14.1 Unless otherwise directed by the Authority, the Contractor shall not make any press announcements or publicise this Standing List Agreement in any way without the User Authority's prior written consent.
- 14.2 The Authority shall be entitled to publicise this Standing List Agreement in accordance with any legal obligation on the Authority, including any examination of this Standing List Agreement by the Auditor or otherwise.
- 14.3 The Contractor shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

#### **15. Guarantee**

Before the Commencement Date and at the request of each Other Contracting Body, the Contractor shall procure that the Guarantor shall:

- (a) execute and deliver to the Authority or the relevant Other Contracting Body the Guarantee;
- (b) deliver to the Authority or Other Contracting Body a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

### **Standing List Agreement Termination and Suspension**

#### **16. Termination**

##### **Termination on Default**

- 16.1 The Authority may terminate the Standing List Agreement by serving written notice on the Contractor with effect from the date specified in such notice:
  - (a) where the Contractor commits a material breach and:
    - (i) the Contractor has not remedied the material breach to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or
    - (ii) the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or

- (b) where the Authority terminates a Contract awarded to the Contractor under this Standing List Agreement as a consequence of a material breach by the Contractor;
- (c) any warranty given by the other party in Clause 7 of this agreement is found to be untrue or misleading;
- (d) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

16.2 For the purposes of Clause 16.1(a) **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations under this agreement.

over 14 working days. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

#### **Termination on insolvency and Change of Control**

16.3 Without affecting any other right or remedy available to it, the Authority may terminate this agreement with immediate effect by giving written notice to the Contractor if:

- (a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Contractor with one or more other companies or the solvent reconstruction of the Contractor];
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor (being a company);
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
- (g) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued

against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;

- (h) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 16.3(a) to Clause 16.3 (h) (inclusive); or
- (i) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.4 The Contractor shall notify the Authority immediately if the Contractor undergoes a Change of Control. The Authority may terminate the Standing List Agreement by giving notice in writing to the Contractor with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control;
- (c) but shall not be permitted to terminate where an Approval was granted before the Change of Control.

#### **Termination by Authority for convenience**

16.5 The Authority shall have the right to terminate this Standing List Agreement, or to terminate the provision of any part of the Standing List Agreement at any time by giving a minimum of three months' written notice to the Contractor and all other Standing List Providers. The Parties acknowledge that if the Authority exercises its rights under this Clause 16.5 it shall exercise its equivalent rights under all agreements with the Standing List Providers.

#### **17. SUSPENSION OF CONTRACTOR'S APPOINTMENT**

17.1 Without prejudice to the Authority's rights to terminate the Standing List Agreement in Clause 16 above, if a right to terminate this Standing List Agreement arises in accordance with Clause 16, the Authority may suspend the Contractor's right to receive Orders from Customers in any or all Contractor's Lots by giving notice in writing to the Contractor. If the Authority provides notice to the Contractor in accordance with this Clause 17, the Contractor's appointment shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Authority in writing from time to time.

17.2 Where a Contractor fails to put forward any candidates, in any six month rolling period, the Authority reserves the right to suspend the Contractor's appointment to the Standing List.

17.3 The Contractor will be given the opportunity to explain why they have not put forward any candidates, before a decision to suspend is made.

#### **18. CONSEQUENCES OF TERMINATION AND EXPIRY**

18.1 Notwithstanding the service of a notice to terminate the Standing List Agreement, the Contractor shall continue to fulfill its obligations under the Standing List Agreement until the date of expiry or termination of the Standing List Agreement or such other date as required under this Clause 18.

18.2 Unless expressly stated to the contrary, the service of a notice to terminate the Standing List Agreement shall not operate as a notice to terminate any Contract made under the Standing

List Agreement. Termination or expiry of the Standing List Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

- 18.3 Within 30 Working Days of the date of termination or expiry of the Standing List Agreement, the Contractor shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Contractor's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Standing List Agreement, or such period as is necessary for such compliance.
- 18.4 Termination or expiry of this Standing List Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Standing List Agreement before termination or expiry.
- 18.5 The provisions of Clause 6, Clause 9, Clause 10, Clause 11, Clause 12, Clause 13, Clause 14, Clause 18, Clause 21, and Clause 30 shall survive the termination or expiry of the Standing List Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## **19. Complaints Handling and Resolution**

- 19.1 The Contractor shall notify the Authority of any Complaint made by Other Contracting Bodies within five Working Days of becoming aware of that Complaint and such notice shall contain full details of the Contractor's plans to resolve such Complaint
- 19.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Standing List Agreement or a Contract, and without prejudice to any obligation of the Contractor to take remedial action under the provisions of the Standing List Agreement or a Contract, the Contractor shall use its best endeavours to resolve the Complaint within ten Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

## **20. Dispute Resolution**

- 20.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Standing List Manager of the Authority and Standing List Manager of the Contractor shall attempt in good faith to resolve the Dispute;
  - (b) if the Standing List Manager of the Authority and Standing List Manager of the Contractor are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Director of Corporate Services of the Authority and [SENIOR OFFICER TITLE] of the Contractor who shall attempt in good faith to resolve it; and

- (c) if the Director of Corporate Services of the Authority and [SENIOR OFFICER TITLE] of the Contractor 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 90 days after the date of the ADR notice.

20.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under Clause 30 which clause shall apply at all times.

## **General Provisions**

### **21. Prevention of Bribery**

21.1 The Contractor:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Standing List Agreement and any Contract made under it commit a Prohibited Act; and
- (b) 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 Standing List Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Standing List Agreement.

21.2 The Contractor shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Customer'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 2010; and
- (b) within 20 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 Contractor) compliance with this Clause 21 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Standing List Agreement. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

21.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

21.4 If any breach of Clause 21.1 is suspected or known, the Contractor must notify the Authority immediately.

21.5 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of Clause 21, the Contractor must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant

documents. This obligation shall continue for six years following the expiry or termination of this Standing List Agreement.

- 21.6 The Authority may terminate this Standing List Agreement by written notice with immediate effect if the Contractor, its Staff or Sub-Contractors (in all cases whether or not acting with the Contractor's knowledge) breaches Clause 21.1(a) with the authority or with the actual knowledge of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be)
- 21.7 Any notice of termination under Clause 21.6 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 Standing List Agreement will terminate.
- 21.8 Despite Clause 21, any dispute relating to:
- (a) the interpretation of this Clause 21; 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.
- 21.9 Any termination under this Clause 21 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

## **22. Subcontracting and Assignment**

- 22.1 Subject to Clause 22.2 and Clause 22.3 either party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Standing List Agreement without the prior written consent of the other party, neither may the Contractor subcontract the whole or any part of its obligations under this Standing List Agreement except with the express prior written consent of the Authority.
- 22.2 The Authority shall be entitled to novate the Standing List Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 22.3 Provided that the Authority has given prior written consent, the Contractor shall be entitled to novate the agreement where:
- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
  - (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.
- 22.4 The Contractor shall be entitled to novate the agreement where:
- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
  - (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency,

by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement;

(c) (a) and (b) above are subject to this condition (c) as follows:

- (a) The Contractor acknowledges by executing this agreement that in any of the circumstances set out in (a) and (b) that any organisation or contractor to whom this Agreement is novated or becomes a successor under the circumstances set out in (b) above will enter into a warranty with the Contractor as a part of the Novation or arrangements set out in (b) above [and/or an agreement with the Authority (at the Authority's option)] in accordance with the terms set out in Clause c (ii) below.
- (b) Any organisation to whom this agreement is novated or is a successor within the meaning of (b) above will take any such novation or succession subject to a condition that it will enter competitions on the costs and terms contained in this agreement and the tender submitted by the Contractor. It will agree not to seek to vary or alter the terms or pricing accepted by the Authority. Any approach to alter the terms and pricing by a novated organisation or successor will entitle the Authority to terminate forthwith.

22.5 Payment to sub-contractors under the Public Contract Regulations 2015;

The Contractor shall include in every Sub-contract;

- (a) a right for the Contractor to terminate that Sub-contract if the relevant Sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law; and
- (b) a requirement that the Sub-contractor includes a provision having the same effect as (a) above in any Sub-contract which it awards.

In this clause, 'Sub-contract' means a contract between two or more contractors, 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 Agreement.

### **23. Variations to Standing List Agreement**

Any variations to the Standing List Agreement must be made only in accordance with the Standing List Agreement Change Control Procedure set out in Schedule 10.

### **24. Third Party Rights**

24.1 Except as provided in Clause 2, Clause 3 and Clause 6.1, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

24.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

### **25. Severance**

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

25.2 If one party gives notice to the other of the possibility that] any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**26. Rights and Remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**27. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**28. Entire Agreement**

28.1 This Standing List Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this Clause 28 shall operate to exclude any liability for fraud.

28.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Standing List Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Standing List Agreement.

**29. NOTICES**

29.1 Except as otherwise expressly provided within this Standing List Agreement, no notice or other communication from one Party to the other shall have any validity under the Standing List Agreement unless made in writing by or on behalf of the Party sending the communication.

29.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), (confirmed [in either case] by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 29.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of e-mail or fax or sooner where the other Party acknowledges receipt of such letters, or fax or e-mail.

29.3 For the purposes of Clause 29.2, the address of each Party shall be:

(a) For the Authority:

Name:

Address:

For the attention of:

Tel:

E-mail:

(b) For the Contractor:

[NAME OF SERVICE PROVIDER'S AUTHORISED REPRESENTATIVE]

Address:

For the attention of:

Tel:

E-mail:

29.4 Either Party may change its address for service by serving a notice in accordance with this clause.

### **30. Governing Law and Jurisdiction**

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

30.2 Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Standing List Agreement or its subject matter or formation (including non-contractual disputes or claims).

## Schedule 2. Definitions and Interpretation

### 1 Definitions and Interpretation

#### 1.1 The definitions and rules of interpretation in this clause apply in this Standing List Agreement and call-off Contract

**Approval:** means the prior written approval of the Authority.

**Audit:** means an audit carried out pursuant to clause 19 of the Call-Off Contract – General Terms

**Auditor:** means the National Audit Office or an auditor appointed by the Authority as the context requires.

**Authority:** means Torbay Council

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

**Authority Assets:** any materials, consumables, resources, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services as set out in Schedule 3.

**Authority Premises:** the premises which are to be made available for use by the Contractor for the provision of the Services on the terms set out in this Standing List Agreement (and Call-Off Contract) as set out in the Specification.

**Award Criteria:** means the Standard Services Award Criteria and/or the Competed Services Award Criteria as the context requires.

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

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

**Call-Off Contract:** means the terms and conditions in Schedule 15 to Schedule 19 and no other.

**Call-off Terms and Conditions:** means the terms and conditions in Schedule 15 to Schedule 19.

**Catastrophic Failure:** any action by the Contractor, whether in relation to the Services and this Standing List Agreement (and Call-Off 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 Standing List Agreement (and Call-Off Contract) including to any of the Services.

**Change Control Procedure:** the procedure for making a Change, as set out in clause 33 of the Call-Off Terms.

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

**Commencement Date:** the date on which this Standing List Agreement commences as set out on the Front Sheet, or, if the Front Sheet does not expressly state the Commencement Date, the date on which the Standing List Agreement (and Call-Off 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 Standing List Agreement in connection with the Standing List Agreement, concerning:

- a) the existence and terms of this Standing List Agreement (and Call-Off Contract);
- b) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, affairs, customers, clients, Contractors, 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 Standing List Agreement (and Call-Off Contract).

**Customer:** means the Authority and any other contracting authority (as defined in regulation 2 of the Regulations) described in the OJEU Notice.

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

**Data Processor:** shall have the same meaning as set out in the General Data Protection Regulation.

**Data Protection Legislation:** means all current UK legislation that relates to Data Protection.

**Default:** means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

**Default Notice:** is defined in clause 0 of the Call-Off Contract Terms.

**Dispute:** a dispute arising out of or in connection with this Standing List Agreement (and Call-Off Contract) or the performance, validity or enforceability of it.

**Dispute Resolution Procedure:** the procedure set out in clause 12 of the Call-Off Contract Terms.

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

**Exit Management Plan:** the plan (if any) – Not Used.

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

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

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

**Guidance:** means any guidance issued or updated by the UK government from time to time in relation to the Regulations.

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

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

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

**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:** where;

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

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

**Law:** means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

**Lots:** means the Services divided into lots as referred to in the OJEU Notice and set out in Part 2 Specification.

**Management Information:** means the management information specified in Schedule 15.

**Key Personnel:** those personnel identified in the Specification for the roles attributed to such personnel, as modified from time to time in accordance with the terms of this Standing List Agreement (and Call-Off Contract).

**Key Provisions:** the terms set out in Schedule 15.

**Management Reports:** the reports to be prepared and presented by the Contractor in accordance with clause 15 of the Key Provisions and the Specification.

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

**OJEU Notice:** means the contract notice given at the beginning of this Agreement and published in the Official Journal of the European Union.

**Order:** means an order for Services sent by the Authority to the Contractor in accordance with the award procedures in Clause 3.

**Order Form:** means a document setting out details of an Order in the form set out in Schedule 20 or as otherwise agreed in accordance with Clause 3.5.

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

**Parent Company:** means any company which is the ultimate Holding Company of the Contractor and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor.

**Holding Company** shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

**Party:** means the Authority and/or the Contractor.

**SQ Response:** means the response to the selection questionnaire submitted by the Contractor to the Authority in relation to the tender for this Agreement.

**Payment Schedule:** the document set out at Schedule 5

**Personal Data:** shall have the same meaning as set out in the General Data Protection Regulation.

**Price:** the aggregate Charges paid or payable by the Authority to the Contractor for the Services assuming that the Standing List Agreement runs for the duration of the Term or, if it is not possible to calculate this value; either:

- (a) the price agreed by the parties (acting reasonably) in writing; or
- (b) an amount calculated by the parties (acting reasonably) taking into account the average Charges of the Standing List Agreement prior to the liability incident and the projected future spend extrapolated to the end of the Term.

**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 Standing List Agreement (and Call-Off 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 Standing List Agreement (and Call-Off 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.

**Regulations:** means the Public Contracts Regulations 2015 (SI 2015/102).

**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.

**Regulatory Bodies:** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Standing List Agreement or any other affairs of the Authority.

**Relevant Transfer:** a relevant transfer for the purposes of TUPE.

**Remediation Notice:** a notice served by the Authority in accordance with clause 21.1(a) of the General Terms.

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Authority internally or by any Replacement Contractor.

**Replacement Contractor:** any third party Contractor of Replacement Services appointed by the Authority from time to time.

**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:** a failure by the Contractor to provide the Services in accordance with the Service Level Arrangements.

**Service Failure Default:** a failure by the Contractor to provide the Services in accordance with the Service Level Arrangements that the Authority deems shall result in the Contractor's removal from the Standing List, as set out in the Specification.

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

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

**Standing List Providers:** means the Contractor and other contractors appointed as Standing List providers under this Standing List Agreement.

**Standing List Terms:** the provisions set out in Schedule 1.

**Standing List Year:** a period of 12 months, commencing on the Commencement Date

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

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

**Contractor's Tender Response:** the tender response document submitted by the Contractor and other associated documentation set out in Schedule 3.

**Services:** the services to be delivered by or on behalf of the Contractor under this Standing List Agreement (and Call-Off 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 3 **Error! Reference source not found..**

**Sub-Contract:** (except in clause 6.12 of the Call-Off Contract Terms) any contract between the Contractor and a third party pursuant to which the Contractor agrees to source the provision of any of the Services from that third party.

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

**Tender:** means the tender submitted by the Contractor to the Authority in response to the call for competition in relation to this Agreement.

**Term:** the period of the Standing List Agreement.

**Termination Date:** the date of expiry or termination of this Standing List Agreement (and Call-Off Contract).

**Transferable Contracts:** the third-party contracts (including any licenses to third-party software) that are necessary to enable the transition of the Services to the Authority or any Replacement Contractor on expiry or termination of this Standing List Agreement (and Call-Off Contract).

**Transferring Contracts:** Not Used.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**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 Standing List Agreement (and Call-Off 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 Standing List Agreement (and Call-Off Contract) and shall have effect as if set out in full in the body of this Standing List Agreement (and Call-Off Contract) and any reference to this Standing List Agreement (and Call-Off 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 Headings are included in this Standing List Agreement for ease of reference only and shall not affect the interpretation or construction of this Standing List Agreement;
- 1.10 The Schedules form part of this Standing List Agreement and shall have effect as if set out in full in the body of this Standing List Agreement and any reference to this Standing List Agreement shall include the Schedules;
- 1.11 References in this Standing List Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Standing List Agreement so numbered;
- 1.12 References in this Standing List Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Standing List Agreement so numbered; and
- 1.13 References to clauses and schedules are to the clauses and schedules of this Standing List Agreement (and Call-Off Contract); references to paragraphs are to paragraphs of the relevant schedule.
- 1.14 A reference to writing or written includes facsimile transmission and e-mail.
- 1.15 Any obligation in this Standing List Agreement (and Call-Off Contract) on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.16 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 Standing List Agreement (and Call-Off Contract)) at any time.
- 1.17 Where any statement is qualified by the expression so far as any party is aware or to any party's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

### **Schedule 3. Specification**

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

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

**Schedule 4. Contractor's Tender Response Document**

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

**Schedule 5. Payment Schedule**

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

**Schedule 6. Not Used**

**Schedule 7. Not Used**

**Schedule 8. Not Used**

**Schedule 9. Evidence of Insurance**

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

**Schedule 10. Not Used**

## Schedule 11. Change Control Procedure

### 1 Definitions

The definitions in this paragraph apply in this Schedule 11.

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

### 2 Permitted Changes

2.1 Changes to the Contract shall be made only where:

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

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

- (a) the Change is of the following scope and nature:
  - (i) recruitment practice, in accordance with legislation and any related Authority policies;
  - (ii) Social Work Practice in accordance with legislation and any related Authority policies/procedures;
  - (iii) systems for ordering, booking and making payments, for example:
    - (a) The possibility that the procedure for agency staff booking may become electronic – with future bookings made through the Council's 'My View' intranet system;
    - (b) The Authority's Secure emailing system is currently Egress Switch. If Contractors (on either Standing List) can offer the Transport Layer Security (TLS) facility, then providing a compatibility test is carried out satisfactorily, between the Council's I T Services and the Applicant's organisation, there may or may not be a future requirement to use Egress Switch – although this is required for the immediate future; or
  - (iv) the way the Authority manages its own staffing requirements and/or those of any of its subsidiary companies;
- (b) the price of the Change is calculated as follows:
  - (i) in relation to any changes to agreed rates of pay in line with Council's rates of pay appropriate for the role; or
  - (ii) in accordance with any memorandum of understanding or protocol in place with other local authorities.
- (c) the circumstances necessitating the Change are:
  - (i) change in legislation relating to recruitment practice;
  - (ii) changes in legislation relating to Social Work Practice;

- (iii) changes in Authority systems, functioning, working practices, policies or procedures.
- (d) the Change does not alter the overall nature of the Contract.

### **3 General Principles**

- 3.1 Where the Authority or the Contractor sees a need to change this Contract, the Authority may at any time request and the Contractor may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 4 of this Schedule 11.
- 3.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Contractor shall continue to perform this Contract in compliance with its terms before such Change.
- 3.3 Any discussions which may take place between the Authority and the Contractor in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 3.4 Any work undertaken by the Contractor and the Contractor's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 11 shall be undertaken entirely at the expense and liability of the Contractor.

### **4 Procedure**

- 4.1 Discussion between the Authority and the Contractor concerning a Change shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this Contract by the Authority; or
  - (c) a recommendation to change this Contract by the Contractor.
- 4.2 Where a written request for an amendment is received from the Authority, the Contractor shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Contractor to the Authority within three weeks of the date of the request.
- 4.3 A recommendation to amend this Contract by the Contractor shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Contractor at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
- 4.4 Each Change Control Note shall contain:
  - (a) the title of the Change;
  - (b) the originator and date of the request or recommendation for the Change;
  - (c) the reason for the Change;
  - (d) full details of the Change, including any specifications;
  - (e) the price, if any, of the Change;
  - (f) a timetable for implementation, together with any proposals for acceptance of the Change;

- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Contract including:
  - (i) the timetable for the provision of the Change;
  - (ii) the personnel to be provided;
  - (iii) the Charges;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Contractor.

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

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

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

**Schedule 12. Not Used**

Schedule 13. Form of Default Notice

DEFAULT NOTICE

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

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

Name of the Authority	
Name of the Contractor	
Name and job role of Contractor's temporary agency staff worker	
Contract Commencement Date	
Details of Contractor's default	
Any additional information	
Details of agreed actions to remedy the default and timescales for completion	
Details of consequences of failing to meet timescales for completion of remedial actions	

## Schedule 14 Data Processing Agreement

### 1 Definitions and Interpretation

In this Schedule the definitions and rules of interpretation below will apply, unless the context otherwise requires or permits:-

**The Authority:** means Torbay Council

**The Supplier:** means [insert details of the Supplier]

**Agreement:** means this Data Processing Agreement;

**Completion:** means the time immediately following the completion of the **purpose**

**Data:** means the information provided to the Supplier for the stated **purpose**

**Data Controller:** has the meaning set out in the General Data Protection Regulation.

**Data Processor:** has the meaning set out in the General Data Protection Regulation.

**Data Protection Legislation:** means all current UK legislation that relates to Data Protection.

**Personal Data:** has the meaning set out in the General Data Protection Regulation.

**Personal Data Breach:** has the meaning set out in the General Data Protection Regulation.

**Processing and process:** have the meaning set out in the General Data Protection Regulation.

**Intellectual Property Rights:** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable 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 similar rights.

**Parties:** means the parties to this Agreement and **Party** means either of them. Words in the singular include the plural and in the plural include the singular. Clause headings will not affect the interpretation of this agreement.

References to clauses are, unless otherwise provided, references to the clauses of this agreement.

A reference to a statute or 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.

In the event that there is any conflict between these terms and conditions and the Schedules they shall take the following order of precedence (from most to least important):

For the purposes of this Schedule, the Authority is the Data Controller and the Supplier is the Data Processor of any Personal Data.

### 2 Processing Activity to be Undertaken

2.1 The processing activity will take place in respect of the delivery of temporary agency staff workers via either Standing List Agreement, on behalf of Torbay Council's Human Resources and Children's Services.

2.2 The processing activity shall only be undertaken for the duration of the Contract unless the processing requirement is terminated earlier through formal variation.

- 2.3 The processing activity will be carried out for the specific purpose of ensuring compliance with safer recruitment checks.
- 2.4 The processing activity will only apply to these types of personal data: Personal details e.g:
- (a) Forename(s);
  - (b) Surname;
  - (c) Date of birth;
  - (d) Gender;
  - (e) Address;
  - (f) Contact details (contact number, email address, etc).
- 2.5 The processing activity will only apply to these categories of data subjects:
- (a) Temporary agency staff workers on assignment to Torbay Council.
- 2.6 The means of processing will be:
- (a) Safer recruitment checks carried out by the Supplier on behalf of Torbay Council. Copies will be sent by secure email and retained, in line with Torbay Council's Record Retention Schedule.
- 2.7 If the Supplier does not comply with the required agreed under 2.1 to 2.6 and determines the purpose and means of processing the Supplier will be considered to be a Data Controller in respect of that processing.

### **3 Obligations of the Supplier**

- 3.1 The Supplier and its employees are bound by a duty of confidentiality and will to adhere to the conditions within the agreement between the Authority and the Supplier and employees personal responsibilities to comply with the requirements of the Data Protection legislation.
- 3.2 The Supplier will use all reasonable skill and care in providing the Services.
- 3.3 The Supplier will process the Data only to the extent, and in such a manner, as is necessary for this Agreement and will not process the Data for any other purpose.
- 3.4 The Supplier will:
- (a) process the Data in accordance with Data Protection legislation, in so far as it applies;
  - (b) take appropriate technical and organisational measures against unauthorised or unlawful processing of the Data and against accidental loss of, destruction of, or damage to Data; and
  - (c) act only on instructions from the Authority and in accordance with this agreement;
  - (d) take appropriate technical and organisational measures to assist the Authority in responding to requests for exercising data subject's rights under Data Protection legislation, including but not limited to the right of access and right to be forgotten;

- (e) comply with the requirement to carry out a data protection impact assessment on any new technologies used in connection with the processing of data under this contract and shall consult the Authority's Data Protection Officer on any impact assessment;
  - (f) on termination of this Data Processing Agreement the Supplier will delete or return all personal data to the Authority;
  - (g) the Supplier will notify the Authority immediately in the event that any instruction from the Authority or its authorised representatives in relation to monitoring compliance with data protection legislation, in their opinion, infringes Article 28 of the General Data Protection Regulation
- 3.5 The Supplier will keep a record of any processing of Data it carries out on behalf of the Authority.
- 3.6 In the event that the Supplier receives any complaint, notice or communication from a third party in connection with the Services, it will immediately notify the Authority in writing to The Data Protection Officer, Torbay Council, Town Hall, Castle Circus, Torquay TQ1 3DR and provide the Authority with full co-operation and assistance dealing with such complaint, notice or communication.
- 3.7 The Supplier will promptly comply with any reasonable request received from the Authority in relation to the Data.
- 3.8 The Supplier will keep all information (written or oral) confidential, in so far as permitted by law relating to any Data.
- 3.9 The Supplier will not disclose or transfer the Data in whole or in part to any other person without the Authority's written consent (not to be unreasonably withheld or delayed), except to its employees who have a need to know and involved in the performance of the Services.
- 3.10 The Supplier will promptly, within 24 hours of becoming aware, inform the Authority if they become aware that any Data is lost or if a personal data breach has occurred. The Supplier will recover such Data at its own expense. If equipment containing the data has been lost or stolen, the Supplier will notify the Authority's Data Protection Officer immediately at [infocompliance@torbay.gov.uk](mailto:infocompliance@torbay.gov.uk) and the supplier shall assist the Authority with any investigation undertaken.
- 3.11 The Supplier will not transfer any Personal Data outside the European Economic Area without the prior written consent of the Authority.
- 3.12 The Supplier will not be restricted by this Agreement in its use of any Data which is in the public domain or in the possession of the Supplier prior to the date of this Agreement.
- 4 The Supplier's Employees**
- 4.1 The Supplier ensure that access to the Data is limited to:
- (a) those employees who need access to the Data for the purpose of this Agreement; and in the case of any access by any employee, such part or parts of the Data as is strictly necessary for performance of that employee's duties under this Agreement.
- 4.2 The Supplier will ensure that any of their employees, agents, subcontractors or professional advisors who have access to the Data under this Agreement:

- (a) are informed of the confidential nature of the Data;
- (b) have undertaken training in the laws relating to handling Personal Data;
- (c) are aware of the Supplier obligations under this Agreement.

4.3 The Supplier will use reasonable endeavours to ensure the reliability of any of their employees who have access to the Data.

## **5 The Obligations and Rights of the Authority**

5.1 The Authority is entitled, on giving at least five working days' notice to the Supplier, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of the Data.

5.2 The requirement under clause 5.1 to give notice will not apply if the Authority believes that the Supplier is in breach of any of its obligations under this Agreement.

5.3 The Authority will notify the data subject of any personal data breach, resulting from any actions of the Supplier.

## **6 Warranties**

6.1 Each party warrants to the other that it is duly authorised to enter into this Agreement.

6.2 The Supplier warrants that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

6.3 The Supplier warrants that it will not authorise any third party or sub-contractor to process the Data.

## **7 Intellectual Property Rights**

7.1 The Supplier agrees and acknowledges that any Intellectual Property Rights in the Data belongs to the Authority and that the Supplier does not acquire any rights, title or interest in such Data, save as granted under this Agreement.

7.2 The Authority hereby grants the Supplier a royalty free licence to process the Data under this Agreement. For the avoidance of doubt, this licence shall terminate automatically on termination of this Agreement.

## **8 Indemnity**

8.1 The Supplier agrees to indemnify and hold the Authority harmless against all costs, claims, losses, damages or expenses (including legal expenses) incurred by The Authority as a result of the Supplier's failure to comply with its obligations under this Agreement and Data Protection legislation.

## **9 Completion of the Term**

9.1 Immediately after Completion, the Supplier will delete all Data and any copies of the Data in its possession (unless otherwise stipulated).

## Schedule 15 Call-Off Contract Key Provisions

### Standard Key Provisions

#### 1 Application of the Key Provisions

- 1.1 The standard Key Provisions at clauses 1 to 3 of these Key Provisions shall apply to this Contract.
- 1.2 The optional Key Provisions at clauses 4 to 18 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 15.

#### 2 Term

- 2.1 Each Call-Off Contract shall take effect from the date on the Order Form and shall continue for the Term stated on the Order Form unless terminated early or extended as appropriate in accordance with the terms conditions or clauses of this Call-Off Contract.

#### 3 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 15: Key Provisions;
- (c) Schedule 3: Specification;
- (d) Schedule 5: Payment Schedule;
- (e) 0: Call-Off Contract General Terms;
- (f) Schedule 4: Contractor's Tender Response Document
- (g) Not Used;
- (h) Schedule 2: Definitions and Interpretations; and
- (i) the order in which all subsequent schedules, if any, appear.

### Optional Key Provisions

<input type="checkbox"/>	<b>4 Not Used</b>
<input type="checkbox"/>	<b>5 Not Used</b>
<input checked="" type="checkbox"/>	<p><b>6 Insurance</b></p> <p>In the event that this clause applies, the following shall amend the wording of clause 15.2 of the General Terms:</p> <p>(a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;</p>

	<p>(b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims; and</p> <p>(c) professional indemnity insurance with a limit of indemnity of not less than £100,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover</p> <p>(the <b>Required Insurances</b>). The cover shall be in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.</p>
<input type="checkbox"/>	<b>7 Not Used</b>
<input type="checkbox"/>	<b>8 Not Used</b>
<input checked="" type="checkbox"/>	<p><b>9 Exit Management and Consequences of Termination</b></p> <p>9.1 On termination or expiry of this Contract for any reason, the Contractor shall:</p> <p>(a) immediately deliver to the Authority all Authority Assets (where applicable), copies of information, documentation and Data provided by the Authority to the Contractor for the purposes of this Contract;</p> <p>(b) immediately repay to the Authority all Charges that it has been paid in respect of Services not provided by the Contractor as at the date of expiry or termination or any other sums due to the Authority in accordance with this Contract;</p> <p>(c) cease to use the Authority Data;</p> <p>(d) provide the Authority with a complete and uncorrupted version of all Authority Data;</p> <p>(e) certify to the Authority that it has not retained any copies of any Authority documentation or other information or data, except for one copy which the Contractor may use for audit purposes only and subject to the confidentiality obligations in clause 18 of the General Terms;</p> <p>(f) vacate any Authority Premises; and</p> <p>(g) provide such information relating to the Services as remains in the possession or control of the Contractor.</p> <p>9.2 If the Contractor fails to fulfil its obligations under clause 0, then the Authority may enter the Contractor's premises and take possession of</p>

	<p>any items which should have been returned under it. Until they have been returned or repossessed, the Contractor shall be solely responsible for their safe keeping.</p> <p>9.3 The provisions of clauses 14 (Limitation of Liability) 15 (Insurance), 16 (Freedom of Information), 17 (Data Protection), 18 (Confidentiality), 19 (Audit), 20 (Intellectual Property Rights) 21 (Termination for Breach) of the General Terms and this clause 0 and clause 15 (Reporting and meetings) (if applicable) of the Key Provisions shall survive termination or expiry of this Contract.</p> <p>9.4 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.</p>
<input type="checkbox"/>	<b>10 Not Used</b>
<input type="checkbox"/>	<b>11 Not Used</b>
<input type="checkbox"/>	<b>12 Not Used</b>
<input type="checkbox"/>	<b>13 Not Used</b>
<input checked="" type="checkbox"/>	<p><b>14 Safeguarding Children and Vulnerable Adults</b></p> <p>14.1 The parties acknowledge that the Contractor 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.</p> <p>14.2 The Contractor shall:</p> <p>(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;</p> <p>(a) monitor the level and validity of the checks under this clause 14 for each member of staff;</p> <p>(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.</p> <p>14.3 The Contractor 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 Contractor in the provision of the Services is barred from</p>

	<p>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.</p> <p>14.4 The Contractor 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.</p> <p>14.5 The Contractor shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 14 have been met.</p> <p>14.6 The Contractor 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.</p>
<input checked="" type="checkbox"/>	<p><b>15 Reporting and Meetings</b></p> <p>15.1 The Contractor shall provide the Management Reports in the form and at the intervals set out in the Specification.</p> <p>15.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in the Specification and the Contractor shall, at each meeting, present its previously circulated Management Reports.</p>
<input type="checkbox"/>	<p><b>16 Not Used</b></p>
<input type="checkbox"/>	<p><b>17 Not Used</b></p>
<input checked="" type="checkbox"/>	<p><b>18 Quality Control</b></p> <p>18.1 It shall be the duty of the Contractor well and properly to provide the Service to a standard which is in all respects to the reasonable satisfaction of the Authority and to comply in all respects with the Contract.</p> <p>18.2 The Contractor shall ensure that neither it, nor any of its Staff or sub-contractors embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in or permitting any political activities on Authority premises or by any other act or omission relating to the performance of the Services which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Contractor's obligations under this Agreement.</p> <p>18.3 The Contractor shall deal with any complaints received (whether oral or written whether from the Authority or others) in a prompt, courteous</p>

	<p>and efficient manner and in accordance with its complaints procedure (a copy of which is available to the Authority upon demand).</p>
18.4	<p>Unresolved complaints received or referred to the Authority may be investigated by the Authority, possibly making use of the Authority's own complaints procedure, which may, where it considers it appropriate, issue a Default Notice to the Contractor.</p>
18.5	<p>The Contractor shall throughout the Contract Period institute and maintain a properly documented system of quality control designed to ensure that the Services are provided at all times and in all respects in accordance with the Contract. Such a system shall</p> <ul style="list-style-type: none"> <li>(a) include daily supervision and the carrying out of frequent inspections of buildings, sites and locations at which the Services are to be provided and equipment used by the Contractor; and</li> <li>(b) ensure the recording of any complaints received in connection with the provision or failure to provide the Service, (whether received orally or in writing and whether from members of the public or others) detailing the nature of the complaint, the name of the complainant, the time and date it was received, the action taken by the Contractor in respect of each such complaint, and the names of the Contractor's staff involved in the action complained of and its remedy.</li> </ul>
18.6	<p>The system maintained by the Contractor in accordance with this condition shall be in addition to, and shall not prejudice:</p> <ul style="list-style-type: none"> <li>(a) any independent inspection undertaken by the Authority;</li> <li>(b) the award of any Default Notice.</li> </ul>
18.7	<p>The system shall be operated by the Contract Manager on behalf of the Contractor and shall be open to inspection at any time by the Authority. In the event that any reasonable recommendations concerning the improvement of the system are made by the Authority from time to time, such recommendation shall forthwith be implemented by the Contractor.</p>
18.8	<p>The Authority shall have the right at any time to interview any member of the Contractor's staff in connection with the carrying out of all or any of the Services. 24 hours' notice will be given to the Contract Manager.</p>
18.9	<p>The Authority shall also be entitled to request any information relating to the carrying out of the Services and such information shall be supplied by the Contractor forthwith upon request.</p>

**Additional Key Provisions**

<input type="checkbox"/>	<b>19 Not Used</b>
<input checked="" type="checkbox"/>	<p><b>20 Health and Safety</b></p> <p>20.1 In the event that this clause applies, the following shall amend the wording of clause 5 of the General Terms:</p> <p>20.2 The Contractor shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards that may exist or arise at the Authority Premises or elsewhere and that may affect the Contractor in the performance of the Contract.</p> <p>20.3 The Authority will be responsible for the communication of control measures and specific arrangements, arising from the Authorities risk assessments, to the Contractor where these measures are specific to roles the Contractor is appointed to undertake.</p> <p>20.4 While on the Authority Premises, or carrying out duties elsewhere, that fall within the Authority's undertaking, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority Premises or in the course of its undertaking.</p> <p>20.5 The Authority will be responsible for the health and safety induction to the Contractor and will deliver adequate and sufficient information, instruction and training to enable the Contractor to work safely and without unreasonable risk to health. All Health and safety training will take place during working hours and at no cost to the Contractor.</p> <p>20.6 The Authority will provide the necessary personal protective equipment, in accordance with its specific risk assessments, at no cost to the Contractor, and will agree with the Contractor arrangements for supplying and maintaining it.</p> <p>20.7 The Authority will ensure the Contractor knows how to raise any health and safety concerns in the Authorities workplace, including the reporting of all incidents on the Authorities incident system. The Authority will have systems in place to notify the Contractor of any incidents affecting its employees and will be the responsible body for the reporting any RIDDOR's affecting the Contractor's employees who are under the supervision of the Authority and passing this information onto the Contractor.</p> <p>20.8 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract, and which has not previously been reported to the Authorities incident reporting system, on the Authority Premises or in the course of its undertaking. This applies to all incidents that causes any personal injury, damage to property that could give rise to personal injury or any other incident in accordance with the Authorities incident reporting arrangements.</p> <p>20.9 The Contractor shall notify the Authority, prior to the appointment by the Authority of any Contractor's employee, of any known pre-existing medical condition(s) that could increase the health and safety risk to the Contractor's employee. The Authority will be responsible for the provision of all reasonable adjustments so as to ensure that the risk to the Contractor's employee(s) remain as low as reasonably practical.</p> <p>20.10 Where, due to the job role or personal circumstances, specific risk assessments relating to the performance of the Contract are required to be undertaken to meet either a statutory requirement or to comply with the Authority's health and safety arrangements, e.g. DSE, new and expectant mothers, COSHH, vibration, noise, lead etc.... these will be</p>

	<p>carried out by the Authority and outcomes will be communicated in timely manner to the Contractor.</p>
20.11	<p>Where, due to the job role or personal circumstances, specific risk assessments relating to the performance of the Contract identify that health surveillance is required to be undertaken to meet either a statutory requirement or to comply with the Authority's health and safety arrangements this will be subject to specific processes agreed by the Authority and the Contractor on a case by case basis.</p>
20.12	<p>The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises or as part of its undertaking in the performance of the Contract.</p>
20.13	<p>The Contractor shall nominate a competent person, in accordance with the requirements of the Management of Health and Safety at Work Regulations 1999, to be the Contractor's contact and responsible person in matters relating to health and safety performance and legal compliance.</p>
20.14	<p>The Contractor shall have due regard to Authority's Health and Safety Statement and Policy and a copy of its own health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) shall be made available to the Authority prior to commencement of the contract.</p>

## Schedule 16 Call-Off Contract General Terms

### 1 Supply of Services

- 1.1 The Contractor 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.
- 1.2 In the event that the Contractor does not comply with the provisions of clause 0 in any way, the Authority may serve the Contractor with a notice in writing setting out the details of the Contractor's default (a **Default Notice**). The Default Notice shall be in the form set out in Schedule 13.

### 2 Service Levels

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

### 3 Compliance

- 3.1 The Contractor 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 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Contractor has used best endeavours to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 Without prejudice to clause 2, the Contractor 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 ; and
  - (c) in accordance with all applicable laws.
- 3.4 Without limiting the general obligation set out in clause 3.1, the Contractor shall (and shall procure that the Contractor's Personnel shall):
- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Contractor shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998;
  - (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment; and
  - (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law.

### 4 Authority Premises and Authority Assets

- 4.1 The Authority shall, subject to clause 3 and clause 9, provide the Contractor (and its Sub-Contractors) with access to such parts of the Authority Premises as the Contractor reasonably requires for the purposes only of properly providing the Services.

- 4.2 The Authority shall provide the Contractor with such accommodation and facilities in the Authority Premises as agreed by the parties from time to time.
- 4.3 Subject to the requirements of the Key Provisions on exit management (if relevant), in the event of the expiry or termination of the Contract, the Authority shall on reasonable notice provide the Contractor with such access as the Contractor reasonably requires to the Authority Premises to remove any of the Contractor's equipment. All such equipment shall be promptly removed by the Contractor.
- 4.4 The Contractor shall ensure that:
- (a) where using the Authority Premises and any Authority Assets 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;
  - (b) only those of the Contractor's Personnel that are duly authorised to enter upon the Authority Premises for the purposes of providing the Services, do so;
  - (c) any Authority Assets used by the Contractor are not removed from Authority Premises unless expressly permitted under this Contract or by the Authority Authorised Representative.
- 4.5 The Contractor shall notify the Authority immediately on becoming aware of any damage caused by the Contractor, 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 Contractor shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards that may exist or arise at the Authority Premises and that may affect the Contractor in the performance of the Contract.
- 5.2 While on the Authority Premises, the Contractor 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 Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract on the Authority Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 5.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises in the performance of the Contract.
- 5.5 The Contractor 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 Contractor in accordance with the terms and conditions of this Contract, the Authority shall pay the Charges to the Contractor.
- 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 Contractor in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Contractor, travel costs, accommodation expenses and the cost of Contractor Personnel.
- 6.4 The Authority shall pay each invoice received by the Contractor within 30 days of the date when Authority has determined that the invoice is a valid and undisputed invoice. The Contractor shall accept payment electronically via BACS.
- 6.5 The Authority will consider and verify any invoices submitted by the Contractor 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.
- 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 the Dispute Resolution Procedure. 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 Contractor shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Contract under clause 21 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 Contractor shall at all times comply with the requirements relating to VAT as more particularly detailed in this Contract and the Specification. The Contractor shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to payments made to the Contractor under this Contract.
- 6.9 The Contractor 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 the Contract Year to which the records relate.
- 6.10 The Authority may retain or set off any sums owed to it by the Contractor which have fallen due and payable against any sums due to the Contractor under this Contract.
- 6.11 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- 6.12 In this clause 6.12, "Sub-Contract" means a contract between two or more Contractors, 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 Contractor enters into a Sub-Contract, the Contractor 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.

6.13 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.

## **7 Due Diligence**

7.1 The Contractor acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
- (b) it has received all information requested by it from the Authority pursuant to paragraph (a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to paragraph (b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this Contract in reliance on its own due diligence.

7.2 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Contractor by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

7.3 The Contractor:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Contractor'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
- (b) 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.

7.4 The Contractor shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Contractor in accordance with clause 7.3(b) save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Authority and the Contractor could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Contractor shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

7.5 Nothing in this clause 7 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## **8 Key Personnel**

- 8.1 Each party shall appoint the persons named as such in the Specification as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the Authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 8.2 The Contractor shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
  - (b) the person is on long-term sick leave;
  - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
  - (d) the person resigns from their employment with the Contractor; or
  - (e) the Contractor obtains the prior written consent of the Authority.
- 8.3 The Contractor shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 30 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 8.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 10 Working Days. Any replacement shall be as, or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Contractor or the Authority becoming aware of the role becoming vacant.
- 8.5 The Authority may require the Contractor to remove, or procure the removal of, any of its Key Personnel whom it considers, in its absolute opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities or for any reason which impacts on the management or operation of any applicable Authority's Premises.
- 8.6 If the Contractor replaces the Key Personnel as a consequence of this clause 8, the cost of effecting such replacement shall be borne by the Contractor.

## **9 Contractor's Personnel Used to Provide the Services**

- 9.1 At all times, the Contractor shall ensure that:
- (a) each of the Contractor'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 Contractor's Personnel to provide the Services properly;
  - (c) only those people who are authorised by the Contractor (under the authorisation procedure to be agreed between the parties) are involved in providing the Services;

- (d) all of the Contractor'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 Contractor to obtain a Disclosure Barring Service (**DBS**) certificate, it holds a clear DBS certificate for each of the Contractor's Personnel.
- 9.2 The Authority in its absolute discretion may refuse to grant access to, and remove, any of the Contractor's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 9.3 The Contractor shall replace any of the Contractor's Personnel who the Authority reasonably decides have failed to carry out their duties with all reasonable skill and care. Following the removal of any of the Contractor's Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 9.4 The Contractor shall maintain up-to-date personnel records on the Contractor's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Contractor's Personnel. The Contractor shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 9.5 The Contractor shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

## **10 TUPE**

Not Used.

## **11 Monitoring**

- 11.1 The Authority may monitor the performance of the Services by the Contractor at its discretion.
- 11.2 The Contractor shall co-operate with the Authority in carrying out the monitoring referred to in clause 11.1 at no additional charge to the Authority.

## **12 Dispute Resolution Procedure**

- 12.1 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 Contractor shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Representatives of the Authority the Contractor 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 Contractor who shall attempt in good faith to resolve it; and
  - (c) if the senior officers of the Authority and the Contractor 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.

- 12.2 The Contractor shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.
- 12.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 36 and 37 which shall apply at all times.
- 12.4 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 36 and 37 of these General Terms.

### **13 Sub-contracting and Assignment**

- 13.1 The Contractor shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the Authority. The Contractor 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.
- 13.2 In the event that the Contractor 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 resulting from the failure of the Sub Contractor or an employee of the Sub Contractor in the performance of the duties of the Sub Contractor to provide the Services on behalf of the Contractor 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.
- 13.3 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.
- 13.4 The Authority may, by notice in writing to the Contractor, require the Contractor immediately (or as specified in the notice) to cease to engage a specified Sub-Contractor for the performance of any of its obligations under this Contract where any of the circumstances specified in Regulation 57(1) or (8) of the Public Contracts Regulations 2015 applies to the Sub-Contractor.

### **14 Limitation of Liability**

- 14.1 Subject to clause 14.3, 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.

- 14.2 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.
- 14.3 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.

## 15 Insurance

- 15.1 The policy limits set out below shall apply unless expressly amended in the Key Provisions.
- 15.2 The Contractor shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and
  - (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims,

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

- 15.3 The Contractor shall, prior to the Commencement Date and on each subsequent anniversary of the Commencement Date, provide the Authority with copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies. This evidence of insurance will be added annually to this Contract in Schedule 9.
- 15.4 If, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor including by way of set off against payments that may be made by the Authority to the Contractor for the provision of the Services.
- 15.5 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 15.6 The Contractor shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Contract.

## 16 Freedom of Information and Transparency Obligations

- 16.1 The Contractor 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 Contractor'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.

- 16.2 The Contractor 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.
- 16.3 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.
- 16.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 16.5 The Contractor 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 Contractor. The Authority shall take reasonable steps to notify the Contractor 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 Contractor 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.
- 16.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 16.5.
- 16.7 The Contractor 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 Contractor consents to such publication.
- 16.8 The Contractor 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.
- 16.9 Notwithstanding any other term of the Contract, the Contractor 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.

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

## **17 Data Protection**

17.1 The Contractor shall (and shall procure that any of its Contractor's Personnel involved in the provision of the Contract shall) comply with any notification requirements under Data Protection Legislation and both Parties shall duly observe all their obligations under Data Protection Legislation, which arise in connection with the Contract.

17.2 Notwithstanding the general obligation in clause 17.1, where the Contractor is processing Personal Data as a Data Processor for the Authority, the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under Data Protection Legislation; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Contractor is complying with its obligations under Data Protection Legislation;
- (b) within 24 hours of the Contractor becoming aware of the breach occurring, notify the Authority of any breach and of the security measures required to be put in place pursuant to this clause 17.2;
- (c) co-operating with the Authority and/or any relevant regulatory body in carrying out any investigation by providing information requested by the Authority and/or relevant regulatory body within the timescales required;
- (d) allow the Authority's and/or the regulatory body's representatives access to Contractor premises, systems and data for the purposes of any investigation, inspection or audit; and
- (e) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under Data Protection Legislation.

17.3 The Contractor shall not engage another processor without prior written authorisation from the Authority. The Contractor shall inform the Authority of any intended changes concerning the addition or replacement of other processors giving the Authority the opportunity to object. All additional or replacement processors are required to sign the Authority's Data Processing Agreement.

17.4 The Contractor 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 Contractor's obligations in this clause 17 except and to the extent that such liabilities have resulted directly from the Authority's instructions.

## **18 Confidentiality**

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

- (a) is required for disclosure by any applicable law, provided that clause 16.5 shall apply to any disclosures required under the FOIA or the EIRs;
- (b) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Authorised Representatives in breach of this clause);

- (c) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (d) is disclosed by the Authority to any other department, office or agency of the Government;
- (e) where in the reasonable opinion of the Authority it is necessary to disclose information or required to disclose information to any court tribunal arm of Government or Local Government;
- (f) may assist in the enabling of a determination to be made under clause 12;
- (g) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (h) the parties agree in writing is not confidential or may be disclosed.

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

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

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

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

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

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

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

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

18.7 On termination of this Contract, the Contractor shall:

- (a) return to the Authority all documents and materials (and any copies) containing, reflecting, incorporating or based on the Authority's Confidential Information;

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

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

## **19 Audit**

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

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all Contractors (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Contractor's compliance with Data Protection Legislation and the FOIA in accordance with clause 17 and clause 16 and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Contractor in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) to carry out an examination pursuant of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (h) to verify the accuracy and completeness of the Management Reports (if applicable) and any other management information delivered or required by this Contract.

19.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

19.3 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- (c) access to the Contractor's Personnel.

19.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.

19.5 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

19.6 If an audit identifies that:

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

## 20 Intellectual Property

20.1 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 Contractor, Contractor Personnel, a Sub-Contractor or any other employee, agent or subcontractor of the Contractor:

- (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.

20.2 The Contractor 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.

## 21 Termination for Breach

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

- (a) if the Contractor is in breach of any material obligation under this Contract provided that if the breach is capable of remedy or the Authority has served the Supplier with a Default Notice, the Authority may only terminate this Contract under this clause 21.1 if the Contractor has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) 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 Contractor ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Contractor to which the Authority reasonably objects; or
- (g) in accordance with clause 24.7.

21.2 The Authority may terminate this Contract by giving not less than 30 days written notice on the Contractor 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 Contractor such that it should have been excluded from the procurement procedure; or
  - (ii) to a Sub-Contractor on which the Contractor relied in its tender to the Authority for this Contract and the Contractor does not cease to engage that Sub-Contractor within 30 days of a notice from the Authority requiring the Contractor to cease to engage that Sub-Contractor; or
- (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the EU in a procedure pursuant to Article 258 of TFEU.

21.3 If this Contract is terminated by the Authority for cause in accordance with clause 21.1 or 21.2 such termination shall be at no loss or cost to the Authority.

## **22 Termination on Notice**

22.1 The Authority may terminate this Contract at any time by giving not less than 30 days written notice to the Contractor.

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

## **23 Force Majeure**

23.1 Subject to the remaining provisions of this clause 23, neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event.

23.2 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:

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

- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 23.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 23.4 The Contractor cannot claim relief if the Force Majeure Event is one where a reasonable Contractor should have foreseen and provided for the cause in question.
- 23.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Contractor is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 23.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 23.7 The Authority may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Contractor if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 60 Working Days.

## **24 Prevention of Bribery**

- 24.1 The Contractor:
- (a) shall not, and shall procure that any Contractor Party and all Contractor Personnel shall not, in connection with this Contract commit a Prohibited Act;
  - (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.
- 24.2 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor Party or Contractor 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.
- 24.3 The Contractor 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 Contractor) compliance with this clause 24 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

24.4 The Contractor 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 Contractor Party or Contractor Personnel from committing a Prohibited Act and that are compliant with the Bribery Act and shall enforce it where appropriate.

24.5 If any breach of clause 24.1 or clause 24.2 is suspected or known, the Contractor must notify the Authority immediately.

24.6 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of clause 24.1 or clause 24.2, the Contractor 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.

24.7 The Authority may terminate this Contract by written notice with immediate effect if the Contractor, Contractor Party or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 24.1 or clause 24.2. The expression "not acting independently of" (when used in relation to the Contractor 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 Contractor or the Sub-Contractor (as the case may be); or

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

24.8 Any notice of termination under clause 24.7 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.

24.9 Despite clause 12, any dispute relating to:

- (a) the interpretation of clause 24; 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.

24.10 Any termination under clause 24.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

**25 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 or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

**26 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 Contractor 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 Contractor of its obligations to deliver the Services in accordance with the provisions of this Contract.

**27 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.

**28 Severability**

28.1 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.

28.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**29 Partnership or Agency**

29.1 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.

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

**30 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.

**31 Publicity**

The Contractor 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.

## 32 Notices

32.1 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:

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

32.2 This table sets out:

- (a) delivery methods for sending a notice to a party under this agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 32.3:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage.	9.00 am on the third Working Day after posting or at the time recorded by the delivery service.
Pre-paid airmail providing proof of postage.	9.00 am on the fifth Working Day after posting or at the time recorded by the delivery service.
Facsimile transmission/E-mail.	At the time of transmission provided that they are confirmed as set out above.

32.3 For the purpose of clause 32.2 and calculating deemed receipt:

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

**33 Changes to the Contract**

No Change to this Contract shall be effective unless it is processed in accordance with the Change of Control Procedure set out in **Error! Reference source not found.**Schedule 11.

**34 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.

**35 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.

**36 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.

**37 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).

## Schedule 17 Call-Off Contract – Special Conditions

### 1. Supply of Placement Services and Agency Worker Services

- 1.1. In consideration for the payment of the Maximum Contract Sum, the Contractor shall:
  - 1.1.1. during the Contract Period, supply the Placement Services in accordance with the Authority's requirements, the Minimum Service Standard and in accordance with the obligations imposed on the Contractor in these Conditions;
  - 1.1.2. procure that the Agency Worker carries out the Services; and
  - 1.1.3. ensure that the Agency Worker's conditions or provisions substantially similar to them are reflected in a written contract between the Contractor and the Agency Worker ("Agency Worker Agreement") and in the event that the Agency Worker Agreement includes other provisions then the Contractor shall ensure that the Agency Worker Agreement provides that the Agency Worker's conditions prevail over such other provisions.
- 1.2. If so requested by the Authority from time to time, the Contractor shall promptly provide the Authority with a copy of the Agency Worker Agreement. The Contractor shall notify the Authority if any variations are made to the Agency Worker Agreement after the Effective Date and if so requested by the Authority shall promptly provide to the Authority a copy of the Agency Worker Agreement as varied.
- 1.3. If so requested by the Authority from time to time, the Contractor shall procure that the Agency Worker enter into:
  - 1.3.1. a direct confidentiality agreement with the Authority on terms to be agreed at the time between the Parties.
- 1.4. The Contractor shall procure that the Agency Worker Agreement includes:
  - 1.4.1. a provision which reserves for the Authority third party rights under the Contracts (Rights of Third Parties) Act 1999 which permit the Authority to enforce the terms of the Agency Worker Agreement as if it were the Contractor and the Contractor shall provide the Authority with such assistance as it may require from time to time in order to exercise such right including to enforce the Agency Worker's conditions.
  - 1.4.2. A provision that permits the Authority to require the Agency Worker to provide the Authority with all information required to demonstrate that the Agency Worker complies and continues to comply with all obligations imposed upon them by the Agency Worker Legislation. The Authority may share such data with HMRC or such other regulatory bodies as may be necessary to determine compliance with the Agency Worker Legislation.
- 1.5. If and to the extent that:
  - 1.5.1. the Agency Worker does not agree to the inclusion of Agency Worker conditions referred to in clauses 1.4.1 and 1.4.2 above the Contractor shall inform the Authority; or
  - 1.5.2. the Agency Worker does not provide the information referred to in clause 1.4.2 above within such time period as reasonably requested by the Authority; or
  - 1.5.3. the information provided by the Agency Worker in accordance with clause 1.4.2 above is inadequate to demonstrate that the Agency Worker has and continues to comply with the obligations imposed upon them by the Agency Worker Legislation; or
  - 1.5.4. the information provided by the Agency Worker in accordance with clause 1.4.2 above demonstrates that, at any time the Agency Worker has or is not complying with

obligations imposed upon them by the Agency Worker Legislation,

Then the Authority may immediately terminate the Contract by giving written notice to the Contractor.”

- 1.6. The Agency Worker shall be regarded at all times as having a contract for services with the Contractor and no relationship of Authority and employee shall arise between the Authority and the Agency Worker under any circumstances regardless of the degree of supervision that may be exercised over the Agency Worker by the Authority.
- 1.7. In the event that the Agency Worker asserts for any reason that he is or has become an employee of the Authority, then in such circumstances, if the Contractor is aware of the same, the Contractor shall notify the Authority in writing as soon as reasonably practicable upon becoming aware of the same. Upon receipt of such written notification, the Contractor and the Authority agree that they shall consult with each other as soon as reasonably practicable and take such action as the parties mutually agree.
- 1.8. The Contractor will indemnify in full and hold the Authority harmless from and against all and any claims, proceedings, actions, damages, costs, expenses and any other liabilities incurred or suffered by the Authority (whether in respect of remuneration or otherwise) arising out of or in connection with any claim or assertion that the Agency Worker is or was an employee or worker of the Authority where it arises out of or in connection with any act or omission of the Contractor. This clause 1.8 shall not apply in circumstances where:
  - 1.8.1. the Authority offers to employ or engage the Agency Worker; or
  - 1.8.2. acts or omissions of the Authority outside the course of ordinary day to day activities cause such claim or assertion.
- 1.9. The Contractor shall provide all the equipment necessary for the supply of the Placement Services. In the event that the Contractor brings any equipment onto the Facility it shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any equipment unless and to the extent that the Contractor is able to demonstrate that such loss or damage was caused by or contributed to by the Authority.
- 1.10. The hours of work of the Agency Worker shall be as agreed between the Agency Worker and the Authority. Where the Authority requests that additional hours be worked, the Contractor shall use reasonable endeavours to procure that the Agency Worker complies with such request. The cost of any additional hours if not previously agreed between the Parties will be subject to the agreement of the Parties.
- 1.11. The Contractor shall notify the Authority as soon as possible of Agency Worker absences and in any event within thirty (30) minutes of the Agency Worker's usual start time.
- 1.12. In the event that an Agency Worker is absent the Contractor shall provide a replacement upon request by the Authority. Such a replacement shall be provided no later than;
  - (a) Thirty (30) minutes for all operational staff
  - (b) One (1) Working Day for all administrative staff
  - (c) Five (5) Working Days for all specialist staff after the Authority's first contact with the Contractor.
- 1.13. In the event that an Agency Worker that has been placed on standby by the Contractor is brought in to carry out the Placement Service they must report to the relevant Manager employed by the Contracting Authority no later than thirty (30) minutes after the Authority's first contact with the Contractor.
- 1.14. The Authority agrees that the Agency Workers placed under this Contract shall undertake

Assignments under the direction, supervision and control of the Authority.

## **2. PPE**

- 2.1. The Contractor shall provide the Agency Worker with all PPE necessary for the individual to be able to complete their Placement safely and with no risk to themselves or others.
- 2.2. The Contractor shall ensure that the Agency Worker's PPE is fit for purpose, suitable for the conditions of the role and offers the right level of protection for the individual in the role. The Contractor shall replace any that may become damaged or that is no longer fit for purpose.
- 2.3. The Contractor shall ensure that the PPE provided to Agency Workers complies with all relevant legislative requirements and standards including those in force at the time of the inception of the Contract and any that might be implemented during the life of the Contract.
- 2.4. The Contractor shall be responsible for paying for the Agency Worker's PPE. The Authority shall not be liable for any costs associated with the procurement of PPE for Agency Workers.

## **3. Quality**

- 3.1. The Contractor agrees that the Authority relies on the skill and judgment of the Contractor in the supply of the Placement Services and the performance of its obligations under the Contract.
- 3.2. The Contractor shall at all times comply with the Quality Standards applicable to the provision of the Placement Services.
- 3.3. The Contractor shall ensure that all Staff supplying the Placement Services shall at all times during the Contract Period:
  - 3.3.1. do so with all due skill, care and diligence;
  - 3.3.2. possess such qualifications, skills and experience as are necessary for the proper supply of the Placement Services.
  - 3.3.3. faithfully and diligently perform those duties and exercise such powers consistent with them as are from time to time necessary in connection with the provision of the Placement Services; and
  - 3.3.4. obey all lawful instructions and reasonable directions of the Authority and provide the Placement Services to the reasonable satisfaction of the Authority.
- 3.4. The Contractor shall at all times during the Contract Period ensure that the Placement Services and its obligations under the Contract:
  - 3.4.1. are supplied in accordance and conform in all respects with the specifications and requirements set out in the Contract;
  - 3.4.2. are supplied in accordance with the Contractor's tender proposals; and
  - 3.4.3. are performed and conform in all respects with all applicable Laws, Quality Standards and in accordance with Good Industry Practice.

## **4. Exit Assistance**

- 4.1. The Contractor shall provide such support and assistance required in order to achieve a smooth transfer of the Placement Services to the Authority or a Replacement Contractor before and after the Expiry Date as specified by the Authority at any time prior to (or within ninety days following) the occurrence of a termination or expiry of the Contract, in order to achieve a smooth transfer of the Placement Services to the Authority or any Replacement Contractor following such termination or

expiry.

- 4.2. The Authority shall reimburse the Contractor for any reasonable additional costs incurred in providing the assistance referred to in clause 4.1 above provided that such costs do not exceed the rates forming part of the Maximum Contract Sum, the Contractor notifies the Authority of such costs in advance and the Contractor is not required to provide the assistance under any other contractual obligation.

## **5. Business Continuity**

- 5.1. The Contractor shall have robust contingency plans in place, agreed with the Authority, to ensure that service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Contractor's operations, and those of Sub-contractors, however caused ("Business Continuity Plan").
- 5.2. The Contractor shall ensure that the Business Continuity Plan aligns and continues to be aligned with Good Industry Practice and the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force.
- 5.3. The Contractor shall make the Business Continuity Plan available for the Authority to inspect and to practically test at any reasonable time, and the Contractor shall promptly act upon and incorporate the Authority's reasonable comments upon the Business Continuity Plan.
- 5.4. The Contractor shall regularly review, test and update the Business Continuity Plan in accordance with Good Industry Practice, including:
  - 5.4.1. in the event of a change to the Authority's business operations;
  - 5.4.2. in the event of a change to the provision of the Placement Services;
  - 5.4.3. on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Plan (including the identification of any threat to the Contractor, the Authority or the Placement Services); and/or
  - 5.4.4. where requested by the Authority in accordance with clause 4.5
- 5.5. The Authority may request (such request to be made reasonably) any additional reviews (over and above those provided for in clause 5.4) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with the Authority's written requirements.
- 5.6. In the event of a loss of service, the Contractor shall immediately invoke the Business Continuity Plan (and shall inform the Authority promptly of such invocation). In all other instances the Contractor shall only invoke or test the Business Continuity Plan with the prior consent of the Authority.

## **6. Monitoring of Contract Performance and Management Information**

- 6.1. The Contractor shall provide such data and information (including management information), including supporting documentation where necessary, as the Authority may reasonably request from time to time in relation to this Contract. Such information shall be provided at such times or at such intervals as the Authority reasonably requests from time to time.
- 6.2. The Contractor shall meet with the Authority from time to time, at such intervals and in such places reasonably requested by the Authority, in order to discuss the Placement Services, the Services, whether the Parties' objectives are being met, whether anticipated benefits had been achieved and to identify any lessons learned for future procurements. The Authority shall be permitted to share information arising from such meeting with other Contracting Authorities.

- 6.3. In order to assess the level of performance of the Contractor, the Authority may undertake satisfaction surveys in respect of the Contractor's provision of the Placement Services.
- 6.4. The Authority shall be entitled to notify the Contractor of any aspects of their performance of the Placement Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with the Contract.

## **7. Benchmarking**

- 7.1. The Authority shall be entitled to regularly benchmark:
  - 7.1.1. the Agency Worker's Day Rate and the Mark Up Percentage;
  - 7.1.2. performance of the Placement Services; and
  - 7.1.3. against other Contractors providing services substantially the same as the Placement Services and, in relation to the Agency Worker's Day Rate, the Services during the Contract Period in order to compare the Contractor's Day Rate and the Mark Up Percentage and level of performance of the Placement Services with charges and service offered by third parties so as to provide the Authority with information for comparison purposes.
- 7.2. The Authority shall be entitled to use any model to carry out the benchmarking evaluation referred to in clause 7.1 above.
- 7.3. The Authority shall be entitled to disclose the results of any benchmarking of the Agency Worker's Day Rate and the Mark Up Percentage and provision of the Placement Services to the Authority and other Contracting Authorities.
- 7.4. The Contractor shall use all reasonable endeavours and act in good faith to supply information required by the Authority in order to undertake the benchmarking referred to in this clause 4.7, such information requirements to be at the discretion of the Authority.

## **8. Disruption**

- 8.1. The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 8.2. The Contractor shall immediately inform the Authority if any events occur which affect or might affect the Contractor's ability at any time to perform its obligations under the Contract.

## **9. Remedies in the Event of Inadequate Performance of the Placement Services**

- 9.1. Without prejudice to any other right or remedy which the Authority may have, if any of the Placement Services are not supplied in accordance with, or the Contractor fails to comply with any of the terms of the Contract then the Authority may (whether or not any part of the Placement Services have been provided) do any one or more of the following:
  - 9.1.1. at the Authority's option, give the Contractor the opportunity at the Contractor's expense to either remedy the failure together with any damage resulting from such failure (where such failure is capable of remedy) or to supply replacement Placement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Authority's instructions;
  - 9.1.2. refuse to accept any further Placement Services provided pursuant to this Contract but without any liability to the Authority;

- 9.1.3. carry out at the Contractor's expense any work necessary to make the Placement Services comply with the Contract;
- 9.1.4. without terminating the Contract, itself supply or procure the supply of all or part of the Placement Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Placement Services in accordance with the Contract;
- 9.1.5. terminate the Contract in respect of part of the Placement Services only (whereupon a corresponding reduction in the Maximum Contract Sum shall be made) and thereafter itself supply or procure a third party to supply such part of the Placement Services; and/or
- 9.1.6. charge the Contractor for and the Contractor shall on demand pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Placement Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Placement Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Placement Services.

9.2. In the event that the Contractor:

- 9.2.1. fails to comply with clause 9.1 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- 9.2.2. persistently fails to comply with clause 9.1 above,

the Authority may terminate the Contract with immediate effect by giving the Contractor notice in writing.

## **10. Maximum Contract Sum**

- 10.1. In consideration of the Contractor's performance of its obligations under the Contract in each Month, the Authority shall pay the Maximum Contract Sum in respect of that Month in accordance with clause 4.18 (Payment and VAT).
- 10.2. The Authority shall, in addition to the Maximum Contract Sum and following delivery by the Contractor of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable (if any) on the Maximum Contract Sum.

## **11. Travelling Time and Expenses**

Travelling time of the Agency Worker and expenses incurred by the Agency Worker in the provision of the Services shall be chargeable and payable as agreed with the Authority. The Contractor shall ensure that the calculation of such travelling time and expenses shall be in accordance with the guidance made available to the Contractor by the Authority from time to time.

## **12. Agency Worker's Pay**

- 12.1. The Contractor acknowledges and agrees that the Authority shall be entitled to audit the Contractor's payment of the Agency Worker's Pay to the Agency Worker including the amount and frequency of such payment.
- 12.2. The Contractor shall on demand provide the Authority with all reasonable co-operation and assistance in relation to the audits which may be carried out pursuant to clause 12.1 above. The Contractor shall:
  - 12.2.1. provide all information requested by the Authority within the scope of the audit; and

12.2.2. assist the Authority in obtaining such information directly from the Agency Worker.

### **13. The Agency Workers Regulations 2010 (AWR) Obligations**

- 13.1. The Parties acknowledge that the AWR will apply to the Agency Workers engaged by the Authority. The Parties agree that the Agency Workers shall qualify for equal treatment under the AWR including Day 1 Rights and rights after the Qualifying Period. Both Parties agree to comply with their respective obligations under the AWR.
- 13.2. Where either Party receives a complaint or a request for information or a claim relating to the AWR, it shall inform the other Party immediately and both Parties undertake to work together to respond to the Agency Worker and resolve any complaints and/or requests for information in relation to the AWR.
- 13.3. Each Party shall comply with the other Party's reasonable requests for information in relation to the AWR and any other reasonable requirements to enable the other Party to comply with the AWR.
- 13.4. Neither Party shall act in such a way that would give rise to a claim under the AWR Regulation 9 (anti-avoidance regulation) or any other AWR provision.

### **14. Authority's AWR Obligations**

- 14.1. The Authority shall comply with its obligations during every Assignment to provide the Day 1 Rights to the Agency Workers including but not limited to:
- 14.1.1. providing access to the Agency Workers to canteen or other similar facilities, child-care facilities, staff rooms, transport services and car parking; and
  - 14.1.2. giving the Agency Workers access to information on job vacancies with the Authority.
- 14.2. The Authority shall comply with its obligations during every Assignment to provide the Qualifying Period Rights to the Agency Workers including but not limited to:
- 14.2.1. equal treatment in respect of basic working and employment conditions, working time, night work, breaks and rest periods, annual leave, paid time off for antenatal appointments and overtime.
- 14.3. The Authority undertakes within seven (7) Working Days of any request from the Contractor to provide to the Contractor accurate and comprehensive Comparator Information (and updates thereto).
- 14.4. The Authority undertakes to keep the Contractor updated of any changes to the Comparator Information including, but not limited to any changes to pay scales which impact on the Comparator Information.

### **15. Contractor's AWR Obligations**

- 15.1. The Contractor shall permit the Agency Worker to raise concerns if s/he considers that s/he has not or may not have received equal treatment under the AWR. The Contractor is to allow the Agency Worker to raise this in writing with the Contractor setting out as fully as possible the basis of his/her concerns. The Contractor shall undertake to forward such concern to the Authority within five (5) Working Days of receipt.
- 15.2. After receipt of information from the Authority relating to the Day 1 Rights and the Authority's available vacancies, the Contractor shall undertake to provide this information to each Agency Worker.
- 15.3. As soon as possible and prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Authority's request in writing, the Contractor

undertakes to:

- 15.3.1. inform the Authority of any Calendar Weeks and during the relevant Assignment in which the Agency Worker has worked in the same or a similar role with the Authority and which the Contractor believes count or may count toward the Qualifying Period; and
  - 15.3.2. provide the Authority with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Authority.
- 15.4. The Contractor undertakes to comply with all annual leave provisions for the Agency Worker under the AWR and the Working Time Regulations. The Contractor acknowledges that under the AWR, on completion of the Qualifying Period the Agency Worker would be entitled to paid and/or unpaid annual leave in addition to any entitlement to paid annual leave under the Working Time Regulations.
- 15.5. The Contractor shall on demand, during and after the Contract Period, fully indemnify and keep the Authority fully indemnified against all and any costs, demands, liabilities, losses and against all claims (together with associated costs and expenses) and damages and any other liabilities whatsoever the Authority may suffer or in respect of each and every claim made by or on behalf of any Agency Worker under the AWR, which arises from a breach of clause 13 of this Contract by the Contractor.

## **16. Agency Worker's Remuneration**

- 16.1. Once the Agency Worker has completed the Qualifying Period during the relevant Assignment, the Contractor shall pay to the Agency Worker:
- 16.1.1. the Comparator Rate of pay comparable to the Authority's employee rate of pay; and
  - 16.1.2. where necessary make additional payments to the Agency Worker to comply with the AWR.

## **17. Review of Agency Worker's Pay**

- 17.1. If after the Qualifying Period, the Day Rate needs to be reviewed to comply with the AWR, then the following process shall be adopted:
- 17.1.1. the Authority's hiring manager shall discuss with the Contractor the potential implications of the AWR on the Day Rate with regard to the Comparator Rate; and
  - 17.1.2. if following Authority's hiring manager discussion with the Contractor, it is ascertained that the Agency Worker is not on the Comparator Rate, then the Contractor shall uplift the Day Rate in line with the ceilings of the maximum rate provided for that particular role type in the Contractor's submitted Tender to be comparable to the Comparator Rate.
- 17.2. For the avoidance of doubt the Comparator Rate is not intended to be any higher than the ceilings of the maximum Day Rate as provided for under the Contractor's submitted Tender.
- 17.3. In the event that the Contractor:
- 17.3.1. fails to comply with the AWR and provisions of this Clause 16; and/or
  - 17.3.2. fails to comply with the Comparator Rate payment requirement of the AWR and to increase the Agency Worker's Day Rate to the Comparator Rate,
- the Authority, without prejudice to its other rights and remedies under this Contract, shall be entitled to terminate this Contract (and suspend Contractor's Agency Worker) by written notice with immediate effect.

## 18. Payment and VAT

- 18.1. The Contractor shall issue invoices monthly in arrears. The Authority shall pay all sums properly due and payable to the Contractor in cleared funds within thirty (30) days (unless otherwise agreed in the Order) of receipt of a Valid Invoice, submitted in accordance with this clause 18.1 and the provisions of the Contract to such bank or building society account as notified by the Contractor.
- 18.2. The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Agency Worker Services and Placement Services provided, including, in respect of the Agency Worker Services:
- a booking reference (where provided)
  - the name of the Agency Worker and, where the Agency Worker is a company, the name of the company, company registration number and VAT number;
  - the title of the Agency Worker's role
  - the date (from/to) of work invoiced
  - the number of days worked by the Agency Worker
  - the applicable Mark Up Percentage
  - the Agency Worker's Day Rate
  - the Maximum Contract Sum
  - where the Agency Worker is an employee of the Contractor, the Agency Worker' National Insurance details
  - Details of any travel time, expenses, other disbursements or accommodation payments, and
  - details of VAT calculation
- and shall ensure that each invoice is supported by any other documentation reasonably required by the Authority to substantiate the invoice.
- 18.3. Where the Contractor enters into a Sub-contract it shall ensure that a provision is included in such Sub-contract which requires payment to be made of all sums due by the Contractor to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-contract.
- 18.4. The Contractor shall ensure that a provision is included in the Agency Worker Agreement which requires payment to be made of all sums due by the Contractor to the Agency Worker within a specified period not exceeding thirty days from the receipt of a validly issued invoice, in accordance with the terms of the Agency Worker Agreement.
- 18.5. The Contractor shall indemnify the Authority on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 17.5 shall be paid by the Contractor to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.
- 18.6. The Contractor shall not suspend the supply of the Agency Worker Services and/or Placement Services unless the Contractor is entitled to terminate the Contract under clause 16 of Schedule 1 **Error! Reference source not found.** (Termination for Breach of Contract) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

18.7. Where the Contract provides for payments by the Contractor to the Authority then such payments shall be made, in cleared funds, within a reasonable time unless otherwise specified in the Contract.

## **19. Recovery of Sums Due**

19.1. Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Authority.

19.2. The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

## **20. Euro**

20.1. Where any Law requires the Contractor to account for the Agency Worker Services and/or Placement Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling the Contractor shall provide such accounting free of charge to the Authority.

20.2. The Authority shall provide all reasonable assistance to facilitate compliance with clause 19.2 by the Contractor.

## **21. Contractor's Staff**

21.1. The Contractor shall ensure that Staff and the Agency Worker are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998.

21.2. The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain within the Facility:

21.2.1. any member of the Staff; or

21.2.2. any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

21.3. At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission to the Facilities in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

21.4. Should any Staff be required to enter into the boundaries of the Facility, such Staff shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of the Facility.

21.5. If the Contractor fails to comply with clause 21.3 within two Months of the date of the request, the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

21.6. The decision of the Authority as to whether any person is to be refused access to the Facility and as to whether the Contractor has failed to comply with clause 21.3 shall be final and conclusive.

21.7. The Contractor shall procure that Staff shall at all times during their engagement in the provision of the Placement Services remain servants of the Contractor and the Contractor shall not be relieved of any statutory or other responsibilities in relation to the Staff by virtue of this Contract.

## **22. Relevant Convictions**

22.1. The Contractor shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Contractor to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service procedures or otherwise), is employed or engaged in any part of the provision of the Placement Services and/or Agency Worker Services without Approval.

22.2. The Contractor shall comply with its obligations as to verification of the Agency Worker as set out in the Minimum Service Standard and the Contractor shall not (and shall ensure that any Sub contractor shall not) engage or continue to employ in the provision of the Placement Services any person who has a Relevant Conviction or an inappropriate record.

## **23. Commencement of Services**

23.1. The Contractor and the Authority hereby acknowledge and agree that the provision of the Placement Services and Agency Worker Services will not give rise to a "relevant transfer" under the Employment Regulations and that no employees of the Authority are intended to transfer to the Contractor as a result of the commencement of the provision of the Placement Services and the Agency Worker Services.

23.2. If any contract of employment of any employee of the Authority ("Authority Employee") is found or alleged to have effect as if originally made between the Authority Employee and the Contractor, any of the Contractor's Sub-contractors or the Agency Worker by virtue of the Employment Regulations, the Contractor shall (or shall procure that the relevant Sub-contractor or Agency Worker shall):

23.2.1. as soon as reasonably practicable notify the Authority of such transfer or alleged transfer;

23.2.2. give the Authority two (2) weeks to offer employment to the Authority Employee or take such steps as the Authority may determine to resolve the issue; and

23.2.3. where the Authority chooses not to offer such employment within such two (2) week period or the Authority Employee rejects such offer or the Authority otherwise fails to resolve the issue, the Contractor shall procure the termination of the relevant contract of employment as soon as reasonably practicable and in any event within two (2) weeks of the Authority's failure to make such offer or the Authority Employee's rejection of such offer of employment.

23.3. Subject to the Contractor's compliance with the provisions of clause 22.2 above, the Authority shall indemnify the Contractor in full for and against all reasonable claims costs expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Contractor in relation to such Authority Employee, including without limitation all legal expenses and other professional fees (together with any VAT thereon), liabilities arising out of any termination of any Authority Employee's employment under clause 22.2.3 above and the costs of employing such person between the date of any transfer and the date of such termination, provided that the Authority and Contractor can mutually agree how any proceedings are to be conducted or alternatively how the issue is to be resolved.

## **24. Offers of Employment**

24.1. Other than as provided for in clause 23.2, the Authority will not, without the prior consent of the Contractor during the Contract Period and for a period of three (3) Months thereafter, directly or

indirectly procure the services of any member of the Contractor's Staff.

- 24.2. In the event that the Authority breaches clause 23.1 above, the Authority shall pay to the Contractor all unavoidable and reasonable costs incurred by the Contractor including a sum equal to the gross salary of the employee due during any relevant contractual period of notice to be worked by the member of Authority Staff.
- 24.3. If, before the expiry of the Quarantine Period, the Authority wishes to procure the services of an Agency Worker direct and such Agency Worker was engaged in the provision of Agency Worker Services hereunder, then the Authority shall:
- 24.3.1. Extend the engagement of the individual for a period of twelve weeks before procuring those services.
- 24.4. If, before the expiry of the Quarantine Period, the Authority wishes to procure the services of an Agency Worker direct and such Agency Worker was engaged in the provision of Agency Worker Services hereunder, then the Authority shall not:
- 24.4.1. Pay the Temp to Fixed Term Charge as appropriate and procure those services in the event that an Agency Worker is recruited to a Full Time Equivalent position.
- 24.5. Other than as provided for in clause 23. the Contractor will not, without the prior written consent of the Authority during the Contract Period and for a period of three Months thereafter, directly or indirectly procure the services of any Authority Employee.
- 24.6. In the event that the Contractor breaches clause 23.4 above, the Contractor shall pay to the Authority all unavoidable and reasonable costs incurred by the Authority including a sum equal to the gross salary of the Authority Employee due during any relevant contractual period of notice to be worked.
- 24.7. No breach of clauses 24.1 and 24.4 shall be deemed to have occurred where an individual employed or engaged by one Party becomes an employee of the second Party as a result of a response by that individual to an advertisement placed by or on behalf of the second Party where it is apparent that the principal purpose of the advertisement was not the solicitation or recruitment of a person directly engaged in connection with this Contract and that the advertisement was equally likely to attract applications from individuals who were not employed or engaged by the first Party.

## Schedule 18 Call-Off Contract Minimum Service Standard

The Contractor shall comply with the following requirements:

### 1. Search and Selection

- 1.1. Analysis and qualification of requirement when received by email fax or on-line – should have the ability to deal with all methods of requirement communication.
- 1.2. Candidate searching sourcing via database, advert or other.
- 1.3. Matching and short listing of CVs.

Submission of CVs, arrangement of interviews where required, management of offer and rejection of candidates including feedback. The Authority will identify from the CVs which potential candidates it wishes to interview and notify the Contractor accordingly and provide relevant details about the interview. The Contractor is required to make the necessary provisions for the individual to attend the interview. Following the interview process the Authority will provide the Contractor with relevant feedback on the introductions made. Where the Contractor has made a successful introduction the Authority will submit an Order to confirm the placement.

In presenting a candidate to the Authority the Contractor is required to provide:

- A brief CV for the candidate; maximum of four (4) pages;
  - A template providing evidence of the candidate's experience and qualifications against the project scope; and
  - A completed declaration of interests.
- 1.4. Manage and agree start date and commercial terms.
  - 1.5. Management of pre-recruitment, security checks to include for all successful candidate pre-engagement checks.

The following must be included when carrying out verification checks:

**Verification of identity check** to check a candidate's full name, signature, date of birth, full permanent address.

**Authenticity** the Contractor is expected to be able to demonstrate that all documents (not just those for verification of identity) are checked for authenticity and that the verification process is cumulative by the use of intelligent cross-referencing. The guidance in the *Good Practice Guide on Pre-employment screening- Document Verification* from the Centre for the Protection of National Infrastructure (see [www.cpmi.gov.uk/ProtectingYourAssets/personnelsecurity-268.aspx](http://www.cpmi.gov.uk/ProtectingYourAssets/personnelsecurity-268.aspx)) must be applied.

**Right to work checks** the Contractor must ensure that candidates are eligible to work in the United Kingdom. The Contractor must carry out all of the following checks on all documentation. The guidance in the *Good Practice Guide on Pre-employment screening- Document Verification* from the Centre for the Protection of National Infrastructure (see [www.cpmi.gov.uk/ProtectingYourAssets/personnelsecurity-268.aspx](http://www.cpmi.gov.uk/ProtectingYourAssets/personnelsecurity-268.aspx)) must be applied.

**Qualification and registration checks** qualification checks verify that the information about education, training or professional qualifications provided by each candidate in support of their application form is correct. All essential qualifications must be checked. If a candidate has gained their qualifications overseas, the Contractor must check that this qualification exists, that it is equivalent to the stated UK qualification and that the candidate does, in fact, hold the qualification. Further advice and contact details can be found on the Foreign and Commonwealth website at [www.fco.gov.uk](http://www.fco.gov.uk). If there is any doubt that

qualifications are genuine, contact to the National Academic Recognition Centre (NARIC) at [www.naric.org.uk](http://www.naric.org.uk) should be made.

**Vulnerable Groups** when required the Contractor will provide information to the Disclosure and Barring Service, about staff they provide under the Safeguarding Vulnerable Groups Act 2006. Further advice and contact details can be found on the Disclosure and Barring Service website: [www.homeoffice.gov.uk/agencies-public-bodies/dbs/](http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/)

**Employment history and reference checks** the candidate's registration form must detail the full employment history for a minimum of ten (10) years continuous employment (or all years since employment started, if less than ten (10)), with no unexplained gaps. The employment history must be cross-checked against appropriate employment references, especially in respect of dates of employment and positions held. As a minimum, references are required from the two (2) most substantial, recent assignments

#### 1.6. Administering Disclosure and Barring Service Checks

For some Agency Workers a standard or enhanced disclosure (as appropriate to the role) may be required. When required the disclosure information must be no more than twelve (12) months old when the Agency Worker is supplied.

Standard or enhanced checks must be requested by the Contractor through the Disclosure and Barring Service.

The Contractor must observe the Disclosure and Barring Service Code of Practice when using disclosure information. A self-declaration must be requested from the non-permanent worker.

Basic checks for England and Wales can be requested from Disclosure Scotland – visit [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

**The Contractor must cover the costs incurred by the Agency Worker undertaking a Disclosure and Barring Service check. The Contracting Authorities will not reimburse the Contractor for any costs associated with this, whether they are the direct costs of the check or the administrative costs involved.**

For those roles which require the Agency Worker to have a Disclosure and Barring Service check, if an Agency Worker is a foreign national, then in addition to the Disclosure and Baring Service check, the Contractor will require the Agency Worker to provide a Certificate of Good Conduct obtained from their country of origin or from the countries in which they have lived for the past five years up to the date of their application to the Contractor.

There are two acceptable ways for an Agency Worker to authenticate the Certificate of Good Conduct. The first is that it is authenticated by the Agency Worker's country's Embassy in the UK. The second is that the Agency Worker obtains an Apostille from the country which issued the document. The Apostille authenticates a document for legal purposes in signatory countries to the Apostille Convention.

#### 1.7. An authorisation from the Contractor's candidates for submission of CV's for prospective roles must be sought.

Evidence must be provided that the candidates have given explicit permission for their information to be

- verified; and
- shared with other interested parties in pursuance of arrangements under the Contract.

A candidate must signify their willingness to work in the proposed position before his name is introduced to a Contracting Authority.

Any offer of engagement will be withdrawn without charge to the Authority if the candidate introduced:

- is not who they claimed to be;
- does not have entitlement to work in the UK;
- has an unacceptable criminal record;
- has knowingly withheld information or provided false or misleading information.

## **2. Pay Rolling and Associated Services**

2.1. Management of rate card and/or Agency Worker rate control in line with current market conditions.

2.2. Management of time-sheeting and invoicing – manual and electronic as required by the Authority.

Whether these are paper or electronic, the most basic requirements are that they are provided in a timely fashion, accurately record the contractor supply and correctly charge at tendered rates. The Contractor must ensure that all timesheet and invoice processes are secure and meet current financial audit requirements.

Where the Authority has provided a booking reference then this must be quoted on the timesheet and the related invoice. Each invoice as a minimum must include:

- name of the Agency Worker and where the Agency Worker is a company, the name of the company, company registration number and VAT number;
- title of the Agency Worker's role;
- the date (from/to) of work invoiced;
- the number of days worked by the Agency Worker;
- the applicable Mark Up Percentage;
- the Agency Worker's Day Rate;
- the Maximum Contract Sum;
- where the Agency Worker is an employee of the Contractor, the Agency Worker's National Insurance details;
- details of any travel expenses, other disbursements or accommodation payments; and
- details of VAT calculation.

2.3. Management of Expenses

The Contractor must invoice the Authority for the expenses the contractor incurs separately from the Contractor Day Rate charged to the Authority. The contractor must adhere to the Authority's expenses policy.

2.4. Updating of candidate CV's and references with new and relevant information shall be carried out every six months as a minimum.

2.5. Assignment Agency Worker performance checks, Authority satisfaction milestones.

- The Contractor must be willing to work in a co-operative manner to resolve problems and issues that may affect successful achievement of the outcomes of any placement.
- The Contractor must ensure that there are processes in place to identify any issues associated with the smooth running of this Contract early and to be able offer possible solutions.
- The Contractor is to ensure that a process is in place to deal with Authority dissatisfaction and/or complaints.

2.6. Management off boarding, assignment completion or extension: provision of monthly management information (as required by the Contract) - plus ad hoc reports as required and defined by the Authority.

Performance and account management: clear deliverables will be set out by the Authority and issued to the Contractor as part of the Order placed. These will include deliverables in relation to skills/knowledge transfer.

**ORDER FORM**

**Standing List Agreement for:**

Lot 1 – Approved Temporary Agency Staff Providers

OR

Lot 2 – Approved Social Worker Agency Providers

*(delete as applicable)*

**FROM**

**Authority:**

**Service address:**

**Invoice address:**

**Authorised Representative:**

Ref:

Phone:

E-mail:

**Order number:**

To be quoted on all correspondence relating to this Order:

**Order date:**

**TO**

**Contractor:**

[SERVICE PROVIDER'S NAME]

**For the attention of:**

**E-mail:**

**Telephone number:**

**Address:**

**1. SERVICES REQUIREMENTS**

**(1.1) Services [and deliverables] required from the proposed temporary agency staff**

**Candidate:**

**(1.2) Service Commencement Date for the temporary agency staff Candidate:**

**(1.3) Price payable by Authority and payment profile:**

**(1.4) Completion date (including any extension period or periods):**

**3. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]**

**(3.1) Key personnel of the Contractor proposing the temporary agency staff Candidate:**

**(3.2) Performance standards:**

**(3.3) Location(s) at which the Services are to be provided:**

**(3.6) Management Information and meetings**

#### **4. CONFIDENTIAL INFORMATION**

**(4.1) The following information shall be deemed Confidential Information:**

**(4.2) Duration that the information shall be deemed Confidential Information:**

**BY SIGNING AND RETURNING THIS ORDER FORM THE SERVICE PROVIDER AGREES** to enter a legally binding contract with the Authority to provide to the Authority the Services specified in this Order Form incorporating the rights and obligations in the Call-off Terms and Conditions set out in the Standing List Agreement entered into by the Contractor and the Authority on [DATE].

For and on behalf of the Contractor:

Name and title

Signature

Date

Contractor's Authorised Representative for the Contract (if different)

[NAME]

For and on behalf of the Authority:

Name and title

Signature

Date